

**CITY OF EMILY  
AGENDA  
PLANNING AND ZONING COMMISSION**

**December 5, 2007, 7:00 PM**

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1. Call to Order
2. Roll Call
3. Public Hearings - None
4. Additions or Deletions to the Agenda
5. Open Forum
6. Approval of Minutes
  - a. July 2007 Regular Meeting
  - b. November 2007 Regular Meeting
7. Planning and Zoning Administrator's Report
  - a. Permits
  - b. Correspondence
  - c. Enforcement Actions
  - d. Council Action
  - e. ISTS Compliance Testing
  - f. CUP and Variance Review
8. New Business
  - a. EAW for Roosevelt Shores
9. Old Business
  - a. Utility Overlay Zone
  - b. Alternative Shoreline Standards
  - c. Extractive Use Discussion
10. Adjourn

This agenda is not exclusive. Other business may be discussed as deemed necessary.

## 7. P&Z Administrator's Report

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A. Permits: The following permits were issued by the Planning and Zoning office since the last meeting:

	Name:	Address:	Type:	Permit Fee:
1	Mikel Davis	43864 State Highway 6	Land Use	\$275.00
			<b>TOTAL:</b>	<b>\$275.00</b>

B. Correspondence. The following correspondence was sent or received by the Planning and Zoning office since the last meeting:

	Date:	To:	From:	RE:
1	11/28/07	Don and Mary Jo Dee Mary Kowalski	Charles Marohn	Letter to the Editor
2	11/28/07	David Larson	Charles Marohn	Guest Quarters/Second Story in Accessory Structure City of Emily
3	11/28/07	Steven Blomberg	Charles Marohn	Potential Land Use Violation City of Emily
4	11/28/07	Paul Nielsen	Charles Marohn	Land Use Violation City of Emily
5	11/26/07	Charles Marohn	David Schaumburg	Northern Lights EAW
6	11/20/07	Emily City Council	David Johnson Denny Neill Darril Wegscheid	Northern Lights EAW
7	11/20/07	Charles Marohn	Peder Larson	Northern Lights EAW
8	11/19/07	George Pepek Emily City Council	Elaine Anderson	Northern Lights Over Roosevelt Lake Project
9	11/18/07	Crosby-Ironton Courier Editor and Publisher	Charles Marohn	Coverage of the Northern Lights over Lake Roosevelt Development
10	11/13/07	John Morrisette	Charles Marohn	Application 07-64 City of Emily
11	11/12/07	Crosby Courier Executive Editor	Charles Marohn	Northern Lights over Lake Roosevelt
12	11/08/07	John Stacy	Charles Marohn	Anna Lake Property City of Emily
13	11/08/07	Mayor and City Council	Charles Marohn	Northern Lights EAW
14	11/6/07	Emily City Council Planning and Zoning	Lonnie Thomas	Northern Lights Development Project

		Commission		
15	11/6/07	Emily Planning and Zoning Commission	David Johnson Denny Neill Darril Wegscheid	Northern Lights EAW
16	10/25/07	Emily Residents	Greg Koch Dean Parker	Northern Lights Over Roosevelt Lake Project

