1000 Friends of Minnesota (www.1000fom.org)

The mission of 1000 Friends of Minnesota is to promote development that creates healthy communities while conserving natural areas, family farms, woodlands and water. They envision that Minnesota will be a place where: citizens have choices about how their communities grow and have tools to make informed decisions; there are pedestrian-friendly communities along with healthy family farms, woodlands, open space and water; cities and towns do not sprawl into the countryside, but are thoughtfully planned. They also envision growth occurring in a fiscally responsible manner using existing infrastructure and offering transportation alternatives and natural resources are protected.

Minnesota Waters (www.minnesotawaters.org)

Minnesota Waters believes that the lakes and rivers in Minnesota are irreplaceable natural assets to be held in trust for future generations. Through programs of discovery, advocacy and on-the-ground action, the people of Minnesota will change their behaviors and public policies to reflect responsible stewardship. Minnesota Waters promotes responsible stewardship of Minnesota's water resources by engaging citizens, state and local policy makers and other like-minded partners in the protection and restoration of our lakes and rivers. They achieve their mission through watershed education, citizen monitoring, supporting conservation stewardship, influencing public policy and empowering citizen groups to manage their local water resources.

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Thank you to the well-respected individuals representing lake associations, local governments, planning departments, planning commissions, environmental organizations, developers and citizen action groups that were gathered together to help determine the content of this publication. They were asked, "If you were putting a guide together to make your fellow citizens more aware and more engaged in the development process, what kinds of things would you include?" Their suggestions were invaluable. It was their initial brainstorming combined with their enthusiasm that turned an idea into a final product. We thank them for their candor, their willingness to share their expertise, their understanding of the problem, but most of all, for caring enough to do something about it.

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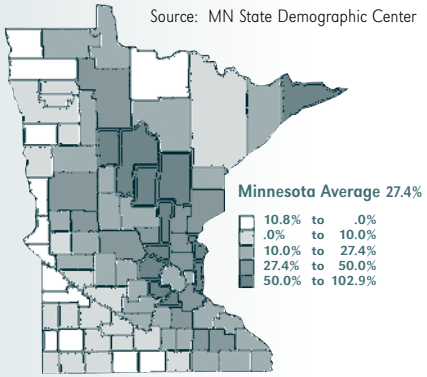
Why is a Citizen's Guide as Necessary As Responsible, Effective, Influential Citizens?

Nonprofit organizations like Minnesota Waters and 1000 Friends of Minnesota often field phone calls from frenzied citizens with concerns about a development that is happening nearby, especially on the shorelands of Minnesota's lakes and rivers. They most often want to know, "What can you do about it?" The typical response by the nonprofit is: "What have you done about it?" That's probably not what the citizen wanted to hear, but it explains the reason for this guide.

Citizens can have a powerful influence on local land-use decisions that determine how their community grows and develops. They just need to be more knowledgeable about the development process and inspired to become engaged earlier rather than later—to be proactive rather than reactive.

That is the intent of this guide—to create a well-informed, well-organized, well-prepared citizenry ready to take action in the name of balanced, well-planned growth and development. There are a couple of other truths they must also know.

FASTEST POPULATION GROWTH PROJECTED FOR SUBURBS AND NORTH CENTRAL COUNTIES 2000-2030

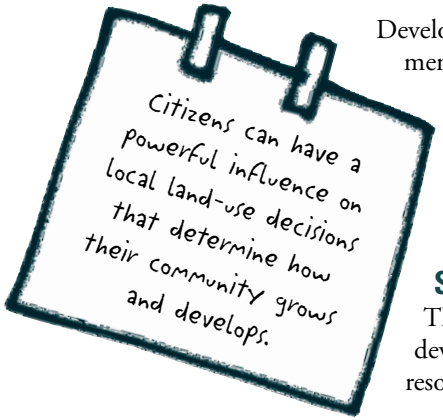


Development is *inevitable*

If you didn't know that already, welcome to reality. As long as there are humans, we will build homes. Here in Minnesota, people dream of one day building a home on or near water. In fact, state demographics predict growth rates of 40 to 60 percent by the year 2030 in Minnesota counties that are rich in water resources.

Another reality is that *responsible* development is *not inevitable*

If development, which we've learned is inevitable, is done improperly along our shorelands, or within the watershed of a lake or river, there can be dramatic, negative impacts on water quality and fish and wildlife habitat.



Development can create more runoff laden with sediments, phosphorous and other pollutants that can impair water quality, and disturbances of natural vegetation along the shoreline and aquatic vegetation near the shore destroys the natural habitat of frogs, birds, fish and other wildlife that depend on that area as their home.

Shoreland management is important

The consequences of uncontrolled and unplanned development can be disastrous to our land and water resources.

Overbuilt and poorly designed shoreland areas degrade the value of the entire water body.

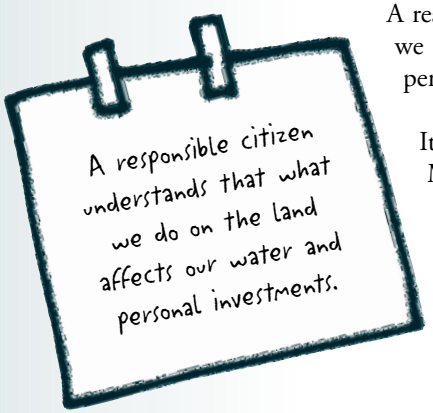
Increasing demand for shoreline building sites has led to skyrocketing land costs. Without controls, land with water frontage tends to be divided into smaller parcels. Scattered cabins, homes, and resorts merge to form a continuous ribbon of buildings and structures along shores of lakes and increasingly on rivers, resulting in the destruction of natural vegetation and scenic beauty.

A first row of crowded structures may be followed by a second and third until the entire watershed is overbuilt.

Marginal shorelands, shallow lakes, and lands with high water tables, severe flooding hazards or steep slopes are falling under increasing development pressure as suitable shorelands are already developed.

The consequences of overdevelopment are increased risks of flooding, pollution and scenic degradation. Nutrients like nitrogen and phosphorous, other pollutants, and improperly designed sewage treatment systems can contaminate wells and the surface waters of lakes and rivers. Development in or near floodplains can reduce the natural storage capacity of the watershed, causing increased flooding threats to life and property. And water quality isn't just an issue for healthy fish populations and plant communities. A recent study done at Bemidji State University [(1)] found that water quality directly impacts shoreland property values.

The study reported that a decrease in water clarity leads to a decrease in the value of lakeshore property. Conversely, an increase in water clarity increases property values. If you were living on a lake, which would you prefer? Degraded property values, polluted lakes and wells, flood damages, and increased public service costs result when short-sighted thinking places immediate profits above long-term impacts and goals of development in our communities.



A responsible citizen understands that what we do on the land affects our water and personal investments.

It's not "if" development will happen on Minnesota's shorelands and within the watersheds of our lakes and rivers; it's about "where," "how," and "how much" we develop that will determine if we protect or harm the water resources that make Minnesota such a special place to live.

The answers to those three questions will ultimately be decided by your community's elected and appointed officials. Responsible citizens can play a vital role in insuring that the right answers are provided.

How much influence you have on land-use decisions depends on the actions of you and your neighbors.

If you want to make sure responsible development happens in your community, get organized, do your research, be thorough, be respectful, and be proactive. Only then, will you be an effective, influential citizen.

How to Be *"Ineffective"* In Influencing Land-Use Decisions

Before you learn how to be more effective as a citizen on the front lines of development, it might be wise to first understand how to be ineffective. Some of you might already be very good at this. Hence, that's another reason for this guide. The following rules on how to be ineffective were written by Gregor McGregor, an environmental attorney in Boston, based on his many years of witnessing citizens doing what they do best: being ineffective.

When you read these rules please read them with passion because ineffective citizens are often very passionate. Unfortunately, they are unable to harness that passion and turn it into practicality. If you would prefer to be remembered for your passion instead of your effectiveness, obey the following rules and stop there. They are guaranteed to make you the most passionate, ineffective citizen in your community. If you want to be effective in influencing local land-use decisions, keep reading this guide.

How to be Ineffective in Citizen Participation

By: Gregor I. McGregor

» This is a lesson in how to be ineffective in public hearings, public meetings, and many other forums available to have your voice heard and your preferences known. With so many good opportunities for citizen input to sponsor zoning changes, review agency regulations, critique government policies, comment on development projects, and speak your mind on whether and with what conditions permits and licenses ought to be granted, why bother to be effective? Somebody else is bound to do it right. Let them enjoy the pride in a battle well fought and an occasional victory well-deserved.

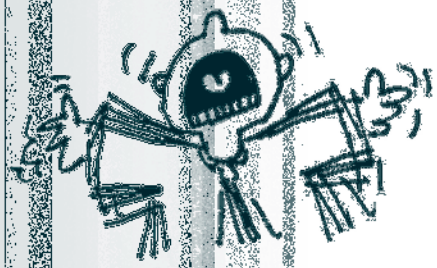
Surely it is enough to do the minimum poorly and then have the satisfaction of complaining why your ideas were ignored, why your contentions were rejected, why your positions were misunderstood, and why your cause was unsuccessful.

The list of suggestions below is presented in honor of people disappointed with the course of human events, railing against change, always amazed at how things turn out. They are satisfied to commiserate at cocktail parties and leave it at that.

These tips are tried and true. These techniques have been used over and over with good results.

✘ **JUST REACT.** Wait until the last minute to do anything, preferably only when it's too late. Never pick your fights when you can relish the opportunity to defend. Never select your issues when you can allow someone else to select them. By waiting until the last minute, you will be sure to conform to the next rule.

✘ **DO NOT PREPARE.** God forbid you should be ready for a public hearing or meeting or comment period. That would require time and effort. That would lead to research on relevant facts presented to fit applicable criteria. That might lead to being persuasive.

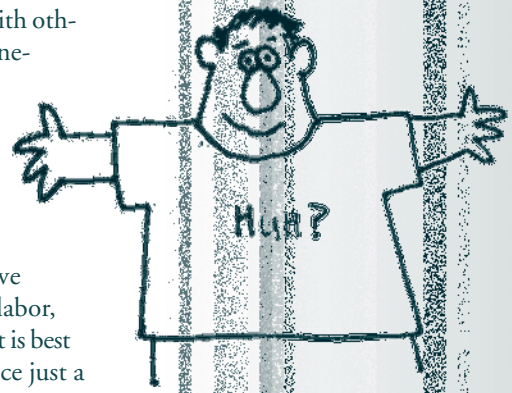


✘ **DO NOT PERSUADE.** Just speak your mind and while you're at it, give them a piece of your mind. It is enough to let them know how you feel and what you demand. Never bother to tailor your points to the audience or the decision-maker.

