

Table of Contents

June 28, 2016

Planning Commission Meeting

Agenda1

Minutes of May 31, 2016 Planning Commission Meeting.....3

Public Hearing

2016-20 Variance – Muller, 11333 E Steamboat Bay Rd5

Muller Variance Site Plan Drawings (separate posting)..... 5A

PZ Administrator’s Report 11

Inspections/Site Visits Map (separate posting).....11A

Temporary Family Health Care Dwellings – new law 13

Old Business

Comprehensive Plan (emailed) 19

New Business

None

CITY OF EAST GULL LAKE
AGENDA
PLANNING AND ZONING COMMISSION
Tuesday, June 28, 2016 – 6:30 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Additions or Deletions to the Agenda /Adoption of Agenda
5. Approval of Minutes
 - a) May 31, 2016 Regular Meeting
6. Public Hearing
 - a) 2016-20 Variance – Muller, 11333 E Steamboat Bay
7. Open Forum*
8. P&Z Administrator’s Report

a) Statistics

New Permits:	4
New Variances:	1
New Conditional Use:	0
Potential Permits:	14
Inspections	20
Completion Letters:	4
New Violations:	0
Total 2016 Permits:	42

- b) 2013, 2014 & 2015 Existing Permits Update
 - One open 2013 permit: Owen Trout garage
 - Three open 2014 permits
 - Twenty-two open 2015 permits
 - c) Site Inspection Report
 - d) Temporary Family Health Care Dwellings
 - On May 12, 2016, Governor Dayton signed into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.
9. Old Business
Comprehensive Plan
10. New Business
None
11. Adjournment

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

***OPEN FORUM** allows the public to speak to the Committee regarding issues that are not on the agenda.

Prepared by East Gull Lake Administrative Assistant
Kathy Schack

**City of East Gull Lake
Planning and Zoning
Regular Meeting
Tuesday, May 31, 2016 – 6:30 PM**

I. Call to order

Chair Buxton called to order the regular meeting of the City of East Gull Lake Planning and Zoning Commission at 6:30 PM on Tuesday, May 31, 2016 at City Hall.

II. Pledge of Allegiance

III. Roll Call

Present: Bruce Buxton (Chair), Commission: Marty Halvorson, Paul Tollefson, Nate Tuomi, Eunice Wiebolt, Rocky Waldin

Staff Present: City Administrator Mason, Administrative Assistant Schack

Council Liaison: Scott Hoffman

Audience: Tim Engel, Jim Schaffhausen, David Patten, Dion Lybeck, Richard Gregory, Jim English

IV. Adoption of Agenda/Additions or Deletions to the Agenda

Motion by Commissioner Halvorson and seconded by Commissioner Wiebolt to approve the agenda as amended. Passed unanimously

V. Approval of Minutes

Motion by Commissioner Wiebolt, second by Commissioner Tollefson to approve the minutes of the Tuesday, April 26, 2016 meeting.

VI. Public Hearings

A. 2016-19 CUP: 87-009-3404 – Stewart Mills, 1004 Green Gables Rd

Conditional Use Permit (CUP) 2016-19 to remove current tennis court now across two properties owned by Stewart Mills Jr. and Hank Mills and relocate to Stewart Mills Jr. property. A CUP is required based on 300 cubic yards of fill being used to prepare the new site.

Administrator Mason addressed the Commission noting the proposal and reading the staff report and public notice for the Mills CUP. He noted that Staff recommends approval with the following condition:

1. After removal of existing court all property will be restored to green space.

Motion by Commissioner Wiebolt and seconded by Commissioner Tuomi to recommend approval of CUP 2016-19 subject to the findings and conditions as presented by the Planning Commission. Ayes Commissioners Halvorson, Tollefson, Tuomi, and Wiebolt; Chair Buxton abstaining. Motion passed.

