

**MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY PLANNING COMMISSION HELD VIRTUALLY VIA WEBEX AND IN-PERSON AT THE ST. LOUIS COUNTY GOVERNMENT SERVICES CENTER, LIZ PREBICH ROOM, VIRGINIA, MN ON THURSDAY, MARCH 9, 2023.**

9:00 AM – 11:26 AM

Planning Commission members in attendance: Tom Coombe  
Steve Filipovich  
Dan Manick  
Pat McKenzie, Chair  
Commissioner Keith Nelson  
Dave Pollock  
Ray Svatos  
Diana Werschay

Planning Commission members absent: None

Also present: Ryan Logan, St. Louis County On-Site Wastewater Manager

**Decision/Minutes for the following public hearing matters are attached:**

**NEW BUSINESS:**

- A. St. Louis County Subsurface Sewage Treatment System Ordinance 61 Amendments
- B. Christine Wyrobek, a zoning map amendment involving parcels 250-0040-00520, 250-0040-00525, 250-0020-02040, 250-0020-02041, 250-0020-02042 within S15 T63N, R18W. The proposed zoning change is from Residential-5 to Shoreland Multiple Use-5 and from Residential-7 to Shoreland Multiple Use-7.
- C. Christine Wyrobek, a conditional use permit for a campground as a Commercial Planned Development Use – Class II, provided a rezoning request is approved by the St. Louis County Board of Commissioners.

**OTHER BUSINESS:**

**Motion by Manick/Werschay** to approve the minutes of the February 9, 2023 meeting.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Svatos, Werschay - 6

**Opposed:** None – 0

**Abstained:** Nelson, Pollock - 2

**Motion carried 6-0-2**

*Jenny Bourbonais*, Acting Secretary, stated that the case load for the April public hearings will mean splitting the Planning Commission and Board of Adjustment meetings into separate days. The Planning Commission hearing will be on April 13, 2023. The Board of Adjustment hearing will be on April 20, 2023.

Correspondence packets were made available for both Christine Wyrobek hearings prior to the new applications to be heard April 13, 2023. The applications for today's public hearing have been withdrawn by the applicant.

**NEW BUSINESS:**

**SSTS Ordinance 61 Amendments**

The first hearing item is for St. Louis County SSTS Ordinance 61 amendments. *Ryan Logan*, St. Louis County On-Site Wastewater Manager, reviewed the following proposed amendments:

- A. The Planning Department began their initial review of Ordinance 61 last fall. The Planning Commission briefly discussed SSTS Ordinance 61 revisions during their December 2022 business meeting. On January 12, 2023, the Planning Commission conducted a workshop to discuss the details of the ordinance language and proposed amendments.
- B. The proposed Ordinance 61 amendments have been open for public comment since January 12, 2023, whereas all townships, cities, and interested parties were notified, including direct notification to subsurface sewage treatment system (SSTS) professionals listed on our courtesy business list, the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Natural Resources (DNR), and the Minnesota Department of Health (MDH). A legal notice was posted in the Duluth News Tribune and Mesabi News Tribune in the January 21, 2023, and February 25, 2023 publications. The Division also hosted two open house public meetings on January 24, 2023, and January 31, 2023 that approximately 30 people attended (roughly 12 in-person and 18 virtual). This information was also posted on the county website.
- C. SSTS Ordinance 61, Article IV, Section 2.03 Failure to Protect Groundwater
  1. When specified conditions are present, this ordinance provision currently requires the entire subsurface sewage treatment system (SSTS) to be replaced simply because the applicant is applying for a variance or conditional use permit without taking into consideration if the request will impact the SSTS.
  2. This has led to unintended consequences for property owners and fails to meet the overall purpose and intent of the provision and the ordinance.
  3. The amendment would consider if the land use request impacts SSTS performance.
  4. Existing language to be amended as follows:
    - a. (B) Systems with 12" or more of vertical separation that meets the definition of non-conforming, must be replaced if one or more of the following conditions occur:
      1. (2) The applicant is granted a variance or conditional use permit that has an impact on the SSTS by increasing wastewater generation or has an impact on the replacement area; or
      2. (3) There is an increase of wastewater generation which may impact the performance of the SSTS.
- D. SSTS Ordinance 61, Article IV, Section 2.06 Component Addition/Replacement
  1. Current ordinance language and interpretation of the 'Conformance to Prevailing Requirements' provision has led to unintended restrictions when permitting for component addition/replacement permits where a property owner is requesting to replace only a portion of the SSTS.