✘ **HARP ON ONE ISSUE.** There is no sense elaborating all the reasons you are correct. Merely pick one point and drive it home again and again ad nauseum. Incidentally, select as your best issue some picky procedural point so everybody can understand that your effort lacks depth and substance. This is related to the next rule.

✘ **IGNORE THE MERITS.** Base your case on personalities or politics and nothing else. Pollution control, open space preservation, growth management, aquifer protection, and the public health and safety are too complex. You might have to learn something to present your case and face hard issues.

✘ **WORK ALONE.** Coordinating with others who share your interests would necessitate meeting new people and finding out how you can help each other. It would mean you would have to plan your presentation at a public hearing or share the cost of an expert consultant. Anyway, other groups have their own agendas for business or labor, elderly or youth, church or school. It is best to work in a vacuum with your voice just a lone cry.



✘ **DO ONLY ONE THING.** File your petition with a few signatures and then wonder why it was not enough. Pretend the public hearing is the whole shooting match where decision-makers attend, listen, pay attention and then decide. Do only one political action or one technical report and then sit back to see if that works before you bother to do anything else.

✘ **BE FANATIC.** Overstate your case. Be a true believer. Admit no mistakes. Live by the credo: "Often wrong, never in doubt."

✘ **ASK THE IMPOSSIBLE.** Never research the applicable statute, state regulation, zoning bylaw, subdivision regulation, or other standard governing a board decision. Just assume the board has complete discretion to decide based on the volume of shouting from the audience. Be certain to demand a decision that would be illegal for the board to give you. Take the opportunity to demonstrate your unfamiliarity with board procedures, information requirements and deadlines.

✘ **THEN LEAVE.** When done, depart early. Do not risk being around for the actual decision, let alone any motions for reconsideration followed by re-votes. It is especially important to miss subsequent nights of rehearing when the politics and the people present may be entirely different and the decision may be reversed.

✖ **DO NOT LOBBY.** For goodness sake, do not dirty your hands with informal correspondence and discussions with decision-makers behind the scenes. That is lobbying and lobbying is dirty. Never give yourself any reasonable prospect of success by educating ahead-of-time the people you want to convince. That way your message can remain muddled when it is too late to do any good.

✖ **NEVER PUT IT IN WRITING.** Don't bother distilling your positions to writing. Why provide the clarity that comes through organizing a written presentation? Why do the writing that shows your strength of purpose, support for positions and staying power? Why build a written record to give the decision-maker a solid foundation for siding with you? Why submit the documents that would let a reviewing court agree with you? The other side is submitting plenty of documentation including technical studies, legal briefs and policy arguments. That should be enough for the reviewing court to get the whole picture.

✖ **BE A NIMBY.** Rather than advancing a better idea, just be negative. If a public or private project is proposed, be sure to use the words, "Not in My Back Yard." That way, you can be a model citizen showing appreciation of valid public policies and private rights. The general idea is to be the typical nay-saying neighbor.

✖ **DEVELOP PARANOIA.** Make everyone your enemy and make new enemies if you run out. Everyone is against you. Everything is decided behind your back. Government officials are in cahoots and in conflict of interest. Politicians are all bad. Be sure to say so publicly. When a board member votes against you, do not support that person for reelection or reappointment even if the alternatives are worse. If an agency makes a decision against you, do not support its budget requests for the money it needs to do things the way you want. In other words, never talk with your opposition to see where you can "agree to agree" even if on some matters you must "agree to disagree."

How to Be *"Effective"* In Influencing Land-Use Decisions

Good, you've chosen to read on.

To be a responsible, effective, influential citizen, you first need to understand how the development process works in your community.

This guide will help you to do that. You will learn about Comprehensive Plans, zoning ordinances, who are the decision-makers, the meaning of important acronyms like DRT, RGU, EAW, EIS, and what good development is, according to the experts. You will also learn through case studies how responsible citizens like you were successful in influencing local land-use decisions. Most importantly, you will learn how you can be more proactive, more influential and more effective in shaping the future of your community as it grows and develops.

Get Involved in Creating a Long-Term Vision for Your Community

Every community, no matter how big or small, should have a plan for how it wants to grow and develop. As individuals, we plan all the time. We plan our daily work schedules. We plan our kids' even busier play schedules. We plan our vacations. And if we're smart, we plan for our future. Shouldn't we do the same as a community of individuals? Like our vacations and our retirement, shouldn't our community have some idea about where it's going and how it proposes to get there?

A failure to plan is a plan for failure

The best way for a community to take charge of its growth is to create a Comprehensive Plan. A comprehensive plan contains a community's vision for the future and a collection of goals, policies and strategies that will be used to realize that vision.

A comprehensive plan not only creates an official document for guiding future development, it also provides a way for people with different perspectives to articulate the sort of community they would like for the future.

Comprehensive planning is about making places better. If you have an opinion about the kind of place that you want to live in, or that you want your kids to live in, you must participate in the comprehensive planning process. A failure to plan is a plan for failure.

A guide for future growth and development

The comprehensive plan is the first opportunity you have to guide future growth and development in your community. But to be influential, you must show up and you must participate.

The rules are not made by the guy who stays home sprawled out on his couch watching TV and then later complains when he doesn't like the way his community is growing.

If your community already has a comprehensive plan (and most do) and you missed participating, you're still not too late. Comprehensive plans, which often look twenty or thirty years into the future, should be revised about every five to seven years. If your community's comprehensive plan is overdue for a revision, talk to your local planner. Be a responsible citizen and help them to make it happen.

In the meantime, read your community's current comprehensive plan. It is available through your local planning and zoning office. Discuss the plan with your friends and neighbors. What do you like about it? What don't you like about it and want to see changed? Create interest. Interest leads to involvement. Involvement leads to change.

Understand the Rules of Development: Zoning Ordinances

Remember in the beginning of this guide when the nonprofit responded to the frenzied citizen with the question, "What have you done about it?" Well, another question the nonprofit will often pose is, "Does the development in question meet the requirements of the local zoning ordinance?" Many frenzied citizens respond, "How should I know?" The correct response should be, "No, and here are the reasons why."

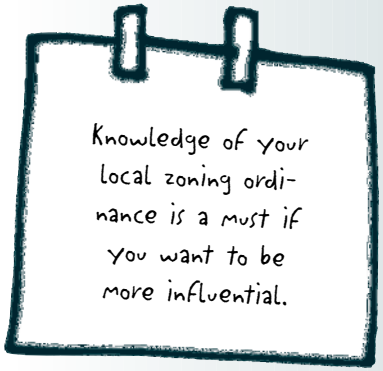
Knowledge of your local zoning ordinance is a must if you want to be more influential than a citizen who only makes a frenzied phone call.

Zoning ordinances follow planning

Once a comprehensive plan is created, a community must then craft zoning ordinances to reflect the plan's vision, goals, and strategies.

Zoning ordinances are the rules of development by which a community must abide. Effective implementation of a comprehensive plan requires consistency between the plan and the zoning ordinances.

If a particular land use is not supported by the comprehensive plan, but is permitted by a zoning ordinance, it will be difficult to stop a developer from pursuing it. This is not uncommon and that is why responsible citizens must actively participate in the creation of both the comprehensive plan and in the zoning ordinances that follow, and/or work to get changes in zoning ordinances that are inconsistent with the comprehensive plan.



Zoning ordinances began as a way to protect property values by prohibiting objectionable land uses like smoke-spewing factories in certain districts. That's still the case today. You won't find a high-density residential development being built next door to a landfill, but you will find some mixing of appropriate uses in urban areas.

Basically, zoning ordinances divide a community into zones like residential, commercial, agricultural or mixed use (a blend of residential and commercial). Each zone has certain permitted uses with requirements such as lot size, setbacks of buildings from the street or the lake, height limits, etc.

A good zoning ordinance that is in compliance with a community's comprehensive plan should make it easy for a developer to do what a community wants and make it impossible for him to do what a community doesn't want.

For example, if a comprehensive plan encourages lower density development in shorelands to better protect water quality, the zoning ordinance should reflect that desire. This is illustrated in the case study entitled, "Be Present for the Future."

Case Study

Be Present for the Future

By: Philip Hunsicker, 1000 Friends of Minnesota

The mission of the Crow Wing County Lakes and Rivers Alliance (LARA) is to help lake and river associations preserve and enhance all the County's lakes, rivers, wetlands and groundwater. Because development impacts County waters, LARA has worked hard to create a mutually respectful relationship with the Crow Wing County Planning Department. Ideas are freely exchanged, but LARA discovered that silence also serves a purpose.

The County created two new shoreland zoning classifications—SR-1 & SR-2—to better protect water quality by limiting the density of future development. The ordinance that created the zones supported the revised County Comprehensive Plan. An ordinance on paper, however, is only as good as its implementation by a planning commission.

Over time, LARA observed that the new ordinance wasn't being implemented, so volunteers from LARA's Board of Directors compiled planning commission decisions on rezoning requests made since the new ordinance went into effect. The results showed that applications for high-density development in shoreland were still being rubber-stamped. LARA reported its research to the County Planning Commission. The LARA volunteers then took turns attending subsequent biweekly planning commission hearings to see how the planning commission and staff responded to the LARA research. During this phase, the volunteers were in attendance simply to observe and gather data. They weren't there to give public testimony — not yet, anyway.

This concept of "passive observation" has been perfected by a group known as WATCH, dedicated to making the justice system more responsive in handling cases of violence, particularly against women and children. Courtroom monitors, who are easily recognized by their bright red clipboards, collect data on observable behaviors by justice system personnel and use this data to identify troublesome patterns, such as chronic offenders going through the system without serious consequences. Judges know they are being "watched," and they know that their decisions will be reported. LARA decided to employ the same technique with regards to shoreland zoning.

Over several months, LARA passively observed a number of noteworthy things:

✔ Applicants weren't requesting the new, more restrictive shoreland zoning designation (SR-2) when they sought to rezone and/or split their shoreland properties. Instead, they were asking for the more dense SR-1 designation, even if the property could accommodate the SR-2 requirements.

✔ Planning staff didn't seem to be steering applicants toward the SR-2 designation.

✔ The Planning Commission continued to approve applications for SR-1 instead of requiring the more protective SR-2 zoning designation when it was appropriate.

✔ LARA's continued presence at the Planning Commission hearings, which was noticed by commission members, seemed to have an effect. Commission members began to question why a property wasn't being rezoned as SR-2 rather than SR-1. These discussions helped to highlight the problems LARA had observed, as well as problems with the ordinance itself. In some ways, the ordinance was too restrictive with lot size and setback requirements, such that many properties couldn't meet the SR-2 standards. Property owners only had one option: the SR-1, which allowed higher densities, more impervious surface and greater impacts to the lake.

