# CHAPTER 394

# PLANNING, DEVELOPMENT, ZONING


| | | | |
|---|---|---|---|
| 394.21 | AUTHORITY TO CARRY ON COUNTY PLANNING AND ZONING. | 394.30 | COUNTY BOARD'S PLANNING COMMISSION. |
| 394.22 | DEFINITIONS. | 394.301 | CONDITIONAL USE PERMITS. |
| 394.23 | COMPREHENSIVE PLAN. | 394.303 | INTERIM USES. |
| 394.231 | COMPREHENSIVE PLANS IN GREATER MINNESOTA; OPEN SPACE. | 394.305 | NOTICE OF RESIDENTIAL DEVELOPMENT ON AGRICULTURAL LAND. |
| 394.232 | COMMUNITY-BASED PLANNING. | 394.307 | TEMPORARY FAMILY HEALTH CARE DWELLINGS. |
| 394.235 | MAY MAKE APPLICANT CERTIFY THAT TAXES ARE PAID. | 394.312 | RELATION TO OTHER COUNTY AUTHORITY. |
| 394.24 | OFFICIAL CONTROLS. | 394.32 | COOPERATION WITH MUNICIPALITIES. |
| 394.25 | FORMS OF CONTROL. | 394.33 | TOWN POWERS. |
| 394.26 | PUBLIC HEARINGS. | 394.34 | INTERIM ZONING. |
| 394.27 | CREATION AND DUTIES OF BOARD OF ADJUSTMENT. | 394.35 | RECORDING WITH COUNTY RECORDER. |
| 394.28 | APPROPRIATION FOR PLANNING ACTIVITY. | 394.36 | NONCONFORMITIES. |
| 394.29 | MAY EMPLOY DIRECTOR AND STAFF. | 394.361 | OFFICIAL MAP. |
| | | 394.362 | VARIANCES; USE PERMITS; ADVERSE EFFECT. |
| | | 394.37 | ENFORCEMENT. |


**394.01** MS 1984 [Repealed, 1986 c 399 art 1 s 29; 1986 c 416 s 11]

**394.02** MS 1984 [Repealed, 1986 c 399 art 1 s 29; 1986 c 416 s 11]

**394.03** MS 1984 [Repealed, 1986 c 399 art 1 s 29; 1986 c 416 s 11]

**394.04** MS 1984 [Repealed, 1986 c 399 art 1 s 29; 1986 c 416 s 11]

**394.05** MS 1984 [Repealed, 1986 c 399 art 1 s 29; 1986 c 416 s 11]

**394.06** MS 1971 [Repealed, 1974 c 571 s 51]

**394.07** MS 1971 [Repealed, 1974 c 571 s 51]

**394.08** MS 1971 [Repealed, 1974 c 571 s 51]

**394.09** MS 1971 [Repealed, 1974 c 571 s 51]

**394.10** MS 1971 [Repealed, 1974 c 571 s 51]

**394.11** MS 1971 [Repealed, 1974 c 571 s 51]

**394.12** MS 1971 [Repealed, 1974 c 571 s 51]

**394.13** MS 1971 [Repealed, 1974 c 571 s 51]

**394.14** MS 1971 [Repealed, 1974 c 571 s 51]

**394.15** MS 1971 [Repealed, 1974 c 571 s 51]

**394.16** MS 1971 [Repealed, 1974 c 571 s 51]

**394.17** MS 1971 [Repealed, 1974 c 571 s 51]

## 394.21 AUTHORITY TO CARRY ON COUNTY PLANNING AND ZONING.

Subdivision 1. **Except most populous counties.** For the purpose of promoting the health, safety, morals, and general welfare of the community any county in the state having less than 300,000 population according to the 1950 federal census is authorized to carry on county planning and zoning activities.

Subd. 1a. **Amortization prohibited.** Except as otherwise provided in this subdivision, a county, regardless of population, under this chapter or under a special or local law, must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by amortization which use was lawful at the time of its inception. This subdivision does not apply to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

Subd. 2. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 3. **Nuisance.** Subdivision 1a does not prohibit a county from enforcing an ordinance providing for the prevention or abatement of nuisances, as defined in section 561.01, or eliminating a use determined to be a public nuisance, as defined in section 617.81, subdivision 2, paragraph (a), clause (2), items (i) to (x), without payment of compensation.

**History:** *1959 c 559 s 1; 1999 c 96 s 1,2; 2011 c 76 art 1 s 55*

## 394.22 DEFINITIONS.

Subdivision 1. **Application.** The words or terms as used in sections 394.21 to 394.37 have the meanings given them in these sections unless a different meaning is clearly indicated by the context.

Subd. 1a. **Airport safety zone.** "Airport safety zone" means an area subject to land use zoning controls adopted under sections 360.061 to 360.074 if the zoning controls regulate (1) the size or location of buildings, or (2) the density of population.

Subd. 2. **Board.** "Board" means the board of county commissioners.

Subd. 3. **Governing body.** "Governing body" means a town board of supervisors, the council of a municipality, or board of county commissioners.

Subd. 4. **Municipality.** "Municipality" means a city however organized.

Subd. 5. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 6. **Official control.** "Official control" means legislatively defined and enacted policies, standards, precise detailed maps, and other criteria, all of which control the physical development of a municipality or a county or any part thereof or any detail thereof, and are the means of translating into ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include but are not limited to ordinances establishing zoning, subdivision controls, site plan rules, sanitary codes, building codes, housing codes, and official maps.

Subd. 7. **Conditional use.** "Conditional use" means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that (1) certain conditions as detailed in the zoning ordinance exist, and (2) the use or development conforms to the comprehensive land use plan of the county and (3) is compatible with the existing neighborhood.

Subd. 8. **Nonconformity.** "Nonconformity" means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.

Subd. 9. **Comprehensive plan.** "Comprehensive plan" means the policies, statements, goals, and interrelated plans for private and public land and water use, transportation, and community facilities including recommendations for plan execution, documented in texts, ordinances and maps which constitute the guide for the future development of the county or any portion of the county.

Subd. 10. **Variance.** "Variance" means any modification or variation of official controls where it is determined that, by reason of exceptional circumstances, the strict enforcement of the official controls would cause unnecessary hardship.

Subd. 11. **Town.** "Town" means any town, including those with the powers of a statutory city pursuant to law.