2. Allowing for component additions or replacements to systems without requiring a complete upgrade to the entire system under specified conditions is a reasonable solution.
  3. The intent would be to correct the failing component of the system. The SSTS would be functionally upgraded to an acceptable existing system compliance for the treatment of wastewater.
  4. The new language shall read as follows:
    - a. Section 2.06 Component Addition/Replacement – Allow for component replacements to systems without requiring complete upgrade to the entire system under certain conditions and on case-by-case scenarios including but not limited to residential property or commercial property (i.e. complex resort systems). The following conditions shall be met:
      1. (a) Require existing system compliance inspections: To provide validation that other system components are not failing. If septic tank is to remain, it must pass compliance requirements. If soil treatment area is to remain, it must meet compliance separation and must not be undersized per original design.
      2. (b) The component replacement shall meet current standards.
      3. (c) No bedrooms have been added, or other development occurred that may increase generation of wastewater.
      4. (d) When feasible, other system components may be brought into compliance (i.e. tank risers brought to grade, effluent filters installed, clean outs installed, inspection pipes installed, etc).
  5. This will remove Article VI, Section 2.4 Conformance to Prevailing Requirements section.
    - a. This provision has led to confusion and fails to meet the overall purpose and intent of the provision and the ordinance.
- E. SSTS Ordinance 61, Article IV, Section 5.1 Homeowner Exemption
1. Homeowner SSTS installation continues to be a challenge for the Division as they take additional oversight and staff time. In many instances, this oversight and additional time taken includes working with property owners to correct errors and mistakes during installation which results in multiple site visits and inspections to verify installation errors were corrected. The Division is proposing to incorporate additional requirements onto property owners and septic professionals in order to continue to support the property rights of homeowners and allow for homeowner installations.
  2. The new language shall read as follows:
    - a. (D) The property owner shall attend and provide the department with a Certificate of Attendance from a basic installation course provided by the University of Minnesota Water Resources Center or an equivalent training program, or
    - b. (E) Have a licensed designer, installer, or inspector present during installation and shall provide a written affidavit that they witnessed and confirmed the following activities:
      1. The minimum vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock exists.
      2. The trench for the dispersal system is excavated or interface soil is prepared for an above ground system.
      3. The plastic limit of soil is determined.

4. The pumping levels in the pump chamber are set.
  5. The as-built form is prepared.
3. The University of Minnesota has partnered with the MPCA to provide an on-site treatment training program. The program has an annual calendar on when these trainings are offered. There are three to four installation training courses, including a virtual training program. These trainings are two to three days with a test at the end. The average costs are between \$300 and \$400. The property owner will not be required to take this training or pass any test. Staff has collaborated with the MPCA on this provision.
- F. SSTS Ordinance 61, Article V, Section 3.05 Administrative Variances
1. Noncompliant SSTS or Imminent Threats to Public Health must be corrected, repaired, or replaced. Often with existing development, the area to replace the SSTS is not able to meet all setback requirements. A variance is required to obtain relief from setback requirements.
  2. The current process of obtaining variance approval is very time-consuming and expensive. Approval must be granted by the Board of Adjustment.
  3. The construction season is very short. Long delays in approving an SSTS permit can have negative consequences for correcting a failing system. Correcting a failing septic system is most often a matter of necessity and not a choice.
  4. Based upon the described need, it is proposed that administrative variances be allowed with oversight by the Board of Adjustment. All requirements for a standard variance shall apply and additional provisions shall be met. This amendment will allow for the issuance of an administrative variance without the need for a public hearing and the Board of Adjustment's final decision.
  5. The Department shall determine if the request can be decided through an administrative variance.
  6. The new language shall read as follows:
    - a. The Department shall determine if the request shall be heard by the Board of Adjustment for final decision or if the final decision of the request can be decided by the Department through administrative variance.
    - b. (A) The Department may make the final decision after conducting technical review, and
    - c. (B) Administrative variance may be granted if the following provisions are met:
      1. Shall meet the provisions listed in Article V, Section 3.0, 3.04 A., 1-5.
      2. The property must be currently developed and served by an existing SSTS.
      3. A compliance inspection, conducted by a licensed SSTS professional, of the existing system been completed and the system has been determined to be noncompliant or an imminent threat to public health (ITPH).
      4. No expansion of water use is allowed such as an addition to bedrooms, change in use, or change in dwelling classification.
      5. Setbacks must be maximized to the greatest extent possible.
      6. The components of the SSTS shall in no event encroach into the shore impact zone.
      7. The technical standards for design and placement shall be followed.
      8. Adjoining neighbor shall be notified if the request is for relief from property line setback.

9. In shoreland area, minimum land alteration standards as outlined in St. Louis County Zoning Ordinance shall apply.
10. Approval shall be recorded as part of the property record and recognized as compliant within the septic record.

G. Other changes include:

1. As part of the Division's overall review of SSTS Ordinance 61, the Division additionally proposes other amendments considered to be general housekeeping by correcting ordinance language that fits with widely accepted current practice, minor adopted technical standard changes, formatting changes, the definition changes where inconsistencies and discrepancies exist, and additions of definitions that align with those found in MN Rules Chapters 7080 through 7083.
2. The Division has received overall support for the proposed amendments.
3. Staff has received three public comments and had a productive collaboration with the Minnesota Pollution Control Agency (MPCA).
4. Many of the recommendations provided by the MPCA have been incorporated into the Ordinance redline draft.
5. The MPCA also acknowledged a couple of areas in the Ordinance that are less restrictive than MN Rules Chapters 7080 through 7083, that deal with nonconforming, failure to protect groundwater, and subdivision/parcel reviews, and further recommend changes to the ordinance that align with MN Rules.
6. However, MPCA also acknowledged that these less restrictive provisions have been in place for some time. In August 2014, the MPCA provided a letter to the County allowing these provisions to remain in place whereas, at that time, it was their conclusion that those provisions met the overall purpose and intent of MN Rules.
7. From the recent collaboration with the MPCA, they will honor their response to the August 2014 letter and continue to allow St. Louis County to be less restrictive in those areas.