LARA felt that if the lot size and setback standards for SR-2 were slightly relaxed, more potential properties could fall into this category. LARA also felt that with the relaxed standards, they could recommend that future lot splits in shoreland only be allowed if the new properties were able to meet the SR-2 standards. In other words, no new high-density SR-1 lots should be created.

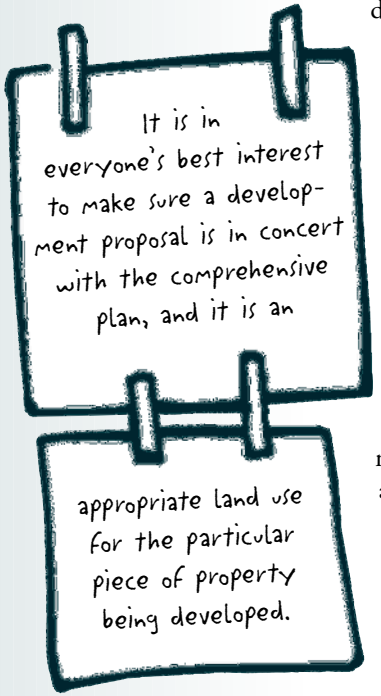
LARA's vow of silence was then replaced with a vow to participate in the discussion to fix the ordinance and its implementation. After months of observation, LARA had the data to back up its recommendations, which were presented to the county planner. The county planner agreed with LARA's proposed changes, which were then presented to the county commissioners for their approval.

With the endorsement of both the county planner and LARA, the county commissioners approved the new SR-2 criteria with only minor changes—changes that LARA could live with. This successful outcome couldn't have happened without organization, research, a reasonable amount of flexibility, a mutually respectful relationship with the county planner, and a willingness to be silent while gathering data that spoke volumes.

Be on Top of a Development as Soon as Possible

Developers have to submit applications to develop a piece of property. Those applications, in principle, must adhere to the desires of the comprehensive plan as well as the rules of the zoning ordinance.

Developers don't just take their application before a planning commission and ask for approval. Other things have to happen first. For example, before an official application is submitted, a developer will sometimes meet with a community's planner to do some preliminary planning. These initial discussions between a developer and a planner help to guide the developer so his application will be in line with both the comprehensive plan and the zoning ordinance.



Eventually, the developer will submit his completed application and pay any associated fees. Planning staff will then visit the site of the proposed development and prepare a report with recommendations. This report is given to the planning commission to aid them in their decision to approve or disapprove the application.

There are many opportunities within this process for citizen input. A responsible citizen will take advantage of those opportunities to assure that the approved development is compatible with their community's vision.

DRT Teams

Some communities have begun to set up Design Review Teams, otherwise known as DRT Teams, or Development Review Teams (DRT). DRTs are used before an application even goes to a planning commission. They are an effort to determine early on whether a development fits with the vision of the comprehensive plan.

The make-up of DRTs can include the community's planner, a representative from the Soil and Water Conservation District, an architect, an engineer, a

landscape architect, or, if protecting lakes is a priority for your community, a representative of the local Coalition of Lake Associations (COLA) or the local lake association.

Typically, there is no cost to the developer and the DRT can make recommendations that could save the developer thousands of dollars. Therefore, it is in everyone's best interest to make sure a development proposal is in concert with the comprehensive plan, and it is an appropriate land use for the particular piece of property being developed.

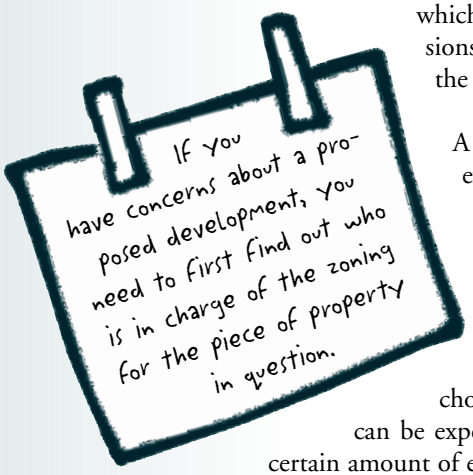
Notices of meetings

Prior to a development application appearing before a planning commission, notifications are sent out to all neighbors living within a certain radius of the proposed development. Often, this is within one-half mile, but it may be different in your community. The notification also runs in the local newspaper. Lake associations can make a request to their community's planning department to receive notification every time a property on the lake is being proposed for development.

That said, it is ultimately up to you, as a responsible citizen, to know what is going on in your own community.

Know Who Controls Development in Your Community

For every piece of property, there is a local unit of government that has authority over zoning and land-use decisions. If you have concerns about a proposed development, you need to first find out who is in charge of the zoning for the piece of property in question.



It might be under the jurisdiction of a county, a city, or a township. Knowing which governmental unit makes decisions is the starting point in influencing the outcome.

A city handles its own zoning. For example, in the Brainerd Lakes Area, the cities of Nisswa, Pequot Lakes, Brainerd and Baxter make all their own land-use decisions. Under state law, incorporated townships may also assume zoning and land-use authority if they choose to do so. Most don't because it can be expensive to administer and there is a certain amount of expertise that is required.

While most townships don't do their own zoning, many will still create a comprehensive plan and they will work closely with the county to realize their vision. If the township chooses not to oversee its own zoning, that responsibility belongs to the county.

It should be noted that counties often seek the input of the township board when making a decision that affects a piece of property within a township.

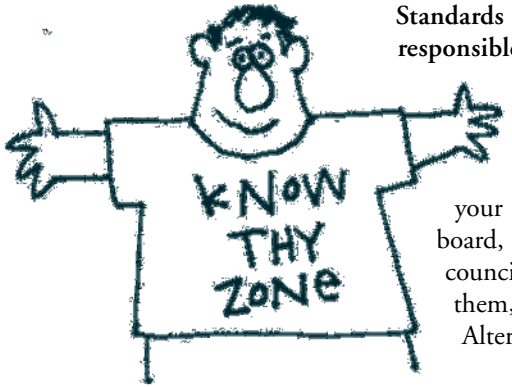
Therefore, if the property you are concerned about falls within the boundaries of an organized township, be sure to communicate your position to the township board, even if it does not have zoning authority.

Shoreland zoning

For shorelands, the State of Minnesota also plays a critical role in governing the way they are developed. The Minnesota Department of Natural Resources (DNR) sets minimum requirements for shoreland development through the State Shoreland Standards. It includes requirements for provisions like building setbacks from lakes and rivers, minimum lot sizes, amount of allowable impervious surface area, and building density.

Local land-use authorities (county, city, and townships, if they have zoning authority) must, at the very least, enforce these state minimum standards for shoreland development. Local units of government can be more restrictive if they choose to do so, and most do because the current standards, which were written in the early 1970s and last updated in 1989, do not provide adequate water quality protection from today's intense shoreland development pressures.

To modernize the State Shoreland Standards and help local units of government better protect the shorelands within their jurisdiction, the Minnesota DNR approved a set of Alternative Shoreland Management Standards [2] in late 2005 that are based on good science and best management practices for protection of water quality. They were developed by a steering committee representing state and local governments, resorts, realtors, developers, the tourism industry, and citizens. The Alternative Standards are a set of tools for local units of government to voluntarily adopt if they wanted to take the next step to better preserve water quality and property values.



Since the Alternative Shoreland Management Standards are not mandatory, your job as a responsible citizen is to convince your local unit of government to voluntarily use them. Become familiar with the voluntary standards. Talk with your planning commission, your county or city planner, your county board, your township board, or your city council. Have your neighbors talk with them, too. Encourage the use of the Alternative Shoreland Standards.

Mahatma Gandhi said it best: *"We must be the change we wish to see in the world."*

Get to Know Your Planning Commission

Get to know the planning commission; they are the folks who make the recommendation to approve or disapprove a particular development.

The planning commission is made up of citizens who have been appointed by the city council (if you live in a city), or by county commissioners (if your land-use decisions are made by the county).

The planning commission hears applications for things like:

- ✔ **rezoning** (such as changing a zoning classification from agricultural to residential)
- ✔ **subdivision or platting** (to create new single-family residential developments)
- ✔ **conditional use permits** (CUP), which place conditions on certain types of developments like Planned Unit Developments (PUDs)

It is the job of the planning commission to decide if an application meets the desires of the comprehensive plan as well as the codes specified in the local zoning ordinance. In making a decision, several other factors are also considered such as recommendations of the planning staff, written comments submitted by concerned neighbors, and oral testimony given by those attending the planning commission hearing.

A planning commission hearing is open to the public.

The planning commission hearing is an opportunity for responsible citizens to let their views and opinions be heard—usually with a time allowance of just three to five minutes so everyone has an opportunity to speak.

Responsible citizens giving testimony on a particular development proposal understand that organized, easy-to-understand, scientific data is a more powerful argument than an irrational, emotional rant.

Decisions aren't based on who is able to yell the loudest. They aren't based on who is the most intimidating or who appears to be the most upset. They aren't even based on who comes to the hearing with the most supporters.

Planning commission members will ultimately base their decisions on "findings of fact."

That is, factual, rather than emotional information, about the property in question. Planning commissions are supposed to consider the answers to the following questions:

- ✔ Is the request consistent with the intent and purpose of the comprehensive plan and the zoning ordinance?
- ✔ Is the request compatible with the surrounding zoning?
- ✔ Will the proposed development have density impacts that are similar to surrounding areas?
- ✔ Is there adequate ingress/egress (a way in and a way out)?
- ✔ Is there enough buildable area?
- ✔ Will the request cause any unreasonable adverse effects on adjacent properties?
- ✔ Is the location and character of the proposed development considered to be consistent with a desirable pattern of development?

Good research is a must

Good research is a must if you are to have any chance of swaying a decision in your favor.

If you can back up your arguments to the planning commission, the county commissioners, or city council with appropriate scientific studies or with local knowledge of the property, your voice will be heard. If you come across as someone who is against any and all development, especially when it happens within 500 feet of your living room bay window, you may as well just stay home and watch your favorite TV show.

Your best tact as a responsible, effective, influential citizen is to rally the folks who share your opinions, and together, point out inconsistencies with the proposed development and the intent of the comprehensive plan and/or the zoning ordinance.

CASE STUDY

Pirz Lake—The Facts Will Speak For Themselves

By: Paula West, Minnesota Waters

Paddling a canoe amid cattails, the rural character of the lake, and clean, clear water lured Tom and Karen Weber to Pirz Lake, a long and narrow—barely 300 feet wide in places—70-acre natural environment lake in Stearns County with 44 developed properties. That was before 2002, when high-speed boats arrived on the lake for the ideal waterskiing conditions of a small, calm lake.