Subd. 12. **Official map.** "Official map" means a map adopted in accordance with section 394.361, which may show existing county roads and county state-aid highways, proposed future county roads and highways, the area needed for widening existing county roads and highways, and existing and future state trunk highway rights-of-way. An official map may also show the location of existing public land and facilities and other land needed for future public purposes, including public facilities such as parks, playgrounds, schools, and other public buildings, civic centers, airports, and travel service facilities. When requested in accordance with section 394.32, subdivision 3, an official map may include existing and planned public land uses within incorporated areas.

**History:** *1959 c 559 s 2; 1963 c 692 s 1; 1973 c 123 art 5 s 7; 1974 c 571 s 1-7; 1982 c 520 s 2; 1985 c 248 s 70; 2005 c 41 s 13; 1Sp2019 c 3 art 3 s 104*

## 394.23 COMPREHENSIVE PLAN.

The board has the power and authority to prepare and adopt by ordinance, a comprehensive plan. A comprehensive plan or plans when adopted by ordinance must be the basis for official controls adopted under the provisions of sections 394.21 to 394.37. The commissioner of natural resources must provide the natural heritage data from the county biological survey, if available, to each county for use in the comprehensive plan. When adopting or updating the comprehensive plan, the board must, if the data is available to the county, consider natural heritage data resulting from the county biological survey. In a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, the board must consider adopting goals and objectives that will protect open space and the environment. The board must consider the location and dimensions of airport safety zones in any portion of the county, and of any airport improvements, identified in the airport's most recent approved airport layout plan.

**History:** *1959 c 559 s 3; 1974 c 571 s 8; 1997 c 202 art 4 s 4; 2007 c 57 art 1 s 153; 2008 c 297 art 1 s 56; 1Sp2019 c 3 art 3 s 105*

## 394.231 COMPREHENSIVE PLANS IN GREATER MINNESOTA; OPEN SPACE.

A county adopting or updating a comprehensive plan in a county outside the metropolitan area as defined by section 473.121, subdivision 2, and that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, shall consider adopting goals and objectives for the preservation of agricultural, forest, wildlife, and open space land, and minimizing development in sensitive shoreland areas. Within three years of updating the comprehensive plan, the county shall consider adopting ordinances as part of the

county's official controls that encourage the implementation of the goals and objectives. The county shall consider the following goals and objectives:

(1) minimizing the fragmentation and development of agricultural, forest, wildlife, and open space lands, including consideration of appropriate minimum lot sizes;

(2) minimizing further development in sensitive shoreland areas;

(3) minimizing development near wildlife management areas, scientific and natural areas, and nature centers;

(4) encouraging land uses in airport safety zones that are compatible with the safe operation of the airport and the safety of people in the vicinity of the airport;

(5) identification of areas of preference for higher density, including consideration of existing and necessary water and wastewater services, infrastructure, other services, and to the extent feasible, encouraging full development of areas previously zoned for nonagricultural uses;

(6) encouraging development close to places of employment, shopping centers, schools, mass transit, and other public and private service centers;

(7) identification of areas where other developments are appropriate; and

(8) other goals and objectives a county may identify.

**History:** *2008 c 297 art 1 s 57; 1Sp2019 c 3 art 3 s 106*

**394.232 COMMUNITY-BASED PLANNING.**

Subdivision 1. **General.** Each county is encouraged to prepare and implement a community-based comprehensive plan. A community-based comprehensive plan is a comprehensive plan that is consistent with the goals of community-based planning.

Subd. 2. **Notice and participation.** Notice must be given at the beginning of the community-based comprehensive planning process to the Department of Natural Resources, the Department of Agriculture, the Department of Employment and Economic Development, the Board of Water and Soil Resources, the Pollution Control Agency, the Department of Transportation, local government units, and local citizens to actively participate in the development of the plan.

Subd. 3. **Coordination.** A county that prepares a community-based comprehensive plan shall coordinate its plan with the plans of its neighbors and its constituent municipalities and towns in order both to prevent its plan from having an adverse impact on other jurisdictions and to complement plans of other jurisdictions. The county's community-based comprehensive plan must incorporate the community-based comprehensive plan of any municipality or town in the county prepared in accordance with section 462.3535. A county may incorporate a municipal or town community-based comprehensive plan by reference.

Subd. 4. **Joint planning.** Under the joint exercise of powers provisions in section 471.59, a county may establish a joint planning district with other counties, municipalities, and towns, that are geographically contiguous, to adopt a single community-based comprehensive plan for the district. The county may delegate its authority to adopt official controls under this chapter to the board of the joint planning district.

Subd. 5. MS 2010 [Repealed by amendment, 2011 c 76 art 4 s 1]

Subd. 6. **Plan update.** The county board, or the board of the joint planning district, shall review and update the community-based comprehensive plan periodically, but at least every ten years. When updating the plan, the county board or the board of the joint planning district must consider natural heritage data resulting from the county biological survey. In a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, the board must consider adopting goals and objectives that will protect open space and the environment.

Subd. 7. MS 2010 [Repealed by amendment, 2011 c 76 art 4 s 1]

Subd. 8. **Planning authority.** Nothing in this section shall be construed to prohibit or limit a county's authority to prepare and adopt a comprehensive plan and official controls under this chapter.

**History:** *1997 c 202 art 4 s 5; 1998 c 366 s 78; 1Sp2003 c 4 s 1; 2008 c 297 art 1 s 58; 2011 c 76 art 4 s 1*

## 394.235 MAY MAKE APPLICANT CERTIFY THAT TAXES ARE PAID.

The county board may require, either as part of the necessary information on an application or as a condition of a grant of approval, an applicant for an amendment to an official control established pursuant to sections 394.21 to 394.37, or for a permit or other approval required under an official control established pursuant to those sections to certify that there are no delinquent property taxes, special assessments, penalties, and interest due on the parcel to which the application relates. Property taxes which are being paid under the provisions of a stipulation, order, or confession of judgment, or which are being appealed as provided by law, are not considered delinquent for purposes of this section if all required payments that are due under the terms of the stipulation, order, confession of judgment, or appeal have been paid.

**History:** *1996 c 282 s 2; 1997 c 2 s 2*

## 394.24 OFFICIAL CONTROLS.

Subdivision 1. **Adopted by ordinance.** Official controls which shall further the purpose and objectives of the comprehensive plan and parts thereof shall be adopted by ordinance. The comprehensive plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the comprehensive plan.

Subd. 2. **Municipality may request inclusion.** Official controls adopted by a board shall apply to and be binding upon the county or any parts thereof including areas within the incorporated limits of a municipality, when requested by the municipality under section 394.32.

