

**CITY OF MINNEWAUKAN  
PERMANENT LAND USE ORDINANCE  
AREA OF SPECIAL CONSIDERATION**

**Section 1.0**

Statutory Authorization, Findings of Fact, Purpose and Objectives

**1.1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES**

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the City Council of Minnewaukan, North Dakota does ordain as follows:

**1.2 Findings of Fact**

- (1) There is an Area of Special Consideration (ASC) mapped within the jurisdiction of Minnewaukan identified by the Flood Insurance Rate Map (FIRM) dated April 16, 2009. Structures located in this ASC have a potential for flood damage from continuous lake flooding from Devils Lake.
- (2) Devils Lake is a natural “closed basin lake”, (up to the spill elevation of 1460 feet mean sea level) from which water leaves primarily through evaporation and whose surface now exceeds or has exceeded one square mile at any time in the recorded past.
- (3) Minnewaukan is a participating community in the National Flood Insurance Program (NFIP) and has enacted a flood plain management ordinance based on the one percent chance event.
- (4) Participation in the NFIP under a Closed Basin Lake Endorsement requires adoption and enforcement of this Permanent Land Use Ordinance limiting construction in the ASC.
- (5) Minnewaukan has voluntarily elected to enact these special Closed Basin Lake Endorsement requirements.
- (6) Structures in the ASC are subject to actual damage and/or under imminent threat of flooding which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief.
- (7) The ASC designation is final, however, if a U.S. Corps of Engineers (USACE) certified flood control project or otherwise certified flood control project later protects land within the ASC, FEMA will, upon request of the community, amend the ASC to remove areas protected by those projects.

**1.3 Statement of Purpose**

It is the purpose of this ordinance to promote long-term flood plain management solutions to eliminate or minimize future flood losses in the ASC. This ordinance, in compliance with the

NFIP endorsement for closed basin lake flooding, provides the means for eligible homeowners and commercial business interests to relocate outside the ASC when they are flooded or under imminent threat of flooding.

#### **1.4 Methods of Reducing Flood Losses**

In order to accomplish its purposed, this permanent land use ordinance includes provisions for prohibiting the construction of any residential or commercial buildings within the ASC with limited exceptions.

### **Section 2.0** **Definitions**

**Area of Special Consideration (ASC)** means all areas subject to flooding from Devils Lake up to an elevation of 1460.0 feet (Nation Geodetic Vertical Datum of 1929). The ASC accounts for continuing fluctuations in the water surface elevation of Devils Lake because of the closed basin lake phenomenon. The ASC excludes areas below 1460 feet that are protected by certified projects.

**Closed Basin Lake (CBL)** means a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past.

**Flood Insurance Rate Map (FIRM)** means the official map on which the Federal Emergency Management Agency has delineated the areas of special flood hazards, the ASC and the risk premium zones applicable to the community.

**44 C.F.R. §60.3** in part, refers to (a)(3)(ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages; (c)(3)(ii) build the structure watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and (c)(4)(i) a registered professional engineer or architect shall certify that the design and methods are in accordance with accepted standards of practice for meeting these provisions.

**Recreational Vehicle** means a vehicle that is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**Structure** means a walled and roofed building or manufactured home that is principally above the ground.

**Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started, or
- (2) If the structure has been damaged and is being restored, before the damage occurred.

For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**Variance** means a grant of relief from the requirements of this ordinance, which permits construction in a manner that would otherwise be prohibited by this ordinance.

Refer to the **Flood Damage Prevention Ordinance** Definitions Section for additional terms.

### **Section 3.0** **General Provision**

#### **3.1 Basis For Establishing The Area of Special Consideration (ASC)**

Using historical, scientific and engineering data, FEMA has established elevation levels at which flooding may occur from continuous lake flooding of Devils Lake. The “Area of Special Consideration (ASC), identified by a scientific and engineering report entitled the “Flood Insurance Study, Benson County, North Dakota and incorporated areas dated April 16, 2009” with accompanying Flood Insurance Rate Map (FIRM), is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study with FIRM is on file at Minnewaukan City office, 170 Main Street.

#### **3.2 Lands to Which This Ordinance Applies**

This ordinance shall apply to all land in the ASC within the jurisdiction of Minnewaukan as shown on the FIRM dated April 16, 2009.

#### **3.3 Compliance**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this ordinance and other applicable regulations.

#### **3.4 Abrogation and Greater Restrictions**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, and another

ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

### **3.5 Interpretation**

In the interpretation and application of this ordinance, all provisions shall be: Considered as necessary to prevent future lake flood damages; liberally construed in favor of the governing body; and deemed neither to limit nor repeal any other powers granted under State statutes.