Normal lake activities were curtailed due to the waterskiing activities, and after three seasons of this activity, shorelines were eroding, the aquatic plant population in the lake had quadrupled leaving some residents without access to the lake, emergent plant beds looked like battle zones with stems and lily pads floating everywhere, and stirred up sediments left the water brown and cloudy. Water clarity declined from 22 feet to six feet when the lake experienced its first noxious blue green algae bloom in the summer of 2005.

Earlier in 2005, a local landowner brought a proposal for a 105-acre subdivision with 10 lots, which under current zoning status would allow dividing into 30 total building sites, and an outlot designed for ATV trails, camping area, parking lot, and a six-slip dock before the Stearns County Planning Commission (PC). In the planning process, no one questioned the potential impacts to the lake. Residents only learned about the development by virtue of the public notice leaving them with little time to prepare to voice their concerns about further degradation.

But prepare they did. They got the facts about the lake and the shoreland development criteria for natural environment lakes from the DNR. The facts showed the lake was already overcrowded and the site suitability criteria in the DNR shoreland standards were being ignored by the County. Armed with this information, water clarity data, and testimony before the County from 25 years earlier that said the lake could not handle more development, the residents presented their concerns to the PC. The plat was denied by a resounding 9-2 decision.

That plat was withdrawn from County Commissioners' review and was resubmitted in June 2005 by the Environmental Services Department to the Planning Commission after removing the proposed outlot. Again, the PC denied the plat petition and the denial was referred on to the County Board for a final vote.

Initially the residents' credibility was challenged because they didn't have a formal lake association. With help from the Minnesota Lakes Association, the residents quickly formed a lake association in August 2005, to which 75% of residents joined. The three major landowners declined to join.

At the County Board hearing in August 2005, pressure from supporters of the development and the township officials resulted in a recommendation by the County to postpone their decision and hold a public hearing without any acknowledgement of the Planning Commission's recommendations for denial.

With water clarity data already in hand to show substantial decreases in water quality, the lake association turned to the Minnesota Pollution Control Agency (MPCA) to run a model to show further degradation would occur with more overuse. They also hired Dr. Keith Knutson, a retired professor from St Cloud State who had participated in earlier water quality studies for the County to do further sampling, including sediment sampling, to verify the nutrient rich condition of the lake.

Armed with these facts and now having credibility as an organized association, residents presented well-documented and unemotional testimony at the public hearing in September 2005, appealing to the County Board to allow continued study of the lake before any further development was allowed. On September 13, 2005, the County Board voted to deny the plat.

"The lake association was not anti-development; it wanted orderly development that doesn't harm the lake. We would support a conservation subdivision," said Tom Weber. "By getting organized, doing our research, gathering water quality data, and presenting our facts in an unemotional manner, we were able to show the potential harm to the lake and the lake is now better served. The Pirz Lake website and its data is open to everyone."

Weber noted that through the process he learned it is important to get to know local officials emphasizing that the citizenry has to come and ask the local officials to be involved. "I asked planning commission members if I could come to their homes and share information. People are threatened if they think you have more information or more clout—they go on the defensive. But if you seek to share in the spirit of discovery, they will be more open to hearing and understanding."

In 2006, a voluntary no-wake zone was observed and water clarity improved to 14 feet. Follow the success of the Pirz Lake Association—let the facts speak for themselves.

Get to Know Your City Council or County Board

The planning commission can decide to recommend approval, disapproval, or to table the development request for the collection of additional information. Once a decision is made by the planning commission to approve or disapprove an application, their recommendation is sent to the county board or city council, which has the final say over whether or not a development will be built.

The county board or city council will take into account the planning commission recommendations, input from other state, county and municipal authorities, as well as public input. This is yet another opportunity for responsible citizens to let their learned, rational opinions be heard by decision-makers.

A note of warning: city councils and county boards will sometimes ignore the recommendations of their own planning commission. That is why responsible citizens need to follow an application to the very end.

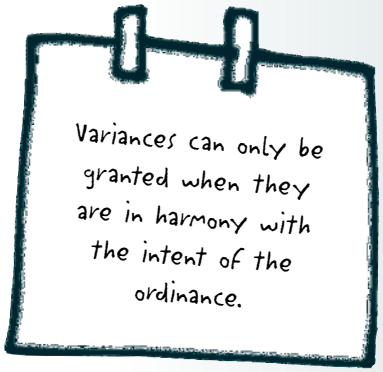
Assuming a recommendation of approval or disapproval from a planning commission will be the final decision of a city council or county board can result in extreme disappointment.

Can Someone Legally Break the Zoning Rules?

Yes, there are times when a property owner can do something on their property that is not allowed in the zoning ordinance. To do so, the property owner must go before another appointed group called the **Board of Adjustment** (**BOA**) or **Board of Appeals** to ask for a variance to the rules.

A variance is permission to break the rules.

The property owner must present valid reasons for why they are unable to meet the rules of the zoning ordinance. An example of a variance request might be to ask if a house can be built 10 feet from a side lot line, although the zoning ordinance normally requires at least 15 feet. Variances can only be granted when they are in harmony with the intent of the ordinance.



In Minnesota, the granting of a variance depends on a determination of **undue hardship** to a property owner.

Undue hardship, as defined by Minnesota law, requires three conditions:

- ✔ **The property in question can't be put to a reasonable use under the conditions of the current zoning ordinance.** For example, a substandard lot might not receive a variance to build a lake home on it because the lot could still be used as a picnic site or as a place to simply access the lake. Some lots are not suitable for home construction. Alternatively, if the property in question is only slightly smaller than the minimum size required by the ordinance, a variance to allow a home to be constructed might be granted. It's up to the discretion of the BOA.

- ✔ **Your predicament is due to circumstances unique to the property and not due to something you created.** For example, let's say you built a lake cabin on a lot. Now, you wish to build a garage or an addition to the cabin that would be closer to the lake than the required setback. You created the dilemma. Therefore, a variance probably wouldn't be granted.

- ✔ **The variance would not alter the character of the neighborhood.** For example, you want to build a three-story home on a lake that would exceed the 35 feet height limit of the ordinance. If the character of the existing development in the area is mostly single-story or two-story homes less than 35 feet in height, a variance probably would not be granted.

Case Study

Warning — It Is No Longer Easier to Ask for Forgiveness Instead of Permission

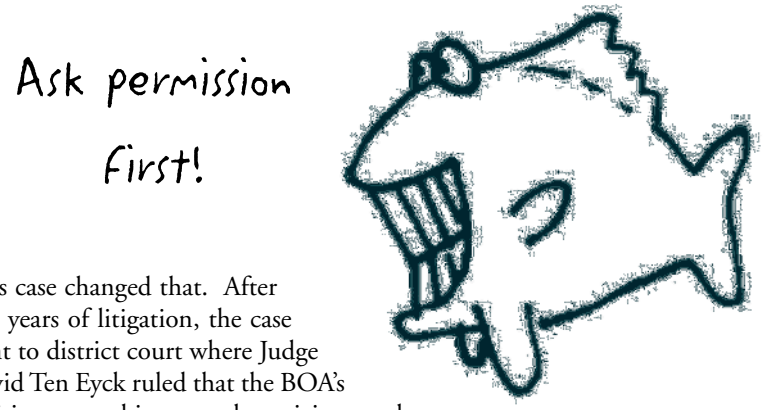
By: Philip Hunsicker, 1000 Friends of Minnesota

In August of 2000, property owners on Placid Lake near Deerwood, Minnesota sought a variance from the Crow Wing County Board of Adjustment (BOA) to build a 363 square-foot addition and make improvements to their lakeside cabin. The reason a variance was needed was because the cabin, which was constructed before current zoning laws went into effect, was only fifteen feet from the lake, much closer than the current required setback of 100 feet.

The requested variance was granted and improvements on the cabin began. Subsequent inspections by county staff, however, identified ten conditions of the variance that had been violated. For example, improvements included leaving just one single non-weight bearing wall from the original structure. Also, there was excessive dirt moving within the shore impact zone to install a new, full basement instead of the crawl space that was requested. The floor of the new, unapproved basement was found to be below the Ordinary High Water (OHW) elevation. The new structure was just 7 feet from the OHW and just 13.3 feet from the water's edge.

A cease-and-desist order was issued by the County and the Crow Wing County Board of Adjustment agreed that the terms of the original variance had been far exceeded. The property owners argued that any effort to restore the property to the terms and conditions of the original variance would just cause more environmental harm. On a 4-3 vote, the Crow Wing County Board of Adjustment granted the property owners an after-the-fact variance, which said, in effect, "OK, you didn't follow the rules, but we'll allow you to continue."

At that point, concerned neighbors joined forces with the Crow Wing County Lakes and Rivers Alliance (LARA) and the Crow Wing Environmental Protection Association (CWEPA) to hire an attorney. A suit was filed against both the Board of Adjustment and the property owners. Often, the only way to fix a land-use violation like this one is to tear down a structure. This is an expensive and unpalatable proposition to most courts, which have, historically, been very reluctant to force property owners to remove illegal structures. In fact, the court system has more typically provided a great way for property owners to, if not attain forgiveness, at least find mercy.



This case changed that. After two years of litigation, the case went to district court where Judge David Ten Eyck ruled that the BOA's decision was arbitrary and capricious and the BOA's decision was reversed. The judge ruled that Crow Wing County had failed in its responsibility to protect the public interest when it issued the after-the-fact variance. To the property owners, the judge had this to say: "The axiom of 'It's better to ask forgiveness than permission' is clearly a standard which should come to an end or not be used to begin with."

He further commented that there was an absence of hardship in this case and any perceived hardship was the direct result of actions taken by the property owners after the original variance was approved. He ruled that the property owners must restore the site to the County's specifications.

The County instructed the property owners to submit a new site plan. In that site plan, the new dwelling would no longer be allowed to sit just 15 feet from the lake. The new dwelling would now have to conform to the lake setback requirement of 100 feet. In addition the property owners would have to revegetate the site where the original dwelling had sat.

Tom Beaver, LARA president, reacted by saying, "We welcome responsible growth and development, but will oppose any project which flaunts the laws, or which knowingly violates the standards most citizens try and uphold."

Additional criteria that a board of adjustment will look at to determine if a variance is justified are things like:

- ✔ any difficulties or hardships that are not solely based on economic considerations.
- ✔ the variance would not allow any use that is prohibited in the zoning district in which the property is located.
- ✔ the proposal will not impede the normal and orderly development and improvement of the surrounding properties.
- ✔ the granting of a variance will not confer on the applicant any special privilege.
- ✔ the variance requested is the minimum variance that would alleviate the perceived hardship.

Variance requests will sometimes pit neighbor against neighbor instead of neighbor against developer. Remember this if you are contesting a variance request. Do it in such a way that you can still remain neighbors no matter what the final decision is. The last thing you want to do is create a situation where you now live right next door to your worst nightmare who has sworn vengeance on you and yours for challenging his request.