Subd. 3. **Outside metro, state, federal land.** For the area within which official controls adopted by the board are effective, such controls shall apply to the use of land for both private and public purposes, provided that the need for adequate, timely and convenient public and semipublic services and facilities must receive due consideration in the formulation, administration and enforcement of all official controls and no land owned or leased by the federal or state government shall be subject to official controls of the county. With respect to the use of land for public purposes, the provisions of this subdivision shall not apply in the metropolitan area as described in section 473.121.

**History:** *1959 c 559 s 4; 1963 c 692 s 2; 1974 c 571 s 9-11; 1980 c 509 s 150; 1995 c 186 s 119; 1997 c 202 art 4 s 6*

**394.25 FORMS OF CONTROL.**

Subdivision 1. **Adopted by ordinance.** Official controls shall be adopted by ordinance and may include but are not limited to the features set forth in this section.

Subd. 2. **Districts set by zoning ordinances.** Zoning ordinances establishing districts within which the use of land or the use of water or the surface of water pursuant to section 86B.205 for agriculture, forestry, recreation, residence, industry, trade, soil conservation, water supply conservation, surface water drainage and removal, conservation of shorelands, as defined in sections 103F.201 to 103F.221, and additional uses of land and of the surface of water pursuant to section 86B.205, may be by official controls encouraged, regulated, or prohibited and for such purpose the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the comprehensive plan. Official controls may also be applied to wetlands preservation, open space, parks, sewage disposal, protection of groundwater, protection of floodplains as defined in section 103F.111, protection of wild, scenic, or recreational rivers as defined in sections 103F.311 and 103F.315, protection of slope, soils, unconsolidated materials or bedrock from potentially damaging development, preservation of forests, woodlands and essential wildlife habitat, reclamation of nonmetallic mining lands; protection and encouragement of access to direct sunlight for solar energy systems as defined in section 216C.06, subdivision 17; and the preservation of agricultural lands. Official controls may include provisions for purchase of development rights by the board in the form of conservation easements under chapter 84C in areas where preservation is considered by the board to be desirable, and the transfer of development rights from those areas to areas the board considers more desirable for development.

Subd. 3. **In district zoning, maps.** Within each such district zoning ordinances or maps may also be adopted designating or limiting the location, height, width, bulk, type of foundation, number of stories, size of, and the specific uses for which dwellings, buildings, and structures may be erected or altered; the minimum and maximum size of yards, courts, or other open spaces; setback from existing roads and highways and roads and highways designated on an official map; protective measures necessary to protect the public interest including but not limited to controls relating to appearance, signs, lighting, hours of operation and other aesthetic performance characteristics including but not limited to noise, heat, glare, vibrations and smoke; the area required to provide for off street loading and parking facilities; heights of trees and structures near airports; and to avoid too great concentration or scattering of the population. All such provisions shall be uniform for each class of land or building throughout each district, but the provisions in one district may differ from those in other districts. No provision may prohibit earth sheltered construction as defined in section 216C.06, subdivision 14, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. Airport safety zones must be included on maps that illustrate boundaries of zoning districts and that are adopted as official controls.

Subd. 3a. **Pre-1995 manufactured home park.** A county must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements.

Subd. 3b. **Conditional uses.** A manufactured home park, as defined in section 327.14, subdivision 3, is a conditional use in a zoning district that allows the construction or placement of a building used or intended to be used by two or more families.

Subd. 3c. **Feedlot zoning ordinances.** (a) A county proposing to adopt a new feedlot ordinance or amend an existing feedlot ordinance must notify the Pollution Control Agency and commissioner of agriculture

at the beginning of the process, no later than the notice of the first hearing proposing to adopt or amend an ordinance purporting to address feedlots.

(b) Prior to final approval of a feedlot ordinance, a county board may submit a copy of the proposed ordinance to the Pollution Control Agency and to the commissioner of agriculture and request review, comment, and recommendations on the environmental and agricultural effects from specific provisions in the ordinance.

(c) The agencies' response to the county may include:

(1) any recommendations for improvements in the ordinance; and

(2) the legal, social, economic, or scientific justification for each recommendation under clause (1).

(d) At the request of the county board, the county must prepare a report on the economic effects from specific provisions in the ordinance. Economic analysis must state whether the ordinance will affect the local economy and describe the kinds of businesses affected and the projected impact the proposal will have on those businesses. To assist the county, the commissioner of agriculture, in cooperation with the Department of Employment and Economic Development, must develop a template for measuring local economic effects and make it available to the county. The report must be submitted to the commissioners of employment and economic development and agriculture along with the proposed ordinance.

(e) A local ordinance that contains a setback for new feedlots from existing residences must also provide for a new residence setback from existing feedlots located in areas zoned agricultural at the same distances and conditions specified in the setback for new feedlots, unless the new residence is built to replace an existing residence. A county may grant a variance from this requirement under section 394.27, subdivision 7.

Subd. 4. **Official maps.** Official maps as defined in section 394.22, subdivision 12.

Subd. 5. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 5a. **Metro counties; special areas.** In counties in the metropolitan area as defined in section 473.121, official maps may for a period of up to five years designate the boundaries of areas reserved for purposes of soil conservation, water supply conservation, flood control, and surface water drainage and removal.

Subd. 6. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 7. **Specific controls; other subjects.** (a) Specific controls pertaining to other subjects incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation and dedication of streets and land for other public purposes and the general design of physical improvement.

(b) A county must approve a preliminary plat that meets the applicable standards and criteria contained in the county's zoning and subdivision regulations unless the county adopts written findings based on a record from the public proceedings why the application shall not be approved.

(c) The controls may require that a portion of any proposed subdivision be dedicated to the public or preserved for public use as parks, recreational facilities, playgrounds, trails, wetlands, or open space. The requirement must be imposed by ordinance.

(d) If a county adopts the ordinance required by paragraph (c), the county must adopt a capital improvement program and adopt a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan subject to the terms and conditions in this paragraph and in paragraphs (e) through (p).

(e) The county may choose to accept a per lot cash fee as set by ordinance from the applicant for some or all of the new lots created in the subdivision.

(f) In establishing the portion to be dedicated or preserved or the per lot cash fee, the controls must consider the open space, park, recreational, or common areas and facilities that the applicant proposes to reserve for the subdivision.

(g) The county must reasonably determine that it will need to acquire that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision.

(h) The fees or dedication must be fair, reasonable, and proportionate to the need created.

(i) Any cash payments received must be placed by the county in a special fund to be used only for the purposes for which the money was obtained.

(j) Any cash payments received must be used only for the acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space. Cash payments must not be used for ongoing operation, maintenance, or redevelopment of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

(k) The county must not deny the approval of a subdivision based on an inadequate supply of parks, open spaces, trails, or recreational areas within the county.