B. 2016-17 CUP: 87-357-0134 – James English, 10358 Squaw Point Rd

Conditional Use Permit (CUP) for constructing a fence more than the 60 inches (5 feet) allowed by ordinance. All immediate neighbors are in agreement after storm destroyed the privacy tree line that used to separate the properties.

Administrator Mason addressed the Commission noting the proposal and reading the staff report and public notice for the English CUP. He noted that Staff recommends approval with the following condition:

1. Fence will be 72 inches and will begin 50 feet from shoreline and run 136 feet between the properties. Additional trees will be supplemented in the remaining space where others were lost.

Motion by Commissioner Halvorson and seconded by Commissioner Tuomi to recommend approval of CUP 2016-17 subject to the findings and conditions as presented by the Planning Commission. Passed unanimously.

C. 2016-21 CUP: 87-376-0120 – Richard Gregory, 1766 Yellow Moccasin Trl

Conditional Use Permit (CUP) 2016-21 to add over 700 cubic yards (< 50 cu yd allowed) of soil to re-landscape the property after 2015 storm destroyed almost all the trees on the lot.

Administrator Mason addressed the Commission noting the proposal and reading the staff report and public notice for the Gregory CUP.

David Patten addressed the Commission regarding the landscape plan for the Gregory property. He described the plan on the screen. He noted the park like character of the plan. Elevation of the property

and the neighboring properties was discussed. Water runoff and stormwater retention was discussed. Jim Schaffhausen gave his support of the plan.

Administrator Mason read a letter from the Carney family opposing the plan. Chair Buxton stated the concern is the water runoff is not going onto neighboring properties.

Administrator Mason noted that Staff recommends approval with the following condition:

1. A landscape plan containing a storm water management plan to retain excess stormwater on the property is provided and will be followed.
2. The landscape area around Yellow Moccasin Road and Mallard Lane will have drain tile installed and will be designed specifically to remove the ability for standing water to be retained on either road. Water will be directed to the stormwater pond or the smaller catch basins created.

Motion by Commissioner Halvorson and seconded by Commissioner Wiebolt to recommend approval of CUP 2106-21 subject to the findings and conditions as presented by the Planning Commission. Passed unanimously.

VII. Open Forum

None

VIII. Planning and Zoning Administrator's Report

A. Statistics

New Permits:	15
New Variances:	0
New Conditional Use:	3
Potential Permits:	10
Inspections	24
Completion Letters:	5
New Violations	0
Total 2016 Permits to date:	37

Administrator Mason reviewed his site visits for the month using the screen and showing and discussing photos of various properties.

B. 2013, 2014 & 2015 Existing Permits Update

- One remaining open 2013 permit: Owen Trout garage
- Three remaining open 2014 permits
- 26 open out of 69 total 2015 permits

IX. Old Business

A. Comprehensive Plan – Sections VI & VII

Discussed both sections, completing Section VI. Will work on Section VII at next meeting.

X. New Business

A. Zoning Map

Discussed need to go over definitions at next meeting.

XI. Adjournment

Motion by Commissioner Tuomi and seconded by Commissioner Halvorson to adjourn. Passed unanimously.

Transcribed by East Gull Lake Administrative Assistant
Kathy Schack

These minutes are paraphrased and are not written word for word.



City of East Gull Lake

Staff Report

To: Planning Commission

Prepared by: Administrative Assistant Schack

Date: June 28, 2016

Agenda Item: 6a

Subject: Variance 2016-20 – Muller, 11333 E Steamboat Bay Rd

Report:

Remove and replace existing garage with an addition to join to the main house. Variance required based on the home being 41 feet from the OHW of Gull Lake and retaining the existing setback for the older portion of the garage.