Board of adjustment decisions are final; they do not require the approval of the city council or the county board as do planning commission recommendations. If you are dissatisfied with the decision of a board of adjustment, your next avenue of appeal is to go through district court. That requires attorneys, lots of money, and often, lots of time waiting for a decision.

You should weigh the costs with the potential benefits before deciding to go to district court to overturn a decision. That said, court decisions do send out a powerful message to the development community. For an example of how this process can work, see the case study entitled, "Warning: It is no Longer Easier to Ask for Forgiveness Instead of Permission."

Environmental Review: A Useful Tool

Responsible citizens should be familiar with the environmental review process to determine the potential environmental impacts of a development project.

Minnesota's Environmental Review Program (Minnesota Statues, section 116D.04 and 116D.045)[3] provides citizens with tools to help avoid and minimize damage to Minnesota's natural resources caused by public and private actions.

> Responsible citizens should be familiar with the environmental review process to determine the potential environmental impacts of a development project.

Typically, two types of environmental review documents are used to assess the potential environmental impacts of a development in shorelands:

- ✔ **Environmental Assessment Worksheet (EAW)**, a series of questions providing basic information about a project that may have the potential for significant environmental impacts.

- ✔ **Environmental Impact Statement (EIS)**, a more thorough study of a project with potential for significant environmental damage, including evaluation of alternatives and mitigation.

The EAW or EIS are not a means to approve or disapprove a project, but are rather a source of information to guide approval decisions.

The Environmental Assessment Worksheet (EAW)

The Environmental Assessment Worksheet (EAW) is prepared by the Responsible Government Unit (RGU) assigned by the Minnesota Environmental Quality Board (EQB), the state board charged with overseeing the state environmental review process. The RGU is generally the local government that has local land-use decision-making authority. **A moratorium is automatically placed on project approval and construction whenever environmental review is granted by the RGU.**

An EAW can be granted when:

- ✔ The project exceeds mandatory thresholds established by state rulemaking,
- ✔ A RGU responds positively to a citizen petition or,
- ✔ A local government orders a discretionary environmental review.

An EAW will automatically kick in with development projects that exceed certain thresholds, such as the size of the development. For details on when an EAW is mandatory, refer to the Environmental Quality Board's *Guide to Minnesota Environmental Review Rules.*[3]

Citizens can petition for an EAW

For developments that don't meet the mandatory thresholds for environmental review, concerned citizens can petition the EQB to have an EAW prepared. For that to occur, however, there must be some available evidence to indicate that the proposed development project may have significant negative environmental impacts to things like fish and wildlife habitat, water quality, historical or cultural sites, groundwater, traffic, or noise and light pollution, among other reasons.

To be successful in getting the EQB to recommend an EAW to the RGU, citizen petitioners must do more than simply express their opposition or raise questions and concerns. The following helpful information on how to petition for an EAW comes from the *North Shore Land Use Handbook: A Citizen's Action Guide* [4], published by the Minnesota Environmental Partnership. It recommends that citizen petitions for an EAW must include the following:

- ✔ A description of the proposed project.
- ✔ Identification of the project proposer (for example, the name of the developer).
- ✔ Identification of a representative for the petitioners, including mailing address and telephone number.
- ✔ A brief description of the project's potential environmental effects, including an explanation of how unusual or unique characteristics of the location create a need for an EAW even though no mandatory threshold has been exceeded.
- ✔ Material evidence of potential for significant environmental effects because of the project's nature or location. Material evidence can include maps, site plans, existing reports, letters from experts, testimonial letters from citizens, and photographs. Material evidence must be factual documentation of potential for significant environmental effects.
- ✔ Signatures of at least 25 individuals, with no restriction on location of residence, age, or any other factor. Signers must provide a complete mailing address and should certify that they are familiar with the petition content.

Once these conditions have been incorporated into the petition, it is sent to the EQB to determine if it should be forwarded on to the RGU. If granted, the EQB will designate the Responsible Governmental Unit (RGU), such as the county board or the city council, that represents the area in which the proposed development is happening. The EQB will forward the petition to the RGU. Petitioners will be notified by the EQB that this step has been taken and they must also notify the proposer (developer) in writing that they have filed a petition with the EQB.

The RGU will review the petition and will decide whether an EAW is needed. Be aware that less than 25 percent of citizen petitions are granted an EAW by the RGU. To influence this decision, as soon as you receive notice of the designation of the RGU, you should contact the county or city administrator to ask for permission to address the board about the petition. You can also request a public hearing if you know others who are willing to speak about the project and the need for an EAW.

The RGU must require an EAW if the petition establishes that the project may have the potential for significant environmental effects. You should emphasize to the RGU that the petition does not need to show that the project *does* have the potential for significant environmental effects. Rather, an EAW is designed to determine whether the potential is there, and it is required for any project that *might* have that potential.

If the RGU denies your petition, you still have options. You can ask the EQB to intervene and require an EAW, although they rarely grant such a request. This request does not have specific requirements like the petition, but resubmit the petition with your request. The more facts you have, especially statements from experts outlining potential impacts, the better your chance of success. Or, you can challenge the RGU's decision in court.

Be part of the process of preparing the EAW

EAWs are often prepared by a contractor chosen by the developer and then adopted by the RGU without any changes or additions. Typically, citizens then comment on what has been prepared and the developer and RGU will often take a defensive position rather than remaining open to changes based on citizen input.

Case Study *Everybody Can Win Something*

By: Paula West, Minnesota Waters

Stockhaven Lake, a 227-acre natural environment lake in Douglas County with an average depth of four feet and plentiful emergent vegetation ringing nearly the entire shoreland, has been enjoyed as a prime duck hunting lake for sportsmen in Douglas County for many years. When one of only four shoreland owners on the lake sold their land to Naterra Land Development Corporation, that primary use was about to change.

At the first hearing before the Douglas County Planning Commission in 2005, Naterra Land proposed a 144-acre development of 27 residential lots—18 lots on the lake, 7 back lots, and one controlled access lot for non-riparian access to Stockhaven Lake. Concerned about the impacts on this small, sensitive lake, the Douglas County Coalition of Lake Associations (DCLA) and the Douglas County Water and Wetland Conservation Coalition (DCWWCC) of area sportsmen expressed opposition to the controlled access lot because it did not comply with the current Douglas County shoreland ordinance. They asked for a discretionary Environmental Assessment Worksheet (EAW) to assess the potential environmental impacts of the development on the lake. The EAW was recommended by the Planning Commission and approved by the Douglas County Commissioners along with denying the common access lot.

At this point, a representative of Naterra Land sat down with the DCLA and the Coalition to hear their concerns, which included a desire that the first 50 feet of lot setback from the water be put in a conservation easement, reduced dockage, clustered septic systems, a no-wake ordinance for the entire lake, and sedimentation ponds to be added in the development to control runoff into the lake. While nothing was promised by Naterra at the meeting, the citizens were pleased that the developer was willing to listen to their concerns.

As instructed by the County, Naterra hired a firm to complete the EAW and voluntarily added eight sediment ponds to the development design. Upon completion of the EAW, the DCLA in the comment period, following its own review of the EAW, expressed concerns about the incompleteness of the worksheet in addressing their initial concerns.

At the County hearing to determine if an EIS (Environmental Impact Study) was needed based on the EAW, the DCLA pointed out to the County officials that not all the comments on the worksheet were assembled for their review and valid determination. Acknowledging mistakes in procedure and to mitigate the expressed concerns, the County Board suggested the citizen groups (DCLA and the DCWWCC), the developer (Naterra Land), and one county commissioner meet immediately to see if a mitigated plan could be reached prior to an EIS determination.

That same day, an agreement acceptable by all parties was reached. While the DCLA and the DCWWCC did not get their desired clustered septic systems, there was agreement on requiring the first 50 feet of shoreland be put in a conservation easement and the County agreed to be a party to the development covenants to help insure enforcement. The developer agreed to a maintenance plan and 10-foot easement around the sediment ponds, dockage would be limited to one per lot at a maximum length of 25 feet, and they pledged to not fight against the establishment of a surface water ordinance. In April 2006, the Stockhaven Lake Water Surface Use Ordinance was passed which limited motor use to electric trolling motors of no more than 50 pound trust and no jet skis. Because of the mitigated agreement, an EIS was no longer necessary and a negative declaration was made.

While no party got all that they desired, all got some of what they wanted in the consensus agreement. The citizen groups, the developer, and the County could all accept as reasonable a balanced plan for development on Stockhaven Lake. In a sense, everyone won in this situation—even small, shallow Stockhaven Lake.

Instead, citizens should try to establish a process that allows them input into the preparation of the EAW. Talk to the developer and the RGU about how you can submit information for the EAW before it is prepared. Find out who is preparing the EAW and contact them to explain your concerns. Often, when a contractor identifies a potential problem while preparing an EAW, the developer will make changes to the project to avoid the problem before the EAW is finalized. Or, by expressing your concerns to the developer and the RGU a compromise position may be achieved with the developer. This was the case with a development on Stockhaven Lake in Douglas County described in the case study "Everybody Can Win Something."

Case Study

Dead Lake Association Advocates for Responsible Development

By: Terry Sullivan, Dead Lake Association

In late 2002, Dead Lake residents and seasonal property owners were shocked to learn about a very large cluster development proposed to be located on shallow water areas on Dead Lake, located in north central Otter Tail County. Dead Lake is Minnesota's largest natural environment lake. It is 7,900 acres, of which 83 percent is less than fifteen feet deep. Dead Lake's natural environment classification is based on its abundant aquatic vegetation supporting fish and wildlife habitat, its extensive ratio of shoreline to water area, its relatively undeveloped status and the extensive emergent vegetation found throughout the lake. It is also one of the state's westernmost wild rice lakes.

The proposed Blue Heron Bay development is planned in one of the most ecologically fragile areas of this shallow lake—a 202 acre peninsula surrounded by shallow water with sediment depths from one to five feet and large stands of bulrushes. The original proposal called for the development of 151 dwellings in 90 buildings, a restaurant, lodge, swimming pool, three marinas, and parking space for 500 cars, effectively creating an instant town at the development site larger than either of the two nearest towns of Dent or Richville. It would have amounted to a nearly 50 percent increase in residents on Dead Lake.

According to the County's shoreland ordinance, for a development of that size on a natural environmental lake only 49 individual lots should be allowed.