(l) The county must not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee or dedication.

(m) The county must use at least 75 percent of the funds collected under this subdivision according to the plan required in paragraph (d) in the township or city where the collection of funds occurs. However, the township board or city council may agree to allow the county to use these funds outside of the township or city in a manner consistent with the county parks, trails, and open space capital improvement plan or the county parks and open space component in its comprehensive plan. The remainder of the funds may be used by the county only for parks and trails connectivity and accessibility purposes. The county must annually report to cities and townships on where funds were collected and where funds were expended in the past year.

(n) Previously subdivided property from which a park dedication has been received, being resubdivided with the same number of lots, is exempt from park dedication requirements. If, as a result of resubdividing the property, the number of lots is increased, then the park dedication or per lot cash fee must apply only to the net increase of lots.

(o) A county must not require a dedication of a portion of a proposed subdivision or a payment in lieu of dedication in a town or city that has adopted a requirement to dedicate or a payment in place of dedication as a provision of the town or city's subdivision regulations under section 462.358, subdivision 2b, or chapter 366.

(p) A county may negotiate an agreement with a town or city to share the revenue generated by dedicating a portion of a proposed subdivision or a payment in place of dedication.

Subd. 8. **Law adopted by reference.** Any statute of Minnesota, any administrative rule of any department of the state of Minnesota affecting the county, or any code, adopted by reference as part of the official control. The term "code" as used herein means any compilation of rules or standards or part thereof prepared by any governmental agency or any trade or professional association for general distribution in printed form as a standard or model on the subject of building construction, plumbing, electric wiring, inflammable liquids, sanitary provisions, public health, safety, or welfare. Prior to adoption at least one copy of the statute, rule, ordinance or code shall be marked as official copies and filed for use and examination by the public in the office of the county auditor. Provisions of the statute, rule, ordinance, or code thus incorporated in such ordinance by reference shall be as much a part of the ordinance as if they had been set out in full therein.

Subd. 9. **Erosion and sediment controls.** Erosion and sediment controls with regard to clearing, grading, excavation, transporting and filling of lands. Erosion and sediment controls may include, but need not be limited to requiring the development of plans before any land is disturbed. Plans for disturbing land may be submitted to the appropriate soil and water conservation district for comment and review.

Subd. 10. **Amendments.** An amendment to official controls may be initiated by the board, the planning commission, or by petition of affected property owners as defined in the official controls. An amendment not initiated by the planning commission shall be referred to the planning commission, if there is one, for study and report and may not be acted upon by the board until it has received the recommendation of the planning commission.

**History:** *1959 c 559 s 5; 1963 c 692 s 3; 1969 c 777 s 2; 1974 c 317 s 1; 1974 c 571 s 12-19; 1978 c 786 s 12; Ex1979 c 2 s 39; 1980 c 509 s 151; 1981 c 356 s 248; 1982 c 490 s 1; 1985 c 248 s 70; 1987 c 312 art 1 s 10 subd 1; 1990 c 391 art 8 s 44; 1994 c 473 s 2; 1995 c 186 s 119; 1997 c 200 art 4 s 4; 1997 c 216 s 135,136; 2003 c 95 s 1; 1Sp2005 c 1 art 1 s 90; 2006 c 270 art 1 s 2; 1Sp2019 c 3 art 3 s 107*

## 394.26 PUBLIC HEARINGS.

Subdivision 1. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 1a. **When required.** In addition to public hearings required by section 375.51 prior to the adoption by ordinance of any comprehensive plan or amendments thereto or of any official control or amendment thereto, public hearings shall be held before any conditional use permit, interim use permit, variance, or proposal for a subdivision is approved or denied by the responsible authority, and in circumstances where a public hearing is otherwise required by sections 394.21 to 394.37. Such public hearings may be continued from time to time and additional hearings may be held.

Subd. 2. **Notice.** Notice of the time, place, and purpose of any public hearing shall be given by publication in a newspaper of general circulation in the town, municipality, or other area concerned, and in the official newspaper of the county, at least ten days before the hearing, except that notice of public hearings in connection with the adoption by ordinance of any comprehensive plan or amendments thereto or adoption or amendment of any official controls shall be given in the manner provided by section 375.51, subdivision 2. In addition to the requirements of section 375.51, subdivision 2, written notice of public hearings on all official controls and amendments thereto shall be sent to the governing bodies of all towns and all municipalities located within the county. Written notice of public hearings regarding the application of official controls to specific properties, including but not limited to conditional uses, variances, interim uses, zoning regulations, and subdivision regulations, shall be sent to all property owners of record within 500 feet of the affected property in incorporated areas. In unincorporated areas, the written notice shall be sent to property owners as follows:

(a) in the case of variances, to owners of record within 500 feet of the affected property;

(b) in the case of conditional uses and interim uses, to owners of record within one-quarter mile of the affected property or to the ten properties nearest to the affected property, whichever would provide notice to the greatest number of owners;

(c) in the case of all other official controls, including but not limited to zoning regulations and subdivision regulations, to owners of record within one-half mile of the affected property.

Written notice shall also be given to the affected board of town supervisors, and the municipal council of any municipality within two miles of the affected property.

Subd. 3. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 3a. **Who runs hearing.** The board may assign responsibility to conduct public hearings for one or more purposes to the planning commission, board of adjustment or any official or employee of the county, except as provided in section 375.51.

**History:** *1959 c 559 s 6; 1963 c 692 s 4; 1974 c 571 s 20-22; 1976 c 177 s 1; 1980 c 477 s 1; 2008 c 331 s 4*

**394.27 CREATION AND DUTIES OF BOARD OF ADJUSTMENT.**

Subdivision 1. **When controls adopted.** Whenever a board of county commissioners shall have adopted official controls it shall at the same time as the adoption of such controls create a board of adjustment by ordinance.