C. Enforcement Actions

1. **Nancy Cossette.** The Cossette's called and assured that the violation would be taken care of this summer (tree-clearing). We have sent a letter to arrange a site visit for this property.
2. **Rex Stiner.** This matter (property cleanup) has been referred to the City Attorney.
3. **Lake Country Properties.** Action is pending ordinance amendment.
4. **James and Barbara Szczech.** Action is pending ordinance amendment.
5. **Thomas and Judith Hanson.** Action is pending ordinance amendment.
6. **Gregory and Wendy Koch.** We received a report that this property has constructed a guest quarters above their accessory structure. This property owner applied for a variance for such and was denied. A site visit was recently conducted on the property and there is a second story in the garage. An attorney representing the Koch's has contacted our office about discussing this matter in November.
7. **Keith Nichlos.** A site visit was conducted on the Nichlos property. Mr. Nichlos is in the process of resolving the violation and substantial work had been done in that regard. He indicated everything would be resolved by this fall. A site visit was conducted in November and Mr. Nichols is still working on the property. Further monitoring will take place.
8. **Douglas Starry.** A site visit was conducted on the Starry property. Mr. Starry has done considerable work to clean his property. He indicated he will continue working to resolve this violation. A site visit was conducted in November and Mr. Starry is continuing to work on his property. Further monitoring will take place.
9. **Dan Heggerston.** Mr. Heggerston has removed the debris pile and is aware of the Planning Commission's recommendations. **Resolved.**
10. **Richard Vosen.** Mr. Vosen has done some grading work in the shoreline area of his property. He has contacted our office and said he was unaware that he needed a permit. He has submitted plans to resolve this violation. Mr. Vosen has stated that he will attend a meeting this winter to discuss options for resolution with the Commission.

11. **Cary Leblanc.** Mrs. Leblanc has contacted our office and stated that her property has been cleaned. The property has been inspected, further monitoring will take place.
12. **Dan Miller.** Pine Shadows violation for clear cutting in an area that was not to be. **A resolution plan was approved at the October Planning Commission meeting.** Pending ongoing monitoring, this has been resolved.
13. **Randy Rohwer.** Construction of a light within the lake setback area that emits glare onto neighboring properties. A second letter has been issued. We have been informed the light has been shut off. **The Planning Commission can make a determination on this violation.**
14. **Kyle Peterson.** It has been reported that there is an outside storage violation on this property. There are a number of abandoned vehicles and garbage on the property. They have been sent a second violation letter. There has been no contact from the Peterson's.
15. **John Morrisette.** Mr. Morrisette has contacted our office about constructing a boathouse. He has indicated that this boathouse was already there; however we can not confirm this. He has now indicated that this is a fish house. We have issued him a letter informing him that the fish house will have to be moved and the property where it is located restored. **Resolution of this matter is pending a site inspection in the Spring of 2008.**
16. **Steven Blomberg.** It has been reported to our office there may be a potential violation at this property. Mr. Blomberg has been sent a letter informing him of the ordinance requirements.
17. **David Larson.** It has been reported that Mr. Larson may have a second story to his accessory structure/garage. Mr. Larson has been issued a letter asking for a site visit to verify compliance of this structure.
18. **Paul Nielsen.** It has been reported and verified that there is a camper being used as a dwelling unit on this property. Mr. Nielsen has been issued a letter informing him that this is a violation.

#### E. Council Action

There were no recommendations that required Council action in November.

#### F. ISTS Compliance Testing

Nothing new to report on this item.

#### G. CUP and Variance Review

We have reviewed all of the CUP and Variance requests that have not had final inspections and only four remain unsatisfied. A majority of the CUP and Variance requests have been inspected with all conditions being met.

The following conditional use permit and variance properties have not met all the requirements of their permits yet. Further monitoring will take place.

1. **Don Arkell** Variance (2003) Mr. Arkell's property was inspected in November and he has done some work to meet his erosion control plan, the last condition to be met. The property will be inspected in the spring of 2008 to determine if this work satisfies the condition.
2. **Robert Cincoski** Variance (2005) Construction is still ongoing, it doesn't appear that all conditions have met. A site visit will be conducted in the spring to verify that conditions are met.

These two site visits have yet to be conducted.

1. **Daniel Springman** Conditional Use Permit (2003)
2. **Dan Sexton** Variance (2004)

**8a. Old Business – EAW for Roosevelt Shores**

The City of Emily directed the preparation of an Environmental Assessment Worksheet for the Roosevelt Shores development. This document was prepared by the development team and submitted to the City for review on November 14. Your planning staff has reviewed the document and made some changes, both grammatical and substantive.