### **3.6 Warning and Disclaimer of Liability**

This ordinance does not imply that land outside the ASC or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of Minnewaukan, any officer or employee thereof, or FEMA for any flood damages that result from reliance on this ordinance.

## **Section 4** **Administration**

### **4.1 Establishment of Development Permit**

A permit shall be obtained before construction or development begins within the ASC as established in Section 3.1. Application for a permit shall be made on forms provided by the City Auditor.

### **4.2 Designation of the Flood Plain Administrator**

The Mayor is hereby appointed to administer. The Minnewaukan City Council shall implement this ordinance by granting or denying development permit applications in accordance with its provisions.

### **4.3 VARIANCE PROCEDURES**

#### **4.3-1 Appeal Board**

(1) The Minnewaukan City Council shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(2) The Minnewaukan City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Flood Plain Administrator in the enforcement or administration of this ordinance.

(3) Those aggrieved by the decision of the Minnewaukan City Council or any taxpayer, may appeal such decisions to the District Court.

(4) In passing upon such applications, the Minnewaukan City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance and:

(i) The requirements for the community to maintain eligibility for the NFIP Closed Basin Lake Endorsement benefits;

- (ii) The danger to life and property due to flooding or erosion damage;
  - (iii) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - (iv) The safety of access to the property in times of flood for ordinary and emergency vehicles; and
  - (v) The future availability and costs of providing governmental services before, during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.
- (5) The Flood plain Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the FEMA Regional Director.

#### **4.4-2 Conditions for Variances**

- (1) Variances in the ASC may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (2) Variances will not be issued on property governed by a Closed Basin Lake Conservation Easement or Closed Basin Lake Deed Restriction.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances may be issued for reconstruction of substantially damaged structures from origins other than flooding provided the conditions in this section are met.
- (5) Variances may only be issued upon:
  - (i) A showing of good and sufficient cause; and
  - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant. The hardship must be exceptional, unusual and peculiar to the parcel of property involved, and not to the structure, inhabitants, or property owners. Economic or financial reasons, inconvenience, physical handicaps, personal preferences, or disapproval of neighbors, cannot, as a rule, qualify as exceptional hardships.

### **Section 5** **Restrictions on Construction in ASC**

#### **5.1 Specific Standards**

### **5.1-1 Residential and Nonresidential Construction**

(1) Fill for new structures can be placed only where natural ground elevations of 1455 feet msl or higher exist. Any area of fill for structures must be certified as compacted (95% of the maximum density obtainable with the Standard Proctor Test method) and certified as elevated to or above 1460 feet msl by a Registered Professional Engineer. Compacted fill placement must be contiguous to an area 5 acres or larger that is above an elevation of 1460 feet msl, be armored against erosion, and have an access road and utilities at or above an elevation of 1460 feet msl. Isolated islands of fill are not allowed.

(2) New construction and substantial improvements on land in the ASC shall be prohibited except for structures placed on fill that meets the requirements of paragraph 5.1-1(1) and certain simple agricultural and recreational structures. These structures must meet NFIP requirements for wet-floodproofing (or dryfloodproofing, or elevation, where practicable), pursuant to 44 C.F.R. §60.3 and are restricted to the following:

(i) Simple agricultural structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including livestock, and limited to the following:

(a) General purpose bars, which are open on at least one side, for the temporary feeding of livestock;

(b) Pole frame buildings with open or closed sides used exclusively for storage of farm machinery and equipment, and related agricultural items; and

(c) Steel grain bins and steel frame corn cribs.

(ii) Simple recreational structures such as open bleachers and docks and recreational vehicles that are fully licensed and ready for highway use. Highway use means the vehicle is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

## **Section 6** **Severability, Penalties**

### **6.1 Severability**

If any section, paragraph, clause, phrase or part of this ordinance is for any reason held invalid, such decision shall not affect the validity of the remaining provisions of the ordinance and the application of those provisions to any persons or circumstances shall not be affected thereby.

### **6.2 Penalties For Violations**

(1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connections with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be punished by a fine not exceeding \$500.00; or by imprisonment not to exceed 30 days; or by both

such fine and imprisonment for each such offense; and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(2) Nothing herein shall prevent Minnewaukan from taking such other lawful action as is necessary to prevent or remedy any violation.

**6.3 Notification to FEMA of Violations**

The Local Administrator shall declare and report unresolved violations of this ordinance to the FEMA Regional Director for submission to the Federal Insurance Administration (FIA) of FEMA so that flood insurance can be denied to the affected building pursuant to Section 1316 of the National Flood Insurance Act of 1968.

PASSED THIS 14<sup>th</sup> day of April, 2009 .

APPROVED:

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Curtis A. Yri  
Mayor

ATTEST:

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Laura J. Weed  
Auditor