*Ryan Logan* noted correspondence received since public notice was sent January 12, 2023. Three items of correspondence were provided to the Planning Commission prior to the hearing. These three items were from Richard Vukonich, Mike Parrott and Jim Orton. These items were read into the record as follows:

1. Richard Vukonich - One amendment that is continuing to be overlooked is allowing a Type III system in coarse sands with cobbles. This allows them coarse material to be removed and replaced with three feet of washed sand below the roach layer. Studies by the University of Minnesota indicate this type treats effluent per state requirements. To continue to disallow this Type III system is an injustice to St. Louis County residents and tax payers. Sara Christopherson cannot understand why you do not allow these as the county tries to follow 7080. The economic impact on county residents by not allowing such systems needs common sense reasoning as to why the county fails to allow Type III in these situations.
  - a. Staff's response - See 7080.2300 Type III Systems within the Technical standards (on pages 39-40). If specific site conditions exist and minimum standards/provisions for the design of the system are followed as listed in items A through K (specifically K in this situation) this type of design would be allowed. Item K is an additional technical standard to this Type III provision.

- b. The ways the provisions are currently written requires a soil scientist on the site. There are two professional soil scientists in St. Louis County. In the event there are no soil scientists, these new provisions state no soil scientist is required to analyze the site.
2. Mike Parrott - Nonconforming 12" of separation in shoreland should be removed and not allowed. Nonconforming well setback requirement should be removed. Not all wells are on the index and the casing depth is unknown. It puts liability on the inspector they should not have.
  - a. Staff's response - Amendments to the nonconforming definition are not being proposed at this time. Further, if well information is not provided on the Minnesota Department of Health well index, the well is to be considered a sensitive well. A nonconforming SSTS determination is considered to be passing and may be used as is.
  - b. If an existing system does not meet a well setback, it is noted on the record.
3. Jim Orton - Should an inspector be able to help install a septic for a homeowner?
  - a. Staff's response - Certified inspectors are allowed to train and mentor installers and/or designers and, therefore, have the credentials to witness and confirm installation activities.

Three members of the audience asked questions.

*Lucas Crawford*, 1505 West Morgan Street, Duluth, asked how variance data would be collected and archived specifically for septic utility in neighborhoods. *Ryan Logan* stated that like a standard variance, division staff will create a report, conduct a site visit/investigation of the report and through the administrative process will make an administrative variance decision if these ten provisions are met. During the Board of Adjustment regular meetings, the administrative variance decision would be shared with the Board of Adjustment. At that time, this would be in the record and the decision will be recorded on the property. Any compliance inspections done in the future after the variance is approved will consider this septic system as compliant.

*Ronald Johnson*, Whispering Winds Resort, Lake Vermilion, asked what the timeframe is for getting a variance if a new system is being installed and they hit ledgerrock and need to move the proposed system. *Ryan Logan* stated the variance process requires an application deadline of the first Friday of the month to be heard the following month. This is a five-week window from application deadline to when the report is presented to the Board of Adjustment.

*Scott Holm*, no address given, asked if a component replacement/addition to an existing septic system would encompass a bathroom in a garage or an accessory dwelling with living quarters. *Ryan Logan* stated that a bathroom in the garage with no living quarters would not affect a septic system. A septic system is designed based on the number of bedrooms and water-using device. If there is an additional dwelling proposed on the property and meets the provisions of a dwelling that has sanitary living and sleeping quarters, the division would need to consider the size of the septic system to ensure it is sized appropriately.

The floor was opened to the audience. Five members of the audience spoke in total.

*Ronald Johnson* asked if there would be extra charges if county staff does the inspections. If a homeowner must hire someone else, there would be extra charges. *Ryan Logan* stated if a property

owner decides to have a SSTS professional witness and confirm installation activities, that is up to the licensed professional business on what they want to do to provide that assistance. *Ronald Johnson* asked if a county staff member would do this. *Ryan Logan* stated all environmental specialists are all certified individuals in design and inspection. As part of the permit fee to issue the permit to construct, these specialists perform a final inspection. Upon verification that the system was installed per the design and meets the minimum standards, a certificate of compliance will be issued. This is part of the initial permit.

He asked if a solution to the “nonconforming” problem would be to eliminate the three year certificate of compliance and require a current inspection because if it currently passes now, it may not have any issues as a system inspected two to three years ago may have now.

*Lucas Crawford* asked if the status for nonconforming systems would not be changing. *Ryan Logan* stated there are no changes proposed to nonconforming system status.

He is in support of a change to the nonconforming system policy. He and his wife purchased their first home about a year ago. Their property was built in 1954 and the septic system was last updated in 1969. The reason their system has lasted for 54 years is because it was left alone due to its nonconforming status. At the time of purchase in 2022, they had a point of sale inspection that was done by the county to act as a regulatory trigger for replacing old septic systems. The system was deemed nonconforming and is a passing status. Within three weeks of closing on the property, their system needed to be replaced.