Staff recommends that the variance be approved based on the findings of this report. We also recommend the following conditions:

1. *Because impervious coverage exceeds the 20% threshold for the property from the lakeshore to East Steamboat Bay Road, a storm water management plan will be required to improve drainage.*
2. *A large percentage of the rear deck of the home will be removed to reduce impervious coverage for the home; pavers will be installed in place which also will count against impervious coverage.*
3. *Maintain the 10 foot setback to property lines on all new construction of the garage addition. A practical difficulty situation exists in regard to the current bump out of the property line and being able to use the property efficiently. An adjustment of the foundation to maintain existing setbacks from the old garage.*
4. *New water well will be drilled and located on the south side of the main house to maintain setback as required by the Department of Health.*
5. *Old garage footprint will be moved slightly to line up with new addition and will still maintain or exceed current setbacks.*



Staff Report

Application: 2016 – 20A

Application #: 2016 – 20A

Parcel number: 87-029-1110

Applicants: Bob and Carol Faye Muller on property described as: All that part of Government Lot 1, Section 29 Township 134 Range 29, Cass County, Minnesota, described as follows: Commencing at a point 1120 feet South of the northeast corner thereof; thence west and parallel with the north line of said Lot 1 to the shore of Gull Lake; thence southerly along said shoreline at a distance of 200 feet more or less to the South line of said Lot 1; thence East along said South line of Lot 1 to the southeast corner thereof; thence North 200 feet more or less to the place of beginning, except that part lying East of highway as described in Document 206758 and except that part of Government Lot 1 described as follows: Commencing at a point 1220 feet south of the northeast corner thereof; thence west and parallel with the north line of said Lot 1 a distance of 821.93 feet to the centerline of Township Road and part of beginning of the tract to be herein described; thence continuing West parallel with said North line a distance of 202.55 feet thence South at right angles 7.24 feet; thence west at right angles 27.0 feet; thence North at right angles 7.24 feet; thence west at right angles 83.10 feet more or less, to the shore of Gull Lake; thence southerly along said shoreline a distance of 100 feet more or less, to the south line of said Lot 1, thence East along said south line of Lot 1 to a point on the center line of existing town road, a distance of 868.47 feet West of the southeast corner of said Government Lot 1; thence northerly along said town road a distance of 100 feet more or less to the point of beginning.

Directions to property: From City Hall proceed across the Gull Lake Dam heading west and proceed to Cass County 70, one mile south on Cass County 70 to take a right one mile south to Steamboat Bay Road. Proceed 400 feet south to address # 11333 East Steamboat Bay Road.

Proposed Findings/Conditions based on MN Statute and East Gull Lake (EGL) Land Use, Zoning and Subdivision Ordinance

MS 462.357 Subdivision 6 - Appeals and Adjustments – Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.
2. To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance 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 zoning ordinance. "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 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 ordinance. The board of appeals and adjustment or the governing body as the case may be, may not permit a variance as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit a variance the temporary use of a one family as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to a must be directly related to and must bear a rough proportionality to the impact created by the variance.

East Gull Lake Land Use, Zoning and Subdivision Section 8.2-1 – This ordinance is adopted for the purpose of:

1. Protecting the public health, safety, comfort, convenience and general welfare.
2. Inaugurating and effectuating the goals of the Comprehensive Plan.
3. Promoting order in development by dividing the area of the City into zones and regulating therein the location, construction, reconstruction, alteration and use of the structures and the land.
4. Conserving the natural and scenic beauty and attractiveness of the City, for health and welfare of the public.
5. Providing for adequate light, air and access to property by regulating the use of the land and buildings and the bulk of structures in relation to surrounding properties.
6. Providing for the administration of the provisions of the ordinance and defining the authority and duties of the Administrator, Planning Commission, Board of Adjustment and City Council under this ordinance.