The City has 30 days from the date the document was submitted to indicate where additional data is needed. If the Planning Commission could review the document, which is not included in the Staff Report but being sent separately, and indicate any questions, concerns or additional information needed, we can finalize it and send it out for public comment. The applicant would seek to have us make the December 10 EQB publication date.

### **9a. Old Business – Utility Overlay Zone**

We are in the process of obtaining mapping data from the City Engineer to prepare the overlay map for this district. Once we have the areas identified, we would be looking to propose some standards to take advantage of the investments that have been made in the sewer infrastructure. This would include increasing densities, reducing setbacks and, in general, encouraging a higher level of development in these select areas.

In a related matter, CGI is working on developing a model ordinance for small towns. The ordinance includes a strong emphasis on both methods for increasing growth and development without increasing public expenditures (essentially, maximizing the existing infrastructure) and for providing aggressive environmental protection of those areas that are less suitable for development. We intend to release the document in the first half of 2008 and believe it may provide some guidance for creating an effective Utility Overlay zone.

### **9b. Old Business – Alternative Shoreline Standards**

The Planning Commission has chosen to examine the “toolbox” of alternate shoreline standards to determine which should be adopted by the City of Emily. The following is a summary of the major changes that was prepared by the DNR (*italics text*) with our comments added for discussion purposes. We would be seeking guidance from the Planning Commission as to which standards to prepare for formal consideration.

⇒ *Multiple shoreland lake classifications on a single lake, for example, a natural environment bay of a general development lake.*

The best example to think of in the City of Emily would be the Pug Hole. This area was part of a General Development lake but exhibited all of the characteristics of a Natural Environment lake (shallow water depth, sensitive vegetation, sensitive shoreline). Under the new standards, the City can provide for multiple classifications on each lake if we are willing to do a technical analysis of the lake. We can't base it off of subjective criteria (ownership or level of development) but can base it on characteristics of the lake (depth, aquatic vegetation, etc...).

This will increase the regulation on some properties and also provide additional administrative concerns when permitting improvements.

We recommend moving forward with consideration of this standard.

⇒ *Sensitive area districts for lakeshore segments, where development standards follow natural environment lake class standards.*

This is very similar to the multiple lake classifications but actually provides an additional classification for highly sensitive areas. It would create the same concerns. We recommend moving forward with this as well.

⇒ *New special protection lake classification for lakes where there is considerable wetland fringe, shallow depth, and/or unique fish and wildlife habitat or endangered species.*

This creates a category of lake that is more sensitive than the current Natural Environment. There are a number of lakes in Emily where this standard may be properly applied, including Smokey Hollow, Papoose, Taylor, Allen, Minnie, Buchite and Davis. This would take study of each of these lakes to determine whether or not they qualified for the reclassification.

While this would increase the regulation of some properties, it would not create any significant administrative concerns.

We recommend moving forward with consideration of this standard.

⇒ *Improved planned unit development (PUD) standards, including: residential densities for all PUDs, increased setbacks, no density multipliers, clustered or grouped docking; no new resorts on special protection or natural environment lakes.*

Some of these changes were inspired by work we have done in Emily in changing our PUD ordinance. They go much further, however, to address the layout and design of PUD's. This is an excellent upgrade to the City's standard, would not add to the burden of processing PUD's, and we recommend considering this standard.

⇒ *Special resort standards that allow for expansion and improvements while addressing water quality concerns with provisions for shoreland revegetation and compliance with stormwater and wastewater treatment standards. If converted to a residential development the resort must then meet residential standards.*

Much of what is contained in this section was actually made into State Law by the 2007 legislature. We will be working to add these amendments to the Ordinance in 2008.

⇒ *Better water quality standards achieved by improved rainwater runoff management, increased drainfield setbacks, and higher shoreline buffer standards.*

The improved rainwater runoff management comes largely from a reduction in impervious coverage. As we have discussed in the past, imposing uniform restrictions on impervious coverage is a blunt instrument that is supported on good science watershed-wide but breaks down on a parcel by parcel analysis. We recommend that these standards be examined but that a dual, performance-based standard ultimately be considered. A performance-based standard would lower impervious coverage amounts but provide for increases where it could be demonstrated that steps have been taken to adequately control and manage runoff.