Since then, they have learned a lot about on-site wastewater systems. They learned the average life expectancy of a septic system is between 15 to 40 years according to the Environmental Protection Agency (EPA). How was their septic system so special that it exceeded the EPA’s life expectancy by 14 years. Over time, they learned their system was not so unique. In 2004, the division received its first nonconforming point of sale inspection for between 12 and 24 inches of soil separation. At that time, the homeowner was issued a permit to replace a system in 2005. This never happened. Why not? No one has been able to provide this information to the property they now have. In all other counties across Minnesota, this work would have been completed. In St. Louis County, it did not get completed. Instead of replacing the system with due diligence, the property was sold a year later in 2006 which was within the three-year period of the nonconforming inspections. In 2021, his family entered the narrative. They became the fourth homeowner to own this nonconforming SSTS. The buck was passed between three different homeowners prior to he and his family taking the initiative and addressing the problem. They fixed this issue.

A few weeks ago, during the public open house on January 24, 2023, it was mentioned that 12 inches of separation is not a scientific number and may not protect public health from disease-causing pathogens. Prior to replacing the system, the former SSTS had 12 inches of separation for 17 years. St. Louis County allowed a failing system to operate for two decades longer than EPA states a system is good for. This could have been fixed in 2021, but St. Louis County perpetuated the problem by issuing another nonconforming rating. The point of sale trigger does not work. This nonconforming policy is merely an illusion of the regulation. It failed because the property transferred ownership three times before the issue was resolved.

Who does Ordinance 61's policy protect? This does not protect the homeowner. They are an example of how this can be passed along from one family to the next. They have been unable to determine who this obscure policy benefits as realtors, inspectors, insurance companies, and the MPCA are all equally confused.

He asked the Planning Commission to align with industry-best practices and continue collaborating with the MPCA to implement a better policy that is more fair and safer. Nonconforming statuses should be removed within St. Louis County and prevent this experience from happening to other homeowners the Planning Commission serves. He is disappointed this is not part of the current ordinance amendments. He asked that instead of doing things better, he asked to do better things.

*Ryan Logan* stated the definition of nonconforming addresses soil separation in Shoreland, Well Head Protection Areas, and Food, Beverage and Lodging (SWF) areas. In SWF areas, meeting the nonconforming definition is having at least 12 inches of soil separation to 24 inches. For non-shoreland it is at least 12 inches of soil separation to 30.6 inches. The definition includes dry wells, seepage pits that in SWF areas are not allowed but are allowed as nonconforming in non-SWF areas. The system would need to be sized appropriately according to occupancy and all other standards are met, including setbacks. From that definition soil separation would meet either a noncompliant or failure to protect groundwater definition in Minnesota rules 7080 through 7083. This is a blend between what Minnesota would consider noncompliant versus compliant. This is for an existing system, not a new system. St. Louis County uses this as a form of septic system determination for passing a point of sale inspection so the system may continue to be used as-is. If there is a change of use for the property, bedroom addition, a variance or conditional use applied for and granted with an impact on the SSTS, the septic would need to be replaced. If the system is used as-is, the system does not need to be replaced.

*Lori Melbostad*, 8864 Raps Road, Cook, stated she is a realtor and wanted to say what other counties do in Minnesota. Pine County has a requirement for any nonconforming or noncompliant system that a permit is pulled and a quote is given for a new system before the property will close. There are options at the county level. At the state level, there is a form that needs to be filled out for any home with a SSTS. It specifically says in that form that the buyer/seller agrees to a licensed inspector's septic system report and there are a certain number of days to do it. A buyer/seller agree who will get the compliance certificate and where the responsibility lies. It requires a system to be compliant or there has to be additional documentation on who will take on the responsibility and what that looks like. There is no grey area when it comes to septic systems in Minnesota. If noncompliant, many mortgage companies will not put a mortgage on that property. There are things in place that protect a buyer and the county may be going down an unnecessary rabbit hole.

Realtors do need to educate their buyers. The state requires septic inspections every three years. Someone could buy a property with a certificate of compliance within a month of expiring and not know that the septic could fail a month or two down the road. Some people just want a certain property and do not understand the septic side of it. Pine County requires a nonconforming septic system to be replaced. The county also has a financial payment plan where landowners can rebuild their mound system and make a payment along the way. They make transferring property as easy

as possible by allowing the opportunity to finance the system through the county. This way, no one would be stuck with a \$40,000 bill to be paid at one time.

*Ryan Logan* stated as part of the point of sale process as described in Ordinance 61, the provisions and other additional standards that were talked about are implemented in the point of sale requirements. This includes a point of sale compliance inspection. If the system is deemed to be failing with a status of noncompliant or imminent public health threat, part of the sale requires a property transfer agreement to negotiate the terms of the escrow account between the buyer and seller. This will also include an estimate from a licensed contractor for the cost to replace the system. Those standards are followed by St. Louis County. Where the county is unique is the nonconforming system status. The county does allow property transfers for properties with nonconforming septic systems if that septic system will remain as-is.