Practical Difficulty:

- * Practical is defined by Webster as: 1) pertaining to actual use and experience rather than theory, 2) trained by practice or experience, 3) useful and 4) manifested in practice.
- * Difficulty is defined by Webster as: 1) onerous, irksome, laborious, 2) troublesome, complicated and 3) trying, perverse.
- * Reasonable is defined by Merriam Webster as: 1) being in accordance with reason, 2) not extreme or excessive and 3) moderate, fair.
- * Reasonable is also defined by the Free Online Dictionary as: 1. capable of reasoning; rational, 2) governed by or being in accordance with reason or sound thinking, 3) being within the bounds of common sense and 4) not excessive or extreme; fair.

EGL Comprehensive Plan Policies:

1. Protect the area's lakes from damage and degradation.
2. Maintain and support the resort community in the City.
3. Preserve and enhance the scenic beauty and natural plant communities of the area.
4. Work to improve recreation opportunities for residents and visitors throughout the City.
5. Strengthen the bond that make the people who live in, work in, and visit East Gull Lake identify with the community.

Staff Findings:

1. The practical difficulty is the existing garage had a property line alteration done when the adjoining property was sold in 1977 by Mr. Alex Artimovitch who owned both lots to Ed Bebenroth who received ownership of PID 87-029-1113 now owned by Mr. Tim Engel. The alteration of the property line for Bebenroth's was before the 10 foot setback rule was in place. It has been noted that at the time the setback for a separate garage (not connected to the house) was five feet from the property line.
2. Any time a non conformity exists, a conditional use permit or a variance must be acquired to make changes to the existing structure. The home is 41 feet from the OHW and the old garage was five feet from the property line.
3. There are a number of cabins in East Gull Lake that were built before the current set backs were in place (primarily before 1989 when the shoreline management act took effect) that are closer than the 75 or 50 foot setbacks.
4. Reducing the number of accessory structures by connecting the garage to the home helps improve the non conformity.
5. Existing garage of 364 sq ft and 16 x 24 will be torn down and rebuilt in the same basic footprint as it has been for many years to take advantage of the property line adjustment made years ago as well, however it will be squared up and moved away from the property line to match the angle of the main house.
6. The new portion of the garage addition of 438.5 sq ft will be built to conformity 10 feet from the property line and will be merged with the main house.
7. In order to reduce the impervious coverage on the home, Mr. Muller will remove 266 sq ft of the back deck on the main home.
8. Total Square footage of the home, decks and garage will be 2,551.5 sq ft with the new addition adding 400 sq ft and taking away the removal of the back deck from this square footage.
9. The stairway to the storage area above the garage will be built internally in the garage to reduce impervious coverage.
10. The current water well will be relocated to the south side of the main house to be conforming to Health department rules and the old well will be sealed.
11. By adding the garage and entryway to the main house, the height requirement is allowable to 30 feet to the peak of the roof. The height requested of the new structure is 27 feet.
12. Neighboring property PID 87-029-1113, Tim Engel's which was built in 1993 is also non-conforming as his lakeside deck encroaches to within 2' 4" of the property line for Mr. Muller. Mr. Engel's Home is 9' 4" from the property line on the Northwest corner of his house.
13. Mr. Engel's upper garage was built with a regular permit. However, a CUP should have been required based on the existing non-conformity with his deck. In addition, the garage currently has a setback from the public road of 30 feet, but is required to be 30 feet from the road right of way which is 66 feet in total. Road width is 20 feet and without a survey it is difficult to determine where the pavement lies within the right of way and to determine if the upper garage is also nonconforming.

Planning Commission Direction: The commission can recommend approval of the variance, recommend denial of the variance, or table the request if additional information is needed. If the recommendation is for approval or denial, findings of fact should be cited.

Staff Recommendation: Staff recommends that the variance be approved based on the findings of this report. We also recommend the following conditions:

1. Because impervious coverage exceeds the 20% threshold for the property from the lakeshore to East Steamboat Bay Road, a storm water management plan will be required to improve drainage.
2. A large percentage of the rear deck of the home will be removed to reduce impervious coverage for the home; pavers will be installed in place which also will count against impervious coverage.
3. Maintain the 10 foot setback to property lines on all new construction of the garage addition. A practical difficulty situation exists in regard to the current bump out of the property line and being able to use the property efficiently. An adjustment of the foundation to maintain existing setbacks from the old garage.
4. New water well will be drilled and located on the south side of the main house to maintain setback as required by the Department of Health.
5. Old garage footprint will be moved slightly to line up with new addition and will still maintain or exceed current setbacks.