People concerned about the potential for an adverse environmental impact on the lake organized through the Dead Lake Association to express their concerns. Following the completion of an environmental assessment worksheet (EAW), the Dead Lake Association (DLA), the Minnesota Department of Natural Resources, and the U.S. Fish and Wildlife Service all asked Otter Tail County to require an Environmental Impact Statement (EIS) to be prepared in order to understand and mitigate the potential effects of the Blue Heron Bay development on the lake. Utilizing two well known engineering firms and other experts, the Dead Lake Association compiled extensive documentation as to why an EIS was necessary. In February 2003, Otter Tail County denied the request for an EIS.

Despite overwhelming opposition in March 2003, the County gave the developer a conditional use permit (CUP) to proceed with the development, only reducing the residential component to 138 units and leaving the other excessive development components intact. Highly experienced real estate professionals within the Dead Lake Association believe the maximum development density allowed under the Otter Tail Shoreland Ordinance to be less than half that given under the CUP.

In addition, during Minnesota Pollution Control Agency (MPCA) hearings for a wastewater treatment permit for the development, it came to light that extremely elevated nitrates were present in the groundwater, something that would have been learned prior to wastewater treatment permitting if an EIS had been performed. None-the-less, the MPCA did grant a wastewater treatment permit for the development.

These decisions to ignore legitimate environmental concerns led to three lawsuits by the Dead Lake Association. The legal action to require an Environmental Impact Statement (EIS) was heard by the Appellate Court in December 2004. The companion appeal of the MPCA's granting of a wastewater treatment permit was heard on the same day. The Court of Appeal's decision required an Environmental Impact Statement (EIS), the first ever done in Otter Tail County, and rescinded the MPCA wastewater treatment permit citing it was premature prior to the completion of the EIS.

The Dead Lake Association also appealed the granting of a conditional use permit all the way to the Minnesota Supreme Court. The Court heard the Dead Lake Association's appeal about the CUP in November 2004. In addition to an array of flaws in the planning process that lead up to granting the CUP, Otter Tail County failed to delineate through a Planned Urban Development process those areas on Otter Tail County lakes suitable for granting the bonus density available to developers under a cluster development. Many other counties have similarly failed to map shorelands environmentally suitable for a bonus density. The Supreme Court ruled it did not have the jurisdiction to require the County to district/zone for shoreland development and remanded the case back to the County. However, the Supreme Court provided strong language that encouraged the County to do so. To date, Otter Tail County has not zoned any lake area for development nor have they updated their shoreland ordinance to provide better protection for the lakes of Otter Tail County.

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Case Study

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The Dead Lake Association participated in the EIS scoping process and provided public comments throughout the draft and final EIS process. On October 31, 2006, the Otter Tail County Board of Commissioners deemed the EIS adequate. In December 2006, the developer presented a revised application for the proposed Blue Heron Bay development's Conditional Use Permit. After numerous hours of discussion among representatives of the Dead Lake Association, the developer and the County, agreement was reached on 23 mitigation issues that will be conditions to the CUP. The County Board of Commissioners met three times in December, finally deciding on 94 residential units, no commercial development and 87 boat slips. While the Dead Lake Association pressed for less density, the numbers approved are far less than the 151 originally proposed by the developer or the 138 units approved by the County Commissioners in 2003.

The Dead Lake Association has mounted a vigorous defense over the past four years. Since 2002, DLA has spent over $250,000 and many thousands of volunteer hours. This is an amazing commitment since Dead Lake is not known as an area of high-end homes or wealthy property owners. A subgroup of the lake association, the Lakes Environmental Committee, was formed in 2003 to oversee the legal and fundraising efforts to hold Otter Tail County accountable for responsible development on Dead Lake. The Committee has met every two weeks since its conception. A sub-committee, called the Legal Team, coordinates communications and decisions with law firms and serves as the team that interacts with the developer.

The money has been raised though three years of monthly pancake breakfasts, direct appeal for funds, raffles, and picnic/auction events during each of the past four summers. As a commitment to the future, the Association formed an Endowment Fund in January 2006.

The Dead Lake Association will continue to push for shoreland districting, as encouraged by the Minnesota Supreme Court, and is developing a lake management plan, including surface water protection ordinances. These measures demonstrate that the Association is not against development, but rather fights for "responsible development" that will balance enjoyment and use of the lake and the development of its shores with the protection of the lake's aquatic community and ecology. If done properly, future generations will enjoy Dead Lake as much as past generations.

Editorial Note: The development on Dead Lake is an issue of statewide significance. The overall scarcity of quality lakeshore has put pressure on lakes that past policy makers never thought would be developed, namely natural environment lakes, sensitive areas on general development and recreational classified lakes and wetland areas. This, combined with the new trend for mega-developments, has created an immediate resource controversy.

The lake classification system established over twenty years ago never foresaw today's development climate. The problem is made worse when the responsible unit of government, Otter Tail County in the case of Blue Heron Bay development, is overwhelmed or unwilling to apply the protective measures that are available.

Review and decision on an EAW

After an EAW is completed, there is a 30-day public comment period.

State agencies like the Department of Natural Resources and the Pollution Control Agency are asked for their opinions. Responsible citizens can also weigh in with their written comments.

Citizen comments should be constructive. They should point out potential environmental effects that have been overlooked or not investigated well enough. Try to make suggestions for changes that address the potential problems. Citizens are also encouraged to solicit professional assistance in reviewing the EAW. Professional opinions matter, so make sure they become part of the public record.

The findings of the EAW, along with the public comments, are used to:

- ✔ determine how the proposed development project might be modified to lessen its potential environmental impacts, and,
- ✔ decide whether a more involved, and more expensive, Environmental Impact Statement (EIS) is ultimately needed.

Citizens should be aware that an EIS declaration is rarely recommended by an RGU, even if it seems like the logical next step. More likely, an RGU will recommend changes to the proposed development based on information provided in the EAW. If you still feel an EIS is warranted after a negative decision to proceed to an EIS, the RGU's decision can be challenged in court. You might even win as the Dead Lake Association did, but not without great cost.

If an EIS is recommended, the costs, which can be $100,000 or more, are picked up by the developer, so you can expect the developer to fight this possibility. The first step in an EIS is called scoping. This refers to determining the scope of issues that will be covered by the EIS. Only those environmental concerns that, through the EAW process, have shown a potential to be significant will be addressed in the EIS. This is why you, as a responsible citizen, should make sure the information contained in the EAW is correct and complete.

Make sure you have legitimate concerns

The EAW is a great tool for getting rudimentary answers to legitimate environmental concerns. Some planning commission members have been heard to opine that EAWs are only used as a stall tactic. This shouldn't be your reason for supporting an EAW. You should have legitimate environmental concerns that require further study.

One of the shortcomings of doing an EAW is that it is limited to potential environmental impacts; it isn't able to analyze the potential economic or social impacts of a development to a community, which may in fact, be more extensive and far more destructive than the environmental impacts.

Some good news—the EQB is currently revising the mandatory thresholds for an EAW, along with questions on the worksheet, for improved environmental review of shoreland developments. This is expected to be completed in 2007.

Play Offense Rather than Defense

Instead of simply reacting to each new development as it comes down the pike, experts recommend that citizens take a proactive approach to development. In other words, take the offensive. Be in control instead of always feeling like the one being controlled.

Here are some suggestions on how to be the dog instead of the tail:

- ✔ **Get your community organized long before a crisis forces you to work together.** Form a neighborhood association or lake association. Get to know each other before someone needs to start barking out orders to meet deadlines associated with a development application. As a neighborhood, or as a lake association, participate in the comprehensive planning process. It's simple mathematics: thirty or forty opinions carry much more weight than one or two.

- ✔ **It's never too early to develop mutually respectful relationships with local elected and appointed officials.** Meet with them personally. Go where they are; don't ask them to come to you. Go with someone they already trust. Don't try and educate them; just have a conversation. Once the person begins to know you, become a resource for them. Let them know that you are not asking them to vote a certain way; you are helping them to gather information to make a more informed decision. Find out what they care about and then find the connections to what you would like them to know and do. Meet as often and in as many different ways as is useful and enjoyable to both of you. Establish a long-term relationship. Familiarity breeds trust. Most importantly, follow through on anything to which you commit.

- ✔ **Know where developers will one day strike in your community.** Find out where the large undeveloped tracts are. These may be family farms, areas currently zoned as agricultural lands, green space, or large stretches of undeveloped shoreline. Check a local plat book to find out where they are, who owns them, and what is the development potential.

Case Study *Be Proactive—Form Sustainability Committees*

By: Philip Hunsicker, 1000 Friends of Minnesota

Lake associations are becoming more involved in development issues than ever before because our lakes are seeing more development pressure than ever before. Summer cabins are being torn down, and in their place, monstrous 7,000 square foot, year-round starter castles go up. In addition, new developments are springing up on lakes that were once considered unappealing because they were too small, too shallow or too boggy. Lake associations are having to enter into the debate over how much shoreline development is appropriate, how much shoreline needs to be preserved in its natural state to adequately protect water quality, and how to deal with all those other properties that aren't right on the lake, but still impact the lake's water quality.

To be more proactive rather than reactive to development, many lake associations are starting a **Sustainability Committee.** A sustainability committee is an active group of people within a lake association that is responsible for evaluating the development potential and preservation potential of all properties (riparian and non-riparian) within the lake's watershed. The committee collects publicly accessible land ownership data, determines environmentally sensitive areas on the lake and in the watershed, prioritizes projects for preservation, contacts the landowners of sensitive parcels and alerts them of concerns, and develops a proactive plan with strategies to address future land-use changes that could negatively impact their lake (and their property values).

Sustainability committees have many tools at their disposal. First, they can encourage landowners to place a conservation easement on their property. Conservation easements are legally binding agreements that allow landowners to voluntarily limit the use and development of their land in order to permanently preserve the land's natural features. Each conservation easement is unique and tailored to the conservation value of the property being protected as well as the needs of the landowner.

A good example of a conservation easement that still allows for some development is one done by Margaret Lunborg Larson whose family has owned land on Middle and Upper Cullen Lakes in Crow Wing County since 1908. At 87 years old, Margaret says, "I was sick of being approached by lawyers and developers who wanted to buy up my land and develop every square inch." Margaret wanted to permanently protect an important piece of her family's history. The terms of her easement agreement prohibit any kind of development on the 1,600 feet of shoreline on Upper Cullen Lake and limit development on the 1,300 feet of shoreline on Middle Cullen Lake. Margaret feels good about what she has done and she suspects that her ancestors are pleased, too.

Another tool used by sustainability committees is to ask landowners to choose an environmentally responsible developer if they ever decide to sell to a developer. If the property is considered environmentally sensitive and is a high priority for protection, the sustainability committee can try to put together a purchase offer of its own. This works best if the landowner has not yet approached a developer. Many lake associations have found that the price for a piece of land already bid on by a developer is three to five times more expensive than what it would be without a developer's bid.