St. Louis County has a septic loan program, a low-interest loan program, and a deferred forgivable program where a landowner may apply if they meet eligibility guidelines.

*Jim Hofsommer*, Colvin Township, stated that one day, every system will fail. A noncompliant system may fail sooner. Even a compliant system could fail. This is something that realtors could be more honest about.

This ordinance will be an improvement and will help streamline and make the system more efficient. He agrees with replacing one part of the system that may not be good enough instead of replacing the whole system which makes little sense. He has discussed this with his Colvin Town Board. He does not agree with the homeowner exemption so the homeowner can install the septic system themselves. The one thing absent when talking about septic systems is cost. Whatever a system costs, it will be paid. According to the Franklin News Foundation, Aurora is the poorest town in Minnesota. The average person makes \$32,700 per year. Other communities in the area make the same amount as those in Aurora. If a landowner has access to their own machinery, they can install their own system and save money. The government is supposed to serve the citizens and make life better for those citizens in some fashion. Should these people be helping landowners out a bit more and help them by getting this done right instead of condemning them when it is done wrong? Secondly, communities are upgrading their municipal systems and are benefitting financially from the federal government, state government, and local government. All the while, rural landowners get nothing. This is not fair, and things should be made easier for local landowners. He asked the On-Site Wastewater Division to assist landowners more.

They have discussed this at their township and with the Town Board. This is an opinion shared by others in Colvin Township.

No other audience members spoke.

The *Planning Commission* discussed the following during staff's presentation:

- A. Commission member *Coombe* asked if there is a newer system sized for two bedrooms and it passes inspection, would the mound system just be extended if a third bedroom was added? *Ryan Logan* stated there is another ordinance provision that addresses bedrooms.

As long as all of the components are compliant and as long as all components meet the sizing requirement of that component, this would be allowed.

- B. Commission member *McKenzie* asked of all the changes being proposed, is the homeowner exemption provision the one that received the most comments. *Ryan Logan* stated he has received no public comment regarding this provision. During the public open house meetings, the majority of those in attendance were septic professionals or realtors. There were no objections to this provision. During this process and from other comments, there are other comments made by townships that were not necessarily clear on why these provisions were there.
- C. Commission member *McKenzie* asked if the University of Minnesota has an equivalent training program for the homeowner exemption provision. *Ryan Logan* stated that there could be an equivalent training program as septic systems are addressed nationwide. Property owners may be coming from out of state. If they attend a course, staff may accept that course if they received out of state training.
- D. Commission member *Filipovich* asked if there are designers/installers going out to the site with these homeowners, how much time are they spending there, and what do they do? *Ryan Logan* stated the licensed designers/installers can only witness and confirm that the property owner did whatever part of the installation. These SSTS professionals are confirming that the minimum installation standards are being followed during the installation process. This is not verified during the final inspection. Why this is not verified for a licensed installer doing that installation is because they uphold their licensing and certification and have the knowledge of what the minimum installation standards are. Commission member *Filipovich* asked if there are licensed installers that inspect now if homeowners are installing their systems. *Ryan Logan* stated right now as the provision is written, Environmental Specialists will have a pre-construction/pre-installation site visit consultation with the homeowner to discuss the minimum installation requirements.
- E. Commission member *McKenzie* asked if there are any other Minnesota counties proposing this. *Ryan Logan* stated staff looked at Carlton County's ordinance's homeowner exemption provision and used the language to come up with both homeowner exemption language provisions.
- F. Commission member *McKenzie* asked if an administrative variance would be used for replacement of existing systems and not new construction. *Ryan Logan* stated administrative variances will be used to replace failing septic systems.
- G. Commission member *Coombe* asked if the provision "the components of the SSTS shall in no event encroach into the shore impact zone" only applies to an administrative variance. There have been variances where septic system components are within the shore impact zone. Would they require a full variance before the Board of Adjustment? *Ryan Logan* stated if this provision cannot be met, a standard variance would be required.
- H. Commission member *Coombe* asked if an administrative variance could be used in such a case that a landowner would need to move a new system closer to a dwelling if they hit ledge rock. *Ryan Logan* stated that if this system is replacing a failing system, it could be heard as an administrative variance given that all ten provisions are met. If the system is a new septic system, an administrative variance would not apply. Commission member *Coombe* asked if there is a way to take care of this problem. *Ryan Logan* stated the current process is that if changes are made to the design during installation, the installer, division, and designer would need to work together. If amenable to the design, the design may need

to be changed. If setbacks cannot be met, a variance would be required to call a system compliant. Any future compliance inspections would show a compliant system if a variance is granted. There is no mechanism at this point to allow a new system that does not meet setback requirements without a variance.

- I. Commission member *Coombe* commented that the size of the ordinance has changed because there is more in the way of definitions. *Ryan Logan* stated that this was one of the last things staff did to examine definitions and to fix discrepancies. If there is something defined in 7080, that same term needs to be defined in the ordinance, unless it is not an adopted local standard. This is based on the collaboration between the division and the MPCA. It would help to review the St. Louis County Technical Standards. Some definitions have more to do with these technical standards. The intent was to align all of these provisions to the overall intent and purpose of the ordinance: to protect public safety, to protect ground water and surface water within St. Louis County, and to eliminate any public nuisances.