Please see additional information: "Muller Variance Drawings 20160628" posted separately.



New Permits:

PERMIT #	PARCEL ID	LAST NAME	PROPERTY ADDRESS	DESCRIPTION	PERMIT TYPE	PERMIT FEE
1 2016-32	87-016-2104	Johnson	10468 Shady Ln	replacing/enlarging deck	Land Use	\$150.00
2 2016-33	87-410-0570	Mick	11646 Oak Lane	Upgrade to existing SSTS	SSTS	\$150.00
3 2016-34	87-357-0245	Lamberson	1228 Green Gables Rd	addition of screen porch and enlarging bedroom entry	Land Use	\$150.00
4 2016-35	87-021-1202	Lee	951 Gl Dam Rd	Divide property among family members	Lot Split	\$300.00
Total Fees						\$750.00

Potential Permits:

PARCEL ID	LAST NAME	FIRST NAME	PROPERTY ADDRESS	DESCRIPTION	PERMIT TYPE
1 87-016-3201	Rainsberger	Kristopher	10700 Sq Pt Rd	add front porch to existing house	LUA
2 87-017-4201	Harstad	Martin	TBD - Sq Pt Rd	possible development	PUD?
3 87-029-1110	Muller	Robert & Carol	11333 E Steamboat Bay	reconstruct garage on existing concrete slab; addition of 16x20 stairway and landing; roof addition connecting to main home, walking deck between with storage space above the garage to height of 26'	Variance
4 87-033-2007	Buchholz	Craig	1113 PB Rd	Solar Array construction (36 solar panels)	LUA
5 87-347-0011	Swartout	Andrew	1160 GG Rd	construct new garage; update existing garage	LUA
6 87-357-0118	Hirth	David	10323 Sq Pt Rd	Shoreline Restoration	LUA
7 87-357-0245	Lamberson		1228 Green Gables Rd	Add on to existing home	LUA
8 87-357-0270	Gleason	Bob, Lorraine, John, Barb	Green Gables Rd	new construction	LUA
9 87-360-0040	Mueller	Doug & Pat	1318 Hillview Forest Rd	Addition of a garage	LUA
10 87-387-0250	Swanson	Jeff & Ann	11346 Birch Is Rd	tear down existing structure and replace further from OHW	Variance
11 87-387-0300	Owens	Jeffrey	1308 Birch Is Rd	add on bedroom and garage to rear of home	CUP
12 87-388-0140	Dunphy	Tyler	11102 Gull River Rd	addition of new screen porch	LUA
13 87-413-0270	Wagner	Mark & Marlene	11699 PB Dr	After the fact permit for shed; need to connect to City WW	LUA

Correspondence:

Date:	To:	From:	Re:
6/1/2016	Narlock, Delaney	EGL	Completion Letters
6/3/2016	Halverson, Cragun's	EGL	Completion Letters

Violations:

PID	Name	Address	Description/Update	Update Date

2013 Permits Update:

PERMIT	PARCEL ID	LAST NAME	FIRST NAME	STATUS	PERMIT TYPE
1 2013-32	87-410-0400	Trout	Owen	80% done, has issues constantly, latest is concussion & no climbing ladders.	LUA

2014 Permits Update:

PERMIT	PARCEL ID	LAST NAME	FIRST NAME	STATUS	PERMIT TYPE
1 2014-38	87-376-0238	Deans	Thomas	landscape work done 2-23-16 Mr Dean Said still intends to build shed, take your time.	LUA
2 2014-42	87-410-0771	Vliet	Vern	99% done only some rock work to be done when warm	LUA
3 2014-53	87-360-0100	Anderson	Clifford	completed 50% of plan in fall of 2015, not sure if they will do more.	LUA