> "The Mule Lake Project happened because we worked together right from the start, thinking strategically and dreaming big."
>
> Gary Lyall, Leech Lake Area Watershed Foundation

In Cass County, the Mule Lake Association worked closely with the Leech Lake Area Watershed Foundation to permanently protect 361 acres, including three miles of shoreline on Donkey and Mule Lakes. The price tag was a staggering $2.7 million, but the community didn't let that stop them. They came up with a plan, did some fundraising, acquired grants, and brought on partners like Ducks Unlimited and the DNR's Reinvest in Minnesota (RIM) Program. Today, the land is a state designated Wildlife Management Area (WMA).

Can sustainability committees help lake associations to preserve important parcels of land that are vital for maintaining good water quality? According to Gary Lyall of the Leech Lake Area Watershed Foundation, the answer is, "Yes." He says, "The Mule Lake Project happened here because we worked together right from the start, thinking strategically and dreaming big." Ted Mellby, also with the Foundation, added "It's pretty rare that major shoreline areas have been targeted for conservation. Usually, they're targeted for development. This project sends the message that there are things citizen conservationists can do to protect their favorite lake."

- ✔ **Talk with the landowners just as you would with local elected and appointed officials.** Be a "developer" by developing mutually respectful relationships with the property owners who will be deciding if, when, and how their property will be developed. If development is inevitable, help the landowner to connect with a responsible developer who wants to work closely with the property owner and the neighbors to create a development everyone supports.

- ✔ **Citizens should set up an early warning system to find out about prospective developments before they reach the planning commission.** This requires a communications network. People talk. Other people hear things. Take advantage of that. Basically, be nosey and encourage your neighbors to do the same.

- ✔ **Citizens should get involved in local government.** Run for public office. Citizen groups should identify units of government that impact their priorities and then work to get their citizen group members appointed to serve. Have potential, willing candidates waiting in the wings for when future openings occur.

More Sage Advice for Responsible Citizens

The following suggestions have been offered by experts—people in the trenches who have seen the good, the bad and the ugly when it comes to citizen influence on development decisions. While not a guarantee to make you successful, these suggestions are guaranteed to make you look smart rather than dumb, and that's always a good thing. Here's advice from the experts:

- ✔ **Get involved in the development process as early as possible and work to generate interest in the community.**

- ✔ **Work to get all stakeholders together (neighbors, the developer, etc.) before an application gets before a planning commission.** Provide the developer an opportunity to share his plan with neighbors. This will also provide you an opportunity to share your concerns with the developer.

- ✔ **Be open to some form of development if it is appropriate for the property in question.** Development is often a process of negotiation, especially with a good developer. What the developer wants and what you want may have some "middle ground."

- ✔ **Ask the question, "Am I alone?"** If the answer is no, get organized with others who share your concerns.

- ✔ **Thoroughly research an issue before offering an opinion.** Remember, you want to come across as smart and well prepared when you give testimony before the planning commission and your fellow citizens.

- ✔ **Connect with local experts for their advice.** For example, you may think a piece of property is important wildlife habitat, but does the local DNR expert agree with you?

- ✔ **Put your concerns in writing.** Don't wait until the public testimony phase of the application process to present your "secret" findings. Put it in writing first and make sure officials are aware before you drop a bomb. Public officials hate being blind-sided. Make sure you get your concerns in writing to the planning office well in advance of the planning commission meeting where the development in question will be discussed. Your comments will then get included in a packet for commission members to review prior to the hearing. Limit your message to one or two pages. Courteous, factual, concise and clear messages are most effective and persuasive.

- ✔ **Present the facts succinctly when giving testimony.** Simple opinions don't matter. It's a good idea to write a letter along with giving public testimony. This becomes part of the public record. If testimony is limited to three minutes per person, as it often is, coordinate your testimony with other neighbors so each person's comments build on the previous comments to tell the whole story. Avoid being redundant.

- ✔ **Use good people skills in all interactions.** Be respectful of differing opinions.

- ✔ **Understand that decisions by elected and politically appointed officials are sometimes made for political reasons.** This can be the case if ordinances aren't strong enough or if they are vague enough to be interpreted more than one way.

- ✔ **Get organized, gather information and take action in that order.**

CASE STUDY

You Could Learn a Lot From a Serpent

By: Philip Hunsicker, 1000 Friends of Minnesota

If you found out tomorrow that a questionable development was being proposed on your lake, would you be prepared to respond—not as a reactionary NIMBY (Not In My Back Yard) who, having achieved his/her piece of paradise, doesn't want anyone else to do likewise, but instead as part of an articulate, respectful, open-minded, well-informed coalition of concerned citizens? The Serpent Lake Association in Crosby, Minnesota (Crow Wing County) was prepared when this happened. Perhaps, you can learn something from their success.

A Planned Unit Development (PUD) was proposed on nine wooded acres along 370 feet of the Serpent Lake shoreline. The developer wanted to build 28 non-clustered housing units with a centralized dock with 24 permanent mooring sites. The Serpent Lake Association felt that this inappropriate land use would have excessive negative impacts to public waters. The proposal stood a good chance of approval if the Serpent Lake Association did nothing. The Association was not against reasonable development of the parcel and it was willing to work with the City of Crosby and with the developer to come up with a proposal that could be supported by all parties.

The final agreement between the City, the developer and the Serpent Lake Association called for three dwellings on the lake (with lake access), two dwellings off the lake (without lake access), and an outlot along the highway (for a possible future commercial venture). How did this development proposal go from 28 housing units down to five? How did it go from 24 boat slips to just three family docks?

The Serpent Lake Association was successful because it wasn't against all development, a position it made known to the City and to the developer. This flexibility set the scene for fruitful negotiation, which is quite common in the development process. How successful you are depends on identifying the appropriate issues to address and the people skills one possesses and demonstrates at public meetings. The Serpent Lake Association succeeded because it negotiated from a showing of strength, reasonably and calmly stated in public.

Part of the Serpent Lake Association's strength came from being organized and ready. When the application and public hearing process began, the Association provided City decision-makers with written explanations of the Association's legal and environmental positions and appeared at the hearings to explain them. An early decision the Serpent Lake Association leadership made was to obtain legal advice, not to drag the issue through the courts, but to ready the Association for its defense on the issues. The organizational skills of the Association were then mobilized in consultation with legal counsel to address the specific legal issues presented by the application.

The Serpent Lake Association succeeded because it negotiated from a showing of strength, reasonably and calmly stated in public.

Because the Association was organized, it realized that it lacked appropriate, internal environmental expertise and promptly made arrangements with an independent professional firm to assess the potential environmental degradation from a development with 28 non-clustered housing units. The findings from that study were incorporated into public presentations by the Association. The study was also the basis for a citizen-petitioned Environmental Assessment Worksheet (EAW), again demonstrating to the developer and to the City the resolve of the Association.

Someone once said, "The harder I work, the luckier I get." That was certainly the case for the Serpent Lake Association. They were lucky enough to work with a developer who was respectful of valid community concerns. One has to wonder, however, if the developer would have been as accommodating if the Association hadn't worked as hard as it did and had it not presented such a spirited public position on legal issues.

The Serpent Lake Association was successful for many reasons: It was organized, it took the offensive instead of waiting to react, it cultivated a relationship with the developer, it sought outside assistance when needed, and it had early legal counsel. But most importantly, it followed the advice of Calvin Coolidge who said, "Press on. Nothing in the world can take the place of perseverance. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent."

- ✔ **Form specialized committees and have assignments.** The folks who do the best research might not be the best presenters at a public hearing. Designate a media/outreach person to get your story out. Assign someone to be the primary contact with your local unit of government and with the developer. Visit the site where the proposed development will happen. Site visits are often recommended to planning commission members and these are open to the public. It provides an excellent informal opportunity to talk with decision-makers and the developer about your concerns.

- ✔ **Expect to be persistent in achieving goals and objectives.** Instant results are uncommon. To avoid burnout, think of your efforts as a cross-country, long-distance marathon run rather than a 100-yard dash.

- ✔ **Be "Energizer Bunnies."** Changing strategies may be necessary, but giving up or quitting should be low on your list of things to do.

- ✔ **Seek knowledgeable legal advice.** Your goal isn't to drag the issue through the court system, but an attorney can help you to present valid arguments that specifically address legal issues associated with a development. Sometimes seeking legal advice before a hearing can save the need for legal advice later.

- ✔ **Stay cool when your efforts are misunderstood or inaccurately portrayed by those who are opposed to your ideas.** Those who don't share your views may not understand your position. Later, you may find that your adversary on one issue is your ally on another, so put the matches away and stop yourself from burning any bridges.

- ✔ **Provide all participants in discussions an opportunity to gracefully change their position when new information is uncovered or provided.**

What is Good Development?

Good question. If we, as responsible citizens, understand that development will happen, and if we understand that our role is to promote "good development," then we need to understand just what "good development" is. The correct answer shouldn't depend on whom one asks.

For example, ask a developer what good development is and you might hear things like, "meets the local zoning codes," or "turns a healthy profit for me (the developer) and increases the community's tax base." Now, ask the neighbor who lives right next door to where a development is happening. Their response would probably be different than that of the developer. The neighbor might say something like, "fits in with the neighborhood," or "won't detract from my (the neighbor's) property values."

Qualities of good development

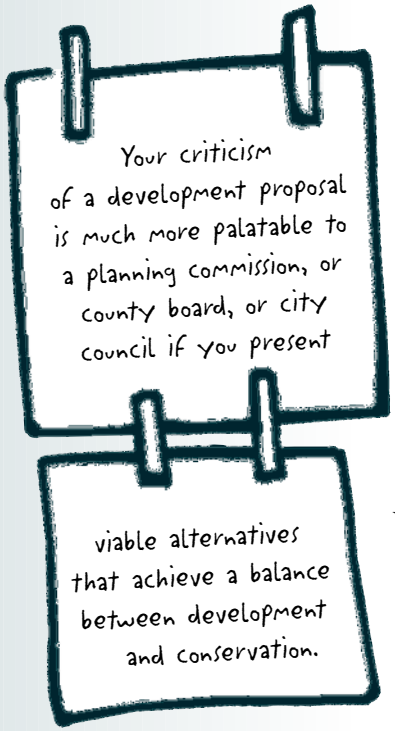
For this guide, varied professionals and informed citizens were asked, "What are the qualities/characteristics of good development?"

Below are some of the responses:

- ✔ It is sensitive to the desires and needs of the community.
- ✔ It has a character and a vision that doesn't promote nondescript, cookie-cutter communities that have no sense of place.
- ✔ It educates the public in some way—new designs, new materials, new ways of thinking about development.
- ✔ If on a lake, it respects the environmental integrity of the shoreline by maintaining vegetative buffers between the development and the lake to reduce potentially pollutant-laden runoff to the lake.
- ✔ It respects the intent of the community's comprehensive plan and its ordinances.
- ✔ It is pedestrian-friendly and promotes walkability by incorporating trails, sidewalks and safe streets.
- ✔ It fits in with the existing environment rather than manipulating it to conform to the desires of the development.
- ✔ It is comfortable to the eye; aesthetically pleasing.
- ✔ It fits in with the architectural style of the neighborhood/community.
- ✔ It adds something positive to the community rather than detracting from it.