The Planning Commission discussed the following after testimony was opened:

- A. Commission member *Werschay* asked if money is put into escrow during a point of sale inspection. *Ryan Logan* stated that if the system is deemed noncompliant or imminent public health threat, an escrow account is required to be set aside. Commission member *Coombe* stated this is if a system is failing. *Ryan Logan* stated nonconforming systems fall under a passing system status. If a system is failing, it would have a status of noncompliant or imminent public health threat.
- B. Commission member *McKenzie* asked if there is follow up in place once an application has been received and a permit to construct has been granted. *Ryan Logan* stated a permit to construct is valid for two years. One hundred days before a permit to construct expires, a notice is sent to the landowner. At the expiration date, certified mail is sent to the property owner that the permit to construct has expired. Commission member *Manick* commented that if he were looking for property and saw it was flagged as having a nonconforming septic, he might look past it because he knows he may need to change that septic system. If a realtor was trying to sell a property with a nonconforming septic system, they may say that nonconforming does not mean anything. If the use is not changing, the system can be used.
- C. Commission member *Pollock* asked if there is a time limit associated with a nonconforming status. *Ryan Logan* stated that is correct. Commission member *Pollock* asked at what point does staff address older septic systems. *Ryan Logan* stated in regarding to the ordinance, no. This is an area where St. Louis County is less restrictive than Minnesota rules based on the MPCA letter from August 2014. Commission member *Pollock* asked if both passing and nonconforming are part of the point of sale. *Ryan Logan* stated yes. Existing system compliance inspections have four different system status determinations. Existing system compliance means that system meets all existing compliance standards, including system sizing, setback, and separation. An initial certificate of compliance was issued after installation. If that system does not meet separation of at least 12 inches, is undersized, does not meet setback and the system was installed but never received a final inspection or its initial certificate of compliance, the system status would be nonconforming. This is still a passing system. A noncompliant system does not meet separation and does not have at least 12 inches of separation, is hydraulically failing, ponding is occurring and there is

spongy ground, and areas of the yard are very green, etc. A noncompliant system status is failing because it fails to protect groundwater. If a system is determined that sewage is directly discharging onto the ground surface or there are imminent public health safety risks, this is determined to be an imminent public health threat and the system status is failing.

- D. Commission member *Pollock* stated he has been concerned about the nonconforming status. Who benefits from these systems if they conflict with the state? The example given today raises red flags.
- E. Commission member *Coombe* asked how would staff know about separation if the system was installed 20 years ago? *Ryan Logan* stated this is a function of an existing compliance inspector. A private inspector will determine separation. Commission member *Coombe* asked if the county keeps all schematics of when these systems were built. *Ryan Logan* stated if a record exists, there would be a record of that.
- F. Commissioner *Nelson* stated nonconforming does not mean the system is not working. It does mean the system works or it would not get its nonconforming status. When he installed his system in 1979, it was a 1,000 gallon septic tank and two 1,000 gallon dry wells. He lives on top of 30 feet of septic sand. His second dry well has no effluent. They put in so many provisions when this septic Ordinance was written back then. There are realtors that would have protested then, but the point of sale requirement has brought about many changes. This makes people, including realtors, honest with people. They need to tell people that a septic system can be used for a period of time, but it would need to be replaced and there is money set aside to do it. A nonconforming status for an existing system means that the system is nonconforming to the new standard. The new standard requires a mound system or an underground pipe distribution. As long as the system works and is inspected on a regular basis, why would there be a requirement to replace this system? There has been a struggle on how to identify a system that works but does not meet new standards. The only word was nonconforming. Another example is his mother's septic system which had a nonconforming system status, but stopped working and had to be replaced. This happens because a system will quit working. "Nonconforming" still needs to be an integral part of what they are trying to accomplish. Will "nonconforming" be there ten years from now? At the rate they are replacing systems in St. Louis County, these systems may all be replaced by then. There are 37,000 septic systems in the county. Within the past eight to ten years, there have been a cumulative total of almost half that number of permits issued. If the language was changed so that nonconforming systems need to be replaced, the current industry would not be able to do this. The Ordinance as it stands has been adopted by everyone north of Highway 2.
- G. Commission member *Manick* asked if there could be a category for passing-nonconforming because the system is working and can continue to be used as-is. It is fully functional and not in the noncompliant category. The nonconforming category is scary for a new homeowner. *Ryan Logan* stated that term is not in the Ordinance; however, the point of sale compliance inspection determination fact sheet outlines what is compliant or nonconforming, as well as both failing statuses for noncompliant and imminent public health threat. Commission member *Manick* asked if that sheet notes which of the nonconforming factors that a specific system may fit into. *Ryan Logan* stated when this compliance inspection report is received, staff reviews this and either a new certificate of compliance for a passing system is issued or a notice of noncompliance is sent stating why

that system has this status. Commission member *McKenzie* asked if this is part of the point of sale process. *Ryan Logan* stated yes, if there is no current certificate of compliance or status of nonconforming, a point of sale inspection is required to be completed on that septic system prior to the transfer of that property. If the system is failing, an escrow account is set up to provide security to the county that the septic system will be replaced.