The increased drainfield setbacks are logical and we should strongly consider adopting.

The City of Emily has already adopted shoreline buffer standards, although administering them has proven difficult. The DNR's recommended approach would not be much easier to administer, if at all. The DNR is working on supporting materials and handouts to assist property owners in establishing buffer zones, but we are not aware of those being available yet.

⇒ *Prohibited controlled access lots for non-riparian lots.*

The City of Emily already prohibits controlled access lots.

⇒ *Advanced subdivision controls, including promotion of conservation subdivisions over conventional (lot & block) subdivisions.*

The probably easiest way to think about this is to refer to the pending Roosevelt Shores subdivision. Adopting these standards would provide a disincentive for that type of development by reducing the number of lots that could be created in this style by about 50%. The alternative approach encourages conservation design, which would move units back and cluster them, create patches of open space and buffering and consolidate docking and shoreline recreation facilities.

The alternative approach is similar to the City's Rural Conservation Subdivision standards, except they are specifically adapted to shoreline development. Adoption of this approach would not create any administrative concerns and we recommend that they be considered.

⇒ *Larger lot sizes for new lots on general development lakes, and no lot size bonuses for sewer areas in any classification.*

This involves increasing the minimum lot size for a GD lake from 20,000 to 30,000 and applying a minimum buildable lot area standard. The City of Emily has already done the latter with the 2004 ordinance update. The former – increasing the minimum lot size – will either put a large number of properties in the City into non-conformity or will require extensive reworking of our non-conforming regulations.

Given the fact that most of the property on GD lakes is already subdivided and, assuming the City proceeds with the multiple lake classification approach and the conservation design approach, we would not recommend consideration of this alternative.

The City of Emily has already eliminated any bonus for being served by municipal sewer.

### **9c. Old Business – Extractive Use Discussion**

We have included this information in previous staff reports. At this time, the Planning Commission needs to select a course of action and direct staff to prepare amendments to the Ordinance for consideration, if appropriate.

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The Ordinance defines “Extractive Use” as follows:

***Extractive Use.*** *The use of land for removal of sand, gravel, rock, industrial minerals, other non-metallic minerals or peat not regulated under Minnesota Statutes Sections 93.44 to 93.51.*

We commonly refer to these areas as “Gravel Pits”, although they are theoretically much more, particularly when all of the accessory uses that are typically provided are factored in. The Ordinance defines an accessory use as:

***Accessory Use.*** *A use naturally and normally incident and subordinate to the main use of the premises.*

For most extractive uses that we would see in Emily, the following accessory uses would be most typical:

- **Crushing of Aggregate.** This is essentially taking large rocks and making smaller rocks out of it using a crushing machine. The crushing provides jagged (as opposed to smooth) edges on the aggregate, which gives a better material with greater overall strength.
- **Sifting of Aggregate.** The mined materials are frequently processed in a manner that separates aggregates of different sizes. This is done by sifting the material through filters of varying size. Aggregate is routinely sifted to get the correct blend of course material (to provide strength) and fine material (to provide binding).
- **Blending of Aggregate.** Blending is the reverse of sifting, where material of a certain size is added back into a mixture to augment the overall material.
- **Washing of Aggregate.** It is sometimes necessary or desired to remove the fine material from an aggregate mixture, particularly when that mixture is intended to be porous or highly permeable. This is done by spraying the material with water.
- **Bituminous Batch Plant.** This process involves taking an aggregate mixture and blending it with asphalt cement, at high temperatures, to create bituminous. Bituminous is a flexible pavement that is used to pave most highways, roadways and driveways in Minnesota.
- **Concrete Batch Plant.** This process involves taking an aggregate mixture and blending it with Portland cement (and sometimes other admixtures) to create concrete. Concrete is commonly used in foundations, basements, commercial structures, sidewalks, driveways and highways.