Subd. 2. **Procedure, qualifications.** The board of adjustment shall consist of at least three but not more than seven members, including at least one member from the unincorporated area of the county, whose appointment, term of office, or removal from the board shall be as provided in the ordinance creating the board of adjustment; provided that no elected officer of the county nor any employee of the board of commissioners shall serve as a member of the board of adjustment and that one member of such board of adjustment shall also be a member of any planning commission appointed under the provisions of sections 394.21 to 394.37. In an ordinance creating a three-member board of adjustment, provision may be made for one alternate member. The alternate board member shall, when directed by the chair, attend all meetings of the board and participate fully in its activities but shall not vote on any issue unless authorized to do so by the chair. The chair shall authorize the alternate board member to vote on an issue when a regular member is absent, physically incapacitated, abstains because of a possible conflict of interest, or is prohibited by law from voting on that issue. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a regular board member from voting thereon shall be decided by majority vote of all regular board members except the member who is being challenged. In the ordinance establishing the board of adjustment provision may be made for removal of any member for nonperformance of duty or misconduct in office and for the filling of vacancies for any unexpired term. The regular and alternate members of such board of adjustment may be paid compensation in an amount determined by the county board and may be paid their necessary expenses in attending meetings of the board and in the conduct of the business of the board.

Subd. 3. **Officers.** The board of adjustment shall elect a chair and vice-chair from among its members and shall appoint a secretary who need not be a member of a board. It shall adopt rules for the transaction of its business and shall keep a public record of its transaction, findings, and determinations.

Subd. 4. **Meetings.** The meetings of the board of adjustment shall be held at the call of the chair and at such other times as the board in its rules of procedure may specify.

Subd. 5. **Authority.** The board of adjustment shall have the authority to order the issuance of variances, hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of sections 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future public use on an official map, and perform such other duties as required by the official controls. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county, or state. In exercising its powers under this subdivision, the board of adjustment shall take into consideration the town board's recommendation when the board of adjustment's decision directly affects land within the town.

Subd. 6. **Appeals.** An appeal from any order, requirement, decision, or determination of any administrative official shall be taken in such time as shall be prescribed by the ordinance creating the board of adjustment by filing with the board of adjustment a notice of appeal specifying the grounds thereof. The board of adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the appellant and the officer from whom the appeal is taken and to the public and decide the same within a reasonable time which shall be defined in the ordinance establishing the board of adjustment. An appeal stays all proceedings in furtherance of the action appealed from unless the board of adjustment to whom the appeal is taken certifies that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property. The board of adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit. The reasons for the board's decision shall be stated in writing.

Subd. 7. **Variances; practical difficulties.** The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subd. 8. **Filing orders.** A certified copy of any order issued by the board of adjustment acting upon an appeal from an order, requirement, decision or determination by an administrative official, or a request for a variance, shall be recorded with the county recorder or registrar of titles. The order issued by the board of adjustment shall include the legal description of the property involved. The board by ordinance shall designate the county official or employee responsible for meeting the requirements of this subdivision.

Subd. 9. **Appeal to district court.** All decisions by the board of adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the

state shall have the right to appeal within 30 days, after receipt of notice of the decision, to the district court in the county in which the land is located on questions of law and fact.

**History:** *1959 c 559 s 7; 1963 c 692 s 5; 1974 c 571 s 23-29; 1976 c 181 s 2; 1978 c 786 s 13; Ex1979 c 2 s 40; 1981 c 356 s 248; 1984 c 392 s 1; 1986 c 444; 1987 c 312 art 1 s 10 subd 1; 2005 c 4 s 97; 2011 c 19 s 1*

**394.28 APPROPRIATION FOR PLANNING ACTIVITY.**

The board of county commissioners shall provide the funds, equipment, and accommodations necessary for such planning activity as the board determines. Such appropriation may include funds for the purpose of matching funds of other governmental units or for joint ventures engaged in with other governmental units.

Any county providing for county planning activities may receive grants-in-aid from or enter into reasonable agreements with any department or agency of the government of the United States or the state of Minnesota, to arrange for the receipt of federal or state funds in the interest of furthering the planning program.

**History:** *1959 c 559 s 8*

**394.29 MAY EMPLOY DIRECTOR AND STAFF.**

To carry out the purposes of sections 394.21 to 394.37, the board may employ a planning director and such staff as it deems necessary to assist the planning director in carrying out assigned responsibilities, including but not limited to a zoning administrator, sanitary inspector and a building official. If no planning director is appointed, the board shall designate a chief administrative officer who shall administer the official controls. The board may employ or contract with a planning authority or commission, any agency of the state or federal government, a regional development commission or with planning consultants, or other specialists for such services as it requires.

**History:** *1959 c 559 s 9; 1974 c 571 s 30; 1986 c 444*

**394.30 COUNTY BOARD'S PLANNING COMMISSION.**

Subdivision 1. **Appointed chair; members.** Any board of county commissioners may by ordinance appoint a planning commission composed of not less than five nor more than 11 members appointed by the chair of the board. At least two members shall be residents of the portion of the county outside the corporate limits of municipalities. The manner of appointment and terms of office of the members shall be as provided in the ordinance. No more than one voting member of the commission shall be an officer or employee of the county. No voting member of the commission shall have received, during the two years prior to appointment, any substantial portion of income from business operations involving the development of land within the county for urban and urban related purposes. In the ordinance establishing the planning commission the board may designate any county officer or employee as an ex officio member of such commission. The term of office and removal of any member for nonperformance of duty or misconduct in office as well as filling vacancies on the board shall be as provided in the ordinance creating the commission.

Subd. 2. MS 1971 [Repealed, 1974 c 571 s 51]

Subd. 3. **Pay, expenses.** The members of the commission, other than members of the board of county commissioners, may be compensated in an amount determined by the county board. All commission members, including county commissioners, may be paid their necessary expenses in attending meetings of the

commission and in the conduct of the business of the commission. Nothing in this subdivision shall be construed to prohibit the payment of a per diem to county commissioners pursuant to section 375.055, subdivision 1.

Subd. 4. **Officers; plan preparation, use permit review.** The planning commission shall elect a chair and secretary from among its members and cooperate with the planning director and other employees of the county in preparing and recommending to the board for adoption a comprehensive plan and recommendations for plan execution in the form of official controls and other measures, and amendments thereto. In all instances in which the planning commission is not the final authority, as authorized in subdivision 5, the commission shall review all applications for conditional use permits and plans for subdivisions of land and report thereon to the board.

Subd. 5. **Additional duties.** The board may by ordinance assign additional duties and responsibilities to the planning commission including but not restricted to the conduct of public hearings, the authority to order the issuance of some or all categories of conditional use permits, the authority to approve some or all categories of subdivisions of land, and the authority to approve some or all categories of planned unit developments. The planning commission may be required by the board to review any comprehensive plans and official controls and any plans for public land acquisition and development sent to the county for that purpose by any local unit of government or any state or federal agency and shall report thereon in writing to the board.