- H. Commission member *Pollock* asked Mr. Crawford if there was an event that caused the new landowner to replace the existing septic system. *Lucas Crawford* stated three weeks after moving in, the system backed up and needed to be pumped. After that, they began the process to replace the system.
- I. Commission member *Pollock* asked what the timeline is for a noncompliant system. *Ryan Logan* stated that a system is deemed noncompliant in non-SWF areas. A landowner has 60 days to submit an application and design for a permit to construct for a replacement septic system. The landowner has up to two years to have the system fully replaced and installed. In a SWF area, there are 60 days to get a permit and design submitted and one year to replace and install a replacement septic system. Commission member *Pollock* asked what if a noncompliant system is working still. *Ryan Logan* stated a noncompliant system is a failing system. Commission member *Pollock* asked if a noncompliant system requires an escrow with the point of sale requirement. *Ryan Logan* stated yes.
- J. Commission member *McKenzie* asked if a nonconforming system would be considered compliant by the MPCA. *Ryan Logan* stated yes. Commissioner *Nelson* noted that this is an exemption with the MPCA because St. Louis County proved that these are functioning systems. These are not systems endangering the groundwater in any way. Anyone can get an inspection before they purchase the property, but there is nothing that says a pipe or a well or a septic system will not fail. These are risks taken by anyone purchasing property.
- K. Commission member *Manick* asked if staff would address “nonconforming” in the future if they are not addressing this issue now. *Ryan Logan* stated staff decided not to move forward with any proposed nonconforming changes because they wanted the proposed provisions to provide more clarity and to provide consistent interpretation that meets the overall purpose and intent. *Lucas Crawford* added that St. Louis County is the only Minnesota county that has a nonconforming status, and it is a rabbit hole this county is going down. Nonconforming in any other county equals failure.
- L. Commission member *Pollock* asked if Mr. Crawford had any conversation about the four system status categories as they have been discussed. *Lucas Crawford* stated the only understanding they had was the urgency to purchase and that they would need to address a septic system that was 50 plus years old. That was not in their budget, and they had to begin the replacement process three weeks later. They would not have purchased this property had they known the septic would need to be replaced.
- M. Commission member *Coombe* stated he does not know how to address “nonconforming.” There is no easy way to address this issue.
- N. Commission member *Pollock* asked if there is a compliance inspection with every land sale. *Ryan Logan* stated that is not correct. If the property owner/seller can provide a valid certificate of compliance or notice of nonconforming, a point of sale inspection is not required. The validity of those differs depending upon the type of certificate.
- O. Commission member *McKenzie* asked if the point of sale inspection is at the point of sale. The seller could produce a valid certificate at the time of sale. *Ryan Logan* stated yes.

The *Planning Commission* discussed the following after the hearing was closed.

- A. Commission member *McKenzie* stated that the Planning Commission will decide today to recommend the Ordinance 61 amendments to the St. Louis County Board. The St. Louis County Board will make the final decision on adopting the amendments.
- B. Commissioner *Nelson* stated that a township Board Supervisor can only speak for the township when they have a town board resolution.
- C. Commission member *Pollock* stated there is the ability for a homeowner to do their installation. Staff will review this project. At the end, there will be a final inspection. In between, the homeowner needs to have the course and utilize a licensed installer to watch what they do. This is a cost-effective, reduced amount that the homeowner can expend. If staff were involved more with the installation, there would be more issues with liability. This means that a licensed installer would need to be on site to make sure everything is done according to provisions.
- D. Commissioner *Nelson* stated there was a time when county staff would design the septic system. If that system were to fail, the county might get sued because the system failed. This is the reason why these systems are privately designed, privately inspected, and privately installed. There are private inspectors other than county employees, too. There is no liability. That is the reason why county staff cannot be more involved. It would be a disservice to any landowner installing their own system to have them install a new septic incorrectly and then they would have to do it again.
- E. Commissioner *Nelson* stated they put in a new septic system two years ago and one was installed last year. Both septic systems cost close to the same amount. Prices for systems do vary based on soils, but not all systems are \$35,000 to \$40,000. Staff could look at prices for septic systems so there is an average price that landowners can expect to pay.
- F. Commission member *Coombe* stated if there is a problem with nonconforming language on a point of sale, this should be looked at. It would not hurt to look at this language to see if the issue is ongoing and how frequently it is found. If this is a problem and older nonconforming systems are getting to the end of their life, there should be a complete current compliance inspection done with them. They should require system replacement and an escrow.
- G. Commission member *Manick* asked if they could table Ordinance 61 decision because the Planning Commission owes the public so the public can see the changes staff is making. *Jenny Bourbonais*, Acting Secretary, stated that a changes to the ordinance may take place between Planning Commission review and County Board final approval. There would be a notice that goes out between now and when the Ordinance amendments go before the St. Louis County Board. The County Board has final approval and may make changes as well. Commissioner *Nelson* stated the attempt was to get the time frame down so that any changes to the ordinance would happen prior to the start of the 2023 construction season. That way, septic designers and installers would have the latest provisions. The Septic and Solid Waste Committee is comprised of the four rural commissioners, and it was their decision to move this forward. The decision was that they would not change the nonconforming status. Staff did mention bringing nonconforming changes forward, but the Septic and Solid Waste Committee chose not to. They wanted to see the Ordinance move forward for a few years before any potential changes would be made. This could be altered at the County Board level. But how would they come up with a number of years to do inspections at? It would be an arbitrary number based on some unknown factor.