Inspections/Site Visits

	PARCEL ID	LAST NAME	FIRST NAME	PROPERTY ADDRESS	COMMENTS	DATE INSPECTED	PERMIT #
1	87-385-0212	Ouren	Stephanie	11174 E Gull Lake Dr	New rock added to driveway by SBA to stop run off of sand on trail	05/26/16	N/A
2	87-408-0250	Mangelsdorf	Max	1870 Sylvan View Dr	remove driveway material, excavate and replace with new base and complete stormwater plan from 2009	05/25/16	N/A
3	87-353-0050	Halverson	Brian	1338 Green Gables Rd	took pic of completed project	05/27/16	2016-18
4	87-410-0400	Trout	Owen	11625 Oak Lane	took pic of golf course side	05/30/16	2013-32
5	87-413-0160	Narlock	Randy	16616 Pine Beach Dr	Met Mt Narlock, welcomed to the City and took pic	06/01/16	2015-64
6	87-393-0112	Cave	Dave	1327 East Pointe Dr	nothing done	06/01/16	2016-13
7	87-393-0118	Norman	Tim	1321 East Pointe Dr	40% done with additional deck and porch	06/01/16	2016-14
8	87-395-0120	Weeks	Linda	1345 East Pointe Dr	Builders said done by Friday 6-6. took pic	06/01/16	2016-10
9	87-029-1413	Urbanski	Joe	11437 E Steamboat Bay	Looked at blacktop challenge from storm and ?? Not sure	06/01/16	N/A
10	87-029-1110	Muller	Robert	11333 E Steamboat Bay	looked at cleanup of debris on property and trees removed	06/01/16	2016-20
11	87-408-0241	Mangelsdorf	Max	Sylvan View Rd	Looked over new driveway plan and landscaping	06/08/16	N/A
12	87-029-1110	Muller	Robert	11333 E Steamboat Bay	checked on survey, took pic, went over new plan with owner and contractor	06/09/16	2016-20
13	87-408-0241	Mangelsdorf	Max	Sylvan View Rd	Progress of driveway project	06/13/16	N/A
14	87-376-0312	Brooks-Hapka		11055 Pine Beach Peninsula	View fence that needs repair from storm, rebuild \$30 permit Mike's Tree	06/14/16	N/A
15	87-410-0771	Vliet	Vern	11653 Sylvan Rd	viewed and discussed with Vern about completion schedule	06/20/16	2014-42
16	87-029-1110	Muller	Robert	11333 E Steamboat Bay	viewed and measured with Bruce Buxton	06/20/16	2016-20
17	87-030-1203	Thuringer	Brian	11266 PBP Rd	viewed completed Wilson Bay building and dining room	06/20/16	2015-55
18	87-419-0030	Siering	Tom & Jill	1802 Sylvan Birch Ln	checked on progress	06/20/16	2015-37
19	87-029-1110	Muller	Robert	11333 E Steamboat Bay	measure wood storage and outhouse and siding drop	06/21/16	2016-20
20	87-387-0240	Brott	Joel & Julie	TBD Birch Island Trl	viewed footings being layed for cabin - no pics	06/20/16	2015-63

Please see map of last month's site visits: "Site Visit Presentation 20160628" posted separately.



Temporary Family Health Care Dwellings of 2016 Allowing Temporary Structures – What it means for Cities

Introduction:

On May 12, 2016, Governor Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.¹ Community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members served as the catalysts behind the legislature taking on this initiative. The resulting legislation sets forth a short term care alternative for a “mentally or physically impaired person”, by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property.²

Where can I read the new law?

Until the state statutes are revised to include bills passed this session, cities can find this