**History:** *1959 c 559 s 10; 1963 c 692 s 6; 1974 c 571 s 31-34; 1975 c 301 s 14; 1986 c 444*

**394.301 CONDITIONAL USE PERMITS.**

Subdivision 1. **By ordinance.** The board may by ordinance designate certain types of developments, including planned unit developments and certain land development activities as conditional uses under zoning regulations. Conditional uses may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied. Such standards and criteria shall include both general requirements for all conditional uses and, insofar as practicable, requirements specific to each designated conditional use.

Subd. 2. **Issuance, review.** Conditional use permits shall be issued by the officer administering the official controls only upon the order of the board or the planning commission as designated by ordinance as the approval authority for one or more categories of conditional uses. The planning commission shall in all instances have an opportunity to review conditional uses prior to any final decision by the designated approval authority. Public hearings shall be held in accordance with section 394.26. In connection with ordering the issuance of a conditional use permit the designated approval authority may impose such additional restrictions or conditions as it deems necessary to protect the public interest, including but not limited to matters relating to appearance, lighting, hours of operation and performance characteristics. When appropriate, restrictive covenants may be entered into regarding such matters.

Subd. 3. **Duration.** A conditional use permit shall remain in effect for so long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the board from enacting or amending official controls to change the status of conditional uses.

Subd. 4. **Copy filed.** A certified copy of any conditional use permit shall be recorded with the county recorder or registrar of titles. The conditional use permit shall include the legal description of the property

involved. The board by ordinance shall designate the county official or employee responsible for meeting the requirements of the subdivision.

**History:** *1974 c 571 s 35; 1976 c 181 s 2; 2005 c 4 s 98*

**394.303 INTERIM USES.**

Subdivision 1. **Definition.** An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

Subd. 2. **Authority.** Zoning regulations may permit the governing body to allow interim uses. The regulations may set conditions on interim uses. The governing body may grant permission for an interim use of property if:

(1) the use conforms to the zoning regulations;

(2) the date or event that will terminate the use can be identified with certainty;

(3) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and

(4) the user agrees to any conditions that the governing body deems appropriate for permission of the use.

Any interim use may be terminated by a change in zoning regulations.

Subd. 3. **Public hearings.** Public hearings on the granting of interim use permits shall be held in the manner provided in section 394.26.

**History:** *2008 c 331 s 5*

**394.305 NOTICE OF RESIDENTIAL DEVELOPMENT ON AGRICULTURAL LAND.**

A person who applies for a permit to construct four or more residential units on a site located on land zoned for agricultural use or on agricultural land in a county that does not have a comprehensive land use or zoning plan shall, not later than ten business days after the application is submitted, provide notice to each owner of agricultural real property within 5,000 feet of the perimeter of the residential development. The notice may be delivered by first class mail, in person, or by publication in a newspaper of general circulation within the affected area and must include information on the number of residential units.

**History:** *1997 c 216 s 137*

**394.307 TEMPORARY FAMILY HEALTH CARE DWELLINGS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Caregiver" means an individual 18 years of age or older who:

(1) provides care for a mentally or physically impaired person; and

(2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.

(c) "Instrumental activities of daily living" has the meaning given in section 256B.0659, subdivision 1, paragraph (i).

(d) "Mentally or physically impaired person" means a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified in writing by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state.

(e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, or niece of the mentally or physically impaired person. Relative includes half, step, and in-law relationships.

(f) "Temporary family health care dwelling" means a mobile residential dwelling providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that meets the requirements of subdivision 2.

Subd. 2. **Temporary family health care dwelling.** A temporary family health care dwelling must:

(1) be primarily assembled at a location other than its site of installation;

(2) be no more than 300 gross square feet;

(3) not be attached to a permanent foundation;

(4) be universally designed and meet state-recognized accessibility standards;

(5) provide access to water and electric utilities either by connecting to the utilities that are serving the principal dwelling on the lot or by other comparable means;

(6) have exterior materials that are compatible in composition, appearance, and durability to the exterior materials used in standard residential construction;

(7) have a minimum insulation rating of R-15;

(8) be able to be installed, removed, and transported by a one-ton pickup truck as defined in section 168.002, subdivision 21b, a truck as defined in section 168.002, subdivision 37, or a truck tractor as defined in section 168.002, subdivision 38;

(9) be built to either Minnesota Rules, chapter 1360 or 1361, and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2; and

(10) be equipped with a backflow check valve.

Subd. 3. **Temporary dwelling permit; application.** (a) Unless the county has designated temporary family health care dwellings as permitted uses, a temporary family health care dwelling is subject to the provisions in this section. A temporary family health care dwelling that meets the requirements of this section cannot be prohibited by a local ordinance that regulates accessory uses or recreational vehicle parking or storage.

(b) The caregiver or relative must apply for a temporary dwelling permit from the county. The permit application must be signed by the primary caregiver, the owner of the property on which the temporary family health care dwelling will be located, and the resident of the property if the property owner does not reside on the property, and include:

(1) the name, address, and telephone number of the property owner, the resident of the property if different from the owner, and the primary caregiver responsible for the care of the mentally or physically

impaired person; and the name of the mentally or physically impaired person who will live in the temporary family health care dwelling;

(2) proof of the provider network from which the mentally or physically impaired person may receive respite care, primary care, or remote patient monitoring services;

(3) a written certification that the mentally or physically impaired person requires assistance with two or more instrumental activities of daily living signed by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state;

(4) an executed contract for septic service management or other proof of adequate septic service management;

(5) an affidavit that the applicant has provided notice to adjacent property owners and residents of the application for the temporary dwelling permit; and

(6) a general site map to show the location of the temporary family health care dwelling and other structures on the lot.

(c) The temporary family health care dwelling must be located on property where the caregiver or relative resides. A temporary family health care dwelling must comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. The temporary family health care dwelling must be located on the lot so that septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.

(d) A temporary family health care dwelling is limited to one occupant who is a mentally or physically impaired person. The person must be identified in the application. Only one temporary family health care dwelling is allowed on a lot.

(e) Unless otherwise provided, a temporary family health care dwelling installed under this section must comply with all applicable state law and local ordinances.

Subd. 4. **Initial permit term; renewal.** The initial temporary dwelling permit is valid for six months. The applicant may renew the permit once for an additional six months.

Subd. 5. **Inspection.** The county may require that the permit holder provide evidence of compliance with this section as long as the temporary family health care dwelling remains on the property. The county may inspect the temporary family health care dwelling at reasonable times convenient to the caregiver to determine if the temporary family health care dwelling is occupied and meets the requirements of this section.