- H. Commission member *Coombe* stated he looked at this Ordinance and was well aware of the nonconforming language. Eight years ago, he was a proponent of changing language. The Planning Commission has been made aware of a problem. If language was changed for nonconforming status at the time of sale, it would not impact a majority of existing septic systems because not all of them are being sold.
- I. Commissioner *Nelson* stated any potential language staff may come up with would be considered at the St. Louis County Board hearing based on the discussion today. The septic ordinance is a living document. If there are changes that are needed to be made, they could be made at any time. He would like the proposed changes to get approved before construction season begins because they make sense. It would be a waste of time and money for the Board of Adjustment to hear septic variances that make no sense. There was a time when 65 to 70 percent of Board of Adjustment decisions were made on septic systems. This is the final step to allow professionals to make administrative decisions that make sense for the county. If certain provisions are not met, these will be variances heard before the Board of Adjustment. With the short construction season, by the time road restrictions come off and November 1, there are just five months.
- J. Commission member *Werschay* asked if it would be difficult to require a current inspection at the time of sale instead of allowing an inspection that is two to three years old. Commissioner *Nelson* stated that is within the prerogative to ask for that change. However, there are only a certain number of inspectors, designers, and installers. There are just two soil scientists in the whole county. The Ordinance needs to work within the parameters of what exists in the private sector.
- K. Commission member *Pollock* stated a system inspection on all sales is becoming a commonsense way. This is something that would help every homeowner and every system. Whatever is required would be a basic need for a property sale.
- L. *Ryan Logan* stated in regard to a point of sale requirements and the point of sale inspection that Minnesota rules chapter 7080 adopted by St. Louis County, certificates are valid for a period of time. For existing systems, a valid certificate of compliance is good for three years. For new construction for point of sale purpose, a valid certificate of compliance is good for ten years. There is no guarantee that a day after inspection, a week after inspection, or at any time after inspection the system status remains the same as determined as on the day of inspection. That certificate is valid to be used for point of sale purposes.
- M. Commission member *McKenzie* asked if Mr. Crawford's system had been inspected at the time of the point of sale and would it have passed inspection? *Ryan Logan* stated a compliance inspection for the point of sale was completed in October 2021 and the property was purchased in March 2022. Commission member *Pollock* stated it would not have hurt for another inspection at the point of sale. The buyer needs to be helped to make sure they are getting a decent property.
- N. Commission member *McKenzie* asked if there is a point an older septic system may cease to function? Could a septic system be considered too old? *Ryan Logan* stated systems are designed to last 15 to 40 years. Why would it fail at 15 years versus failing at 40 years? There are three major soil types and the mixture of those soils create different rates, all of which are considered during the design of the system. The second consideration is how well that property owner is maintaining that septic system. Is it being properly maintained on a regularly scheduled basis? Commission member *McKenzie* stated there is no current mechanism that would fail a septic system status based on age. *Ryan Logan* stated not with

this Ordinance. Commission member *Pollock* stated there could be an inspection required at year 40.

- O. Commission member *McKenzie* commented that the practical problem of having county staff visit a site to ensure things are done properly is that there are not enough county staff. The online course costing a few hundred dollars seems like a good balance compared to having an installer on site every step of the way.

## **DECISION**

**Motion by Manick/Werschay** to approve the St. Louis County SSTS Ordinance 61 amendments and forward to the St. Louis County Board for final approval.

**In Favor:** Coombe, Filipovich, Manick, McKenzie, Pollock, Svatos, Werschay - 7

**Opposed:** None - 0

**Abstained:** Nelson - 1

**Motion carries 7-0-1**

### **Christine Wyrobek (zoning map amendment)**

The second hearing item was for Christine Wyrobek, a zoning map amendment involving parcels 250-0040-00520, 250-0040-00525, 250-0020-02040, 250-0020-02041, 250-0020-02042 within S15 T63N, R18W. The proposed zoning change is from Residential-5 to Shoreland Multiple Use-5 and from Residential-7 to Shoreland Multiple Use-7. The applicant has withdrawn this application. No action is needed. No action was taken.

### **Christine Wyrobek (conditional use permit)**

The third hearing item was for Christine Wyrobek, a conditional use permit for a campground as a Commercial Planned Development Use – Class II, provided a rezoning request is approved by the St. Louis County Board of Commissioners. The applicant has withdrawn this application. No action is needed. No action was taken.

**Motion to adjourn by Werschay. The meeting was adjourned at 11:26 AM.**