The principle extractive use, along with the accompanying accessory uses where allowed, can create a number of concerns. The most common concerns include:

1. **Noise.** Noise is a particular problem for crushing operations, which are very loud. Bituminous batch plants can also be very loud. The volume is often less of an issue than the persistence – some crushing operations have been known to continue around the clock for weeks with little interruption.
2. **Dust.** Dust from the extractive use operation is minimal compared to the dust that is created from the traffic on gravel haul roads and from some of the

accessory uses. Complaints of dust are usually only heard from those directly adjacent to the operation of who live on a haul road.

3. **Traffic.** A large-scale operation will generate a lot of traffic. Since aggregate operations are compensated based on how much material they can deliver, there is a built-in incentive to push the acceptable limits of speed and other traffic regulations. This becomes a particular issue when there is interaction with other vehicles and/or children living and playing in the area.
4. **Road Damage.** Trucks hauling aggregate material are typically heavily loaded. The repeated loading of the roadway inevitably causes the road to prematurely deteriorate.
5. **Environmental Impacts.** Extractive uses are often done in remote locations. While each is a case-by-case evaluation, the nature of the operation necessitates that there is major disturbance to wildlife habitat in the area of the extraction and the immediate vicinity.
6. **Groundwater Impacts.** There is often confusion with mining of aggregate and other types of mining. There are mining operations that, as a routine part of the extraction process, inject chemicals into the ground. Many of these chemicals have been shown to cause serious groundwater and surface water contamination. The extraction of aggregate materials as is contemplated by the Emily zoning ordinance would not have this type of impact.
7. **Property Value Impacts.** Although we can't cite direct studies, it is empirical that an extractive use will have an impact on the development potential of surrounding properties. When seeking to site new extractive uses, aggregate companies typically analyze the level of existing residential development in the immediate vicinity. While an extractive use would not impact land used for forestry or strictly for hunting, it would potentially make property less desirable for expansion of residential use.

At the upcoming meeting, we intend to hold a discussion forum to identify any other potential concerns the Planning Commission and public may have.

There are statewide implications for extractive uses, so much so that the legislature has required counties to plan for and facilitate the establishment of extractive uses. Those statewide implications for road construction and growth do sometimes outweigh the negative local impacts, which is the justification for the legislation.

The benefits of having a local aggregate producer, particularly when accessory uses are provided, include cheaper local aggregate, lower cost for local construction projects (due to lower hauling costs) and some potential job creation.

There are a number of ways the City of Emily can approach the issue of extractive uses.

### **Solution #1 – Expand Allowable Uses within the RP or FR Zones**

We currently allow for existing extractive uses to continue, but as a non-conforming use that cannot be expanded. There are no new extractive uses provided for. We can modify the zoning ordinance to provide for extractive uses in the RP or FR zones. We would need to clearly define the operating parameters, including which accessory uses would be allowed and under what conditions.

### **Solution #2 – Expand Allowable Uses, but keep overall Prohibition**

What we would be doing here is to maintain a prohibition on new extractive uses, but increasing the uses that we would allow established gravel pits to utilize. We would need to coordinate this approach with the City Attorney to ensure that we were treating all property owners legally through this method.

**Solution #3 - Create an Overlay Zone to Provide for the Use**

We can create an overlay district that would define the parameters under which we would allow an extractive use and/or any accessory uses. For example, we can indicate that the operation would have to be greater than 1,000 feet from a lake, greater than 500 feet from an established residence and located on public roadway. This approach would allow the City the greatest control over just where an extractive use was allowed to be established or expanded.

**Solution #4 - Do Nothing**

There is nothing that requires the City to take action in this case. We do not have a pending application or formal request for an ordinance modification. The current ordinance was created after much debate and public input. While it does not satisfy all concerns, it has been correctly established.

Keep in mind that, with the first three solutions offered, a 4/5ths vote of the Council is going to be required to allow for a modification of the Ordinance.