Subd. 6. **Revocation of permit.** The county may revoke the temporary dwelling permit if the permit holder violates any requirement of this section. If the county revokes a permit, the permit holder has 60 days from the date of revocation to remove the temporary family health care dwelling.

Subd. 7. **Fee.** Unless otherwise specified by an action of the county board, the county may charge a fee of up to $100 for the initial permit and up to $50 for a renewal of the permit.

Subd. 8. **No public hearing required; application of section 15.99.** (a) Due to the time-sensitive nature of issuing a temporary dwelling permit for a temporary family health care dwelling, the county does not have to hold a public hearing on the application.

(b) The procedures governing the time limit for deciding an application for the temporary dwelling permit under this section are governed by section 15.99, except as provided in this section. The county has

15 days to issue a permit requested under this section or to deny it, except that if the county board holds regular meetings only once per calendar month the county has 30 days to issue a permit requested under this section or to deny it. If the county receives a written request that does not contain all required information, the applicable 15-day or 30-day limit starts over only if the county sends written notice within five business days of receipt of the request telling the requester what information is missing. The county cannot extend the period of time to decide.

Subd. 9. **Opt-out.** A county may by resolution opt-out of the requirements of this section.

**History:** *2016 c 111 s 2*

**394.31** MS 1971 [Repealed, 1974 c 571 s 51]

**394.312 RELATION TO OTHER COUNTY AUTHORITY.**

All official controls in effect on August 1, 1974, shall remain in full force and effect until amended or repealed whether such controls were adopted by resolution of the board or by ordinance and whether or not comprehensive plans had been adopted before the official controls were adopted. Any official controls and any procedures for the administration of official controls which are in existence on August 1, 1974, shall be brought into compliance with Laws 1974, chapter 571, within four years from August 1, 1974.

**History:** *1974 c 571 s 36; 1977 c 197 s 1*

**394.32 COOPERATION WITH MUNICIPALITIES.**

Subdivision 1. **By contract; fees.** The governing body of any municipality may contract with the board for planning and zoning services to be provided by the county, and the contract may provide that the municipality shall pay such fees as are agreed for the services performed.

Subd. 2. **Joint planning.** The contract between the governing body of the municipality and the board may provide among other things for joint county-municipal planning activities, or it may designate the board as the planning agency for the municipality.

Subd. 3. **Comprehensive plan; control enforcement.** The governing body of any municipality may request a county board to submit to such governing body a comprehensive plan for the municipality setting forth such provisions as the board deems applicable to the municipality and for its best interests, or to include the area within the municipality in a countywide comprehensive plan, or to prepare official controls to apply to the area within the municipality. Notwithstanding the adoption of the comprehensive plan and recommendations for the municipality the plan and recommendations shall not be binding until official controls are adopted by the municipality in accordance with the plan or until the county adopts official controls for the areas within the incorporated limits of the municipality when requested by the governing body of the municipality. After the county adopts official controls for areas within a municipality, the county shall enforce the controls unless the county and municipality provided otherwise by agreement. A municipality may at any time, by resolution of its governing body, take over planning functions, including adoption and enforcement of official controls, with respect to areas within its corporate limits for which a county has adopted official controls.

Subd. 4. MS 1971 [Repealed, 1974 c 571 s 51]

**History:** *1959 c 559 s 12; 1974 c 571 s 37,38*

**394.33 TOWN POWERS.**

Subdivision 1. **Not inconsistent.** The governing body of any town including any town with the powers of a statutory city pursuant to law may continue to exercise the authority to plan and zone as provided by law, but after the adoption of official controls for a county or portion thereof by the board of county commissioners no town shall enact or enforce official controls inconsistent with or less restrictive than the standards prescribed in the official controls adopted by the board. Nothing in this section shall limit any town's power to adopt official controls, including shoreland regulations which are more restrictive than provided in the controls adopted by the county. Upon the adoption or amendment of any official controls the governing body of the town shall record a certified copy thereof with the county recorder or registrar of titles. A certified copy of any official controls of any town which are in effect on August 1, 1974, shall also be filed by the governing body of the town with the county recorder or registrar of titles for record within one year from August 1, 1974.

Subd. 2. **Like municipality.** The board of supervisors of any town which has adopted or desires to adopt zoning regulations and restrictions pursuant to law shall have the authority granted the governing body of any municipality as provided in section 394.32.

**History:** *1959 c 559 s 13; 1963 c 692 s 7; 1965 c 678 s 1; 1974 c 571 s 39; 1976 c 181 s 2; 1995 c 254 art 3 s 4; 2005 c 4 s 99*

**394.34 INTERIM ZONING.**

If a county is conducting or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a comprehensive plan or official controls or an amendment, extension, or addition to either, or in the event new territory for which no zoning may have been adopted, may be annexed to a municipality, the board in order to protect the public health, safety, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning ordinance, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one year from the date it becomes effective and to one year to renewal thereafter.

**History:** *1959 c 559 s 14*

**394.35 RECORDING WITH COUNTY RECORDER.**

Upon the adoption of any ordinance or other official control including any maps or charts supplemented to or as part thereof, the county auditor shall record a certified copy thereof with the county recorder. Ordinances, resolutions, maps or regulations recorded with the county recorder or registrar of titles pursuant to sections 394.21 to 394.37 do not constitute encumbrances on real property.

**History:** *1959 c 559 s 15; 1974 c 571 s 40; 1976 c 181 s 2; 2005 c 4 s 100*

**394.36 NONCONFORMITIES.**

Subdivision 1. **Continuation of nonconformity; limitations.** Except as provided in subdivision 2, 3, or 4, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, although the use or occupation does not conform to the official control. If the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming building or structure is destroyed by fire or other peril to the extent of 50 percent of its estimated market value, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

Subd. 1a. **Substandard structures.** Notwithstanding subdivision 1, Minnesota Rules, parts 6105.0351 to 6105.0550, may allow for the continuation and improvement of substandard structures, as defined in Minnesota Rules, part 6105.0354, subpart 30, in the Lower Saint Croix National Scenic Riverway.

Subd. 1b. **Designated floodplains.** Notwithstanding subdivision 1, a county shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

Subd. 2. **Regulations.** The board may by ordinance adopt such regulations not contrary to law as it deems desirable or necessary to classify, regulate and control, reduce the number or extent of and provide for the gradual elimination of nonconformities and occupancies, including requiring nonconformities to conform with the official controls of the county or terminate within a reasonable time as specified in the official controls. The board may by ordinance impose upon nonconformities additional regulations relating to appearance, signs, lighting, hours of operation and other aesthetic performance characteristics including but not limited to noise, heat, glare, vibrations, and smoke.

