

Protect the Lakes by Raising Development Bar & Requiring Posted Bonds

The COLA Call

by Ed Mutsch

Earlier columns in this series have contended that the time is long overdue for an upgrade to the regulations that govern the development of shore land property in Hubbard County. Only minor revisions have been made in recent years, while nearly 20 years have passed since the last meaningful upgrade to Minnesota statewide standards. In the intervening time, county shore land development has continued apace, with ever growing attendant pressures being brought to bear on our water resources.

Recent developments have made it clear that a Hubbard County shore land standards upgrade is not to be undertaken anytime soon. The resources allocated to the Environmental Services Office in the essentially finalized 2008 county budget are insufficient to meet the growing daily demands on that office, much less to enable the significant time commitment that would be required of a major upgrade of shore land management standards. The recent Minnesota legislative directive to the state DNR to outline by mid-January 2008 a process for upgrading statewide shore land standards has furthered contributed to the disinclination of the county commissioners to initiate what would admittedly be an arduous and contentious task. The board has quite clearly signaled its preference to await the outcome of the DNR effort, since any resulting statewide standards upgrade will be mandatory on all the counties. This despite the fact that a statewide upgrade will require a few years to effect and result in a "one size fits all" standard that will likely be inadequate to the needs of the north central Minnesota counties so richly endowed with water resources experiencing accelerating development.

While awaiting an upgraded county shore land standard as a protection for our lakes and rivers, the county should fortify existing protections through tightened requirements on developers for Environmental Assessment Worksheets

(EAW) and Environmental Impact Statements (EIS).

An EAW is a screening tool for evaluating the potential environmental impact of a shore land development project. It consists of a 6-page questionnaire describing the project, its setting, possible environmental impacts, and proposed actions to be taken to avoid adverse impacts. If particularly troublesome questions arise as a result of the EAW, those questions may dictate that an EIS be undertaken.

An EIS is a much more detailed, time consuming and expensive analysis for major projects with great potential for significant environmental impacts.

Certain types of projects are legally required to be subjected to an EAW or EIS process, while others are discretionary and subject to the dictates of the appropriate Responsible Governmental Unit (RGU). [In the case of Hubbard County shore land projects, the county board would be the RGU.] Citizens can file a petition seeking EAW review of any discretionary project on which the RGU has not imposed such review.

The prerequisites for mandatory project review are established by the Minnesota Environmental Quality Board (EQB), a group made up of a Governor-appointed chair person, 9 state agency commissioners or directors, and five citizen members. This group makes, monitors and revises the rules, and referees occasional jurisdictional disputes, but is not involved in the process details of specific EAW or EIS reviews. The EQB regularly publishes a status report on all Minnesota development projects currently under EAW or EIS review. The EQB is currently looking to expand the developmental situations for which a mandatory review would be required. It is also looking closely at review rules for governing situations where multiple projects would escape mandatory review if looked at project by project but which entail a cumulative environmental impact for which a mandatory review should be required.

With developmental density around regional lakes increasing and with ever more marginal, environmentally fragile property being developed, the county should exercise its prerogative to impose the EAW process on shoreland property developers.

In addition to expanding the number of shore land development projects subject to EAW or EIS review, it would make sense to require the developers of all such projects to post a bond, one of sufficient size to strongly encourage good project planning and strengthen the developer's determination to meet all timeline and action commitments made during the permitting process. In the event of a

failure to perform, the county would be protected, with the "damage deposit" available to correct project deficiencies and/or penalize the developer. The county generally requires a protective bond in situations where county road work is necessary to accommodate the development project. It would be good practice to require posted bonds for all approved projects. Such a requirement would also undoubtedly provide the additional advantage of easing the monitoring and enforcement burden on the Environmental Services Office; the risk of losing some or all of the posted bond would itself serve as a built-in compliance motivator.

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