What these ideas are all trying to say is: **Good development is more than what a developer is allowed to do and more than what the immediate neighbor desires.**

Good development serves a greater purpose: it is environmentally, economically and socially appropriate.



Below are some good ideas on good development. They are meant to show that development doesn't have to be divisive. Good development can bring a community together instead of polarizing it. You will find that your criticism of a development proposal is much more palatable to a planning commission, or county board, or city council if you present viable alternatives that achieve a balance between development and conservation.

Good development goes by several different names

A good development idea that goes by several different names is called **Smart Growth,** or **Balanced Growth**, or **Planned Growth.** Whatever you call it, it makes sense. It is the cure for sprawl and other bad development ideas.

Smart Growth (that's what we'll call it) is based largely on the Ahwahnee Principles. In 1991, at the Ahwahnee Hotel in Yosemite, California, a group of architects, considered to be innovators in land-use planning, was asked to come to agreement on the question, "What is good development?" They were asked to develop a set of guiding principles for communities to use as an alternative to perpetuating urban sprawl, which most experts agree is an expensive and environmentally degrading way to develop.

The Ahwahnee Principles and the Smart Growth principles promote development patterns that are economically sound, socially equitable and environmentally sustainable. These principles are based on the common characteristics of healthy, vibrant, diverse, successful communities across the U.S. that offer their residents choices of how and where to live.

They include things like:

- ✔ Revitalizing downtown cores and encouraging development in areas with already existing infrastructure
- ✔ Mixing land uses – commercial, residential, recreational, educational and others – in neighborhoods or places that are accessible by bike or foot can create vibrant and diverse communities with quality housing for people of all ages and income levels.
- ✔ Providing a variety of transportation choices including pedestrian-friendly neighborhoods.
- ✔ Maintaining a unique sense of place by respecting local cultural and natural environmental features.
- ✔ Conserving open space and farmland and preserving critical environmental areas.

Conservation Design: Another Good Development Idea

"Despite what you may have heard, it is possible for communities to conserve their special open spaces, greenways and natural resources while still achieving their development objectives," says Randall Arendt, a land-use planner who is the founder and president of Greener Prospects [5], a national consulting practice focusing on conservation planning and design.

According to Arendt, each time a property is developed into a residential subdivision, an opportunity exists for adding land to a community-wide network of open space. **Conservation Design simply rearranges the development so that homes are clustered closer together and half (or more) of the buildable land is set aside as permanently protected open space.** The same number of homes can be built in a less-consumptive manner, allowing the balance of the property to be permanently protected and added to an interconnected network of community green spaces. This approach provides a fair and equitable way to balance conservation and development objectives.

Communities wishing to break the cycle of cookie-cutter, suburban sprawl subdivisions should promote the use of Conservation Design, which starts out by asking questions about specific natural features that provide value to a community. For example:

- ✔ Are there mature woodlands on the site worth protecting?
- ✔ Are there sensitive lakes, trout streams or native prairies on the property worth preserving?
- ✔ Is the development within an important scenic viewshed for the community?

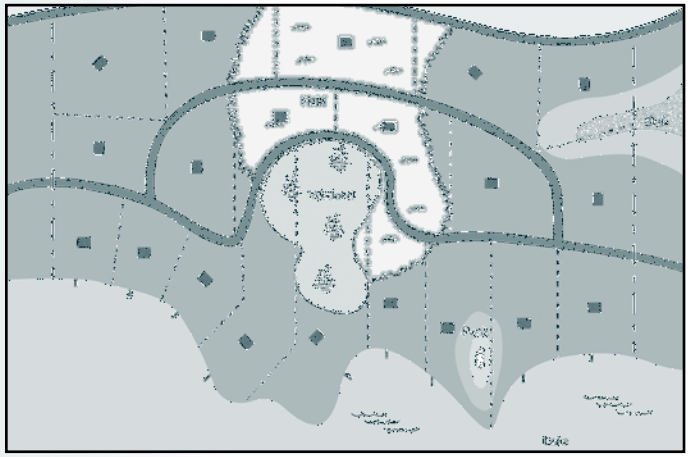
After these kinds of questions are answered, buildings, roads and lots are then arranged in such a manner to protect these important natural resources and to minimize the overall impact of the development to the site itself and the greater community.

Conservation Design has been described as, "Golf course development without the golf course."

Instead of looking out on a fairway or a putting green, residents look out on undisturbed and permanently protected meadows, woodlands, wetlands and water. With Conservation Design, dwellings can be hidden from existing roads, scenic vistas and rural character can be preserved, and a community's open space network can be enlarged each time a property is developed.

In shoreland areas, Conservation Design promotes consolidating dock structures in areas that will have minimal environmental impacts, as well as keeping lot lines set back from the water's edge. This means that property owners don't own individual pieces of the lakeshore. In Conservation Design, the lakeshore is shared by the community through the creation of a buffer zone along the shoreline, which is permanently protected from future development. This kind of development, while radically different from the way lakeshore has traditionally been developed, is an attempt to balance the desires of most Minnesotans: to live on a lake while still preserving the lake's environmental integrity.

Traditional Subdivision



Source: Minnesota Department of Natural Resources

You Really *Do* Have Influence on Land-Use Decisions

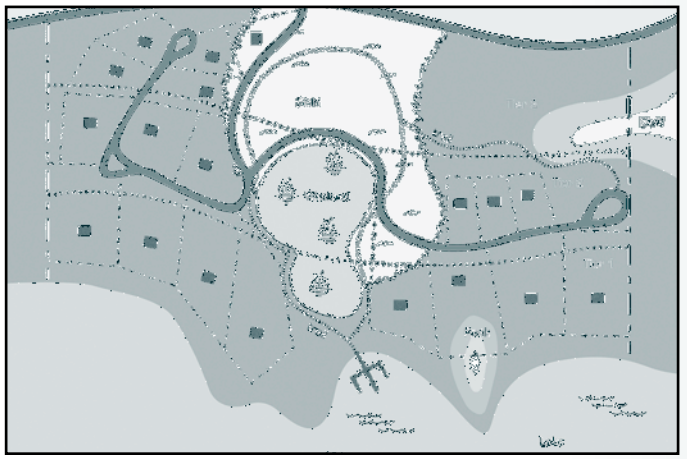
Responsible citizens can have a powerful influence on local land-use decisions that determine how their community grows and develops. **The key is to be both proactive and reactive.**

Being proactive means being prepared for the inevitable: inferior development that will be proposed in your community.

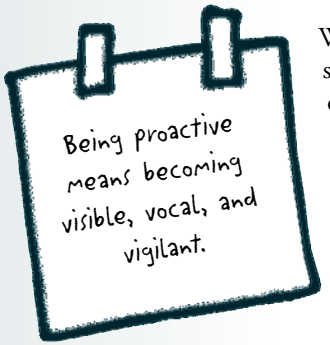
Ask yourself these questions:

- ✔ Have you already established mutually respectful relationships with your city council, your county board, your city or county planner, and your planning commission?
- ✔ Are you familiar with the rules of development in your community — the comprehensive plan and the zoning ordinances?
- ✔ Are you already organized into a neighborhood association or lake association that can quickly mobilize?
- ✔ Have you helped get people elected and appointed to public offices who share your views about development?
- ✔ If you can respond to these questions with an emphatic "Yes," then reacting to an inferior (and don't forget, inevitable) development proposal will be much easier.

Conservation Subdivision



Source: Minnesota Department of Natural Resources



When reacting to a development proposal, make sure you do more than make one frenzied phone call to someone to ask them, "What can you do about it?" You already know what the answer to that question is. Your job is to take advantage of all the proactive preparation you've done in anticipation of this inevitable scenario. And don't forget that you can be all three—visible, vocal, and vigilant—and still be respectful and respected.

If you have doubts about your chances of success in the battle for "good development" to triumph over "bad development" in your community, read the case studies again. They are about the extraordinary efforts of ordinary citizens just like you. They were once where you may be now: feeling overwhelmed, outgunned and just plain ignored. Learn from them.

Then, remind yourself of the wisdom of American Anthropologist Margaret Mead, who said,

"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has."

Finally, let your own success be an example for others to follow. Because you know, development is inevitable…….

References

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http://www.mhbriverwatch.dst.mn.us/publications/lakeshore_property.pdf

(2) Alternative Shoreland Standards, Minnesota Department of Natural Resources

http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/shoreland_rules_update.html

(3) **Minnesota Environmental Review Rules:**

www.eqb.state.mn.us/pdf/rulguid3.pdf.

(4) North Shore Land Use Handbook: A Citizen's Action Guide, January 2006, a project of the North Shore Watershed Watch, published by the Minnesota Environmental Partnership.

www.mepartnership.org

(5) **Greener Prospects,** a unique consulting firm that bridges the gap between land-use planning and conservation.

www.greenerprospects.com

Other Resources

Landowner Protection Options Handbook, Preserving Family Lands; Appraising Easements

http://www.mnland.org/resources.html

Conservation Design Portfolio: Preserving Minnesota Landscapes through Creative Development

http://www.mnland.org/prog-consplanning.html

A Citizen's Guide to Local Land Use Planning

www.northstar.sierraclub.org/land

An Activists Guide to Land Use Planning

http://www.northstar.sierraclub.org/campaigns/open-space/land-use/activistsGuide.pdf

Environmental Review 101: A Virtual Toolbox is a series of articles on environmental review prepared by the Sierra Club, Minnesota North Star Chapter, including: An Introduction to Environmental Review; Environmental Review and Local Government Decision-Making; Comments on Environmental Review Projects; The Petition Process; and Examples and Illustrations for EQB guidance documents and educational materials.

http://northstar.sierraclub.org/campaigns/open-space/land-use/envReview.html

Under Construction: Tools and Techniques for Local Planning, 2002

http://www.gda.state.mn.us/pdf/2002/UnderConstruction.pdf

Planning for Natural Resources: A Guide to Including Natural Resources in Local Comprehensive Planning

http://dnr.wi.gov/org/es/science/publications/SS_964_2002.pdf

For more on Smart Growth

www.1000fom.org

Winning Land Development Issues: A Citizens Guide to Preserving and Enhancing Quality of Life in Developing Areas

http://www.ceds.org/pdfdocs/HTW.pdf

A number of other citizen resources for defeating flawed development proposals are also available at

www.ceds.org