Subd. 3. **May buy if detrimental.** A nonconformity that is determined by the board to be detrimental to the achievement of the goals and objectives of the comprehensive plan may be acquired by the board by purchase.

Subd. 4. **Nonconformities; certain classes of property.** This subdivision applies to homestead and nonhomestead residential real estate and seasonal residential real estate occupied for recreational purposes. Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. If the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged, any subsequent use or occupancy of the land or premises must be a conforming use or occupancy. If a nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the board may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

Subd. 5. **Existing nonconforming lots in shoreland areas.** (a) This subdivision applies to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A county shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to this subdivision.

(b) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(c) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(d) A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(e) Notwithstanding paragraph (c), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(f) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, stormwater runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(g) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage system requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

**History:** *1959 c 559 s 16; 1974 c 571 s 41-43; 2002 c 366 s 5; 2006 c 270 art 1 s 3-5; 2009 c 149 s 1,2; 2013 c 143 art 14 s 61*

**394.361 OFFICIAL MAP.**

Subdivision 1. **Future public uses.** Land that is needed for future street and highway purposes, or for aviation purposes, and as sites for other necessary public facilities and services is frequently diverted to nonpublic uses that could have been located on other lands without hardship or inconvenience to the owners. When this happens, public uses of land may be denied or may be obtained later only at prohibitive cost or at the expense of dislocating the owners and occupants of the land. Identification on official maps of land needed for future public uses permits both the public and private property owners to adjust their building plans equitably and conveniently before investments are made that will make adjustments difficult to accomplish.

Subd. 2. **Development; hearings, adoption, filing.** The planning commission may develop and recommend for adoption by the board official maps and amendments thereto covering all or any portion of the unincorporated area of the county. Public hearings on proposed official maps and amendments thereto shall be held in accordance with section 394.26. The official map may be adopted and amended by ordinance by the board.

All official maps shall be prepared in sufficient detail to permit the establishment of future acquisition lines on the ground. In unplatted areas a minimum of a centerline survey shall have been made prior to the preparation of the final draft of the official map. The accuracy of the future acquisition lines shown on the official map shall be attested to by the county surveyor. Copies of official maps and amendments shall be filed in accordance with section 394.35. One copy of the official map shall be furnished to the town clerk of each affected town.

Subd. 3. **Effect.** After an official map has been adopted and filed, the issuance of land use or zoning permits or approvals by the county is subject to the provisions of this section. Whenever any street or highway is widened or improved or any new street is opened, or interests in lands for other public purposes, including aviation purposes, are acquired by the county, it is not required in such proceedings to pay for any building or structure placed without a permit or approval or in violation of conditions of a permit or approval within the limits of the mapped street or highway or outside of any building line that may have been established upon the existing street or within any area thus identified for public purposes, including aviation purposes. The adoption of official maps does not give the county any right, title, or interest in areas identified for public purposes thereon, but the adoption of a map does authorize the county to acquire these interests without paying compensation for buildings or structures erected in those areas without a permit or approval or in violation of the conditions of a permit or approval. This subdivision does not apply to buildings or structures in existence prior to the filing of the official map.

Subd. 4. **Board of adjustment role.** If a permit for a building in such location is denied, the board of adjustment shall have the power, upon appeal by the owner of the land to authorize the issuance of a permit for building in such location in any case in which the board finds, upon the evidence and the arguments presented to it, (a) that the entire property of the appellant of which such area identified for public purposes forms a part cannot be put to a reasonable use by the owner unless such a permit is granted, and (b) that balancing the interest of the county in preserving the integrity of the official map and the comprehensive plan and interest of the owner of the property in the use of the property and in the benefits of ownership, the issuance of such permit is required by considerations of justice and equity. Prior to reaching a decision upon the appeal, public hearings shall be held in accordance with section 394.26. If the board of adjustment authorizes the issuance of a permit the board shall have six months from the date of the decision of the board of adjustment to institute proceedings to acquire such land or interest therein, and if no such proceedings are started within that time, the officer responsible shall issue a permit in accordance with the conditions stated in the authorization specifying the exact location, ground area, height and other details as to the extent and character of the building for which the permit is granted.

**History:** *1974 c 571 s 44; 1986 c 444; 1995 c 254 art 3 s 5; 2005 c 41 s 14,15*

**394.362 VARIANCES; USE PERMITS; ADVERSE EFFECT.**

Subdivision 1. **Variances; demonstration.** The applicant for a variance which, in the opinion of the board of adjustment, may result in a material adverse effect on the environment may be requested by the board to demonstrate the nature and extent of the effect.

Subd. 2. **Permit; demonstration.** The applicant for a conditional use permit which, in the opinion of the planning commission, may result in a material adverse effect on the environment may be requested by the board to demonstrate the nature and extent of the effect.

**History:** *1974 c 571 s 45*

**394.37 ENFORCEMENT.**

Subdivision 1. **Conveyance compliance.** The board shall provide for the enforcement of sections 394.21 to 394.37 and of ordinances and regulations made thereunder, and may impose enforcement duties on any officer, department, agency, or employee of the county. In a county in which subdivision regulations or controls are in force and have been filed or recorded as provided in section 394.35, the board may by ordinance require that a copy of some or all instruments which convey real estate be submitted by the county recorder to the administrative officer as provided in section 394.29, for review after recording. The officer shall examine each such instrument to determine whether the proposed conveyance complies with the subdivision and platting regulations of the county. If the conveyance does not comply with regulations, the administrative officer shall give notice by mail of the potential violation to the parties to the conveyance.

Subd. 2. **Violations are misdemeanor.** It is declared unlawful for any person to violate any of the terms and provisions of sections 394.21 to 394.37 or the provisions of any ordinance, regulation, or other official control adopted by the board. Violation thereof shall be a misdemeanor. All fines for violations shall be paid to the county and shall be credited to the general revenue fund.

Subd. 3. **Other remedies by county attorney.** In the event of a violation or a threatened violation of sections 394.21 to 394.37 or of any ordinance, regulation, or other official control adopted hereunder, the board, or any member thereof, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, correct, or abate such violations or threatened violations and it is the duty of the county attorney to institute such action.

Subd. 4. **Taxpayer mandamus action.** Any taxpayer of the county may institute mandamus proceedings in district court to compel specific performance by the proper official or officials of any duty required by sections 394.21 to 394.37 or by any ordinance adopted thereunder.

**History:** *1959 c 559 s 17; 1971 c 664 s 1; 1974 c 571 s 46; 1977 c 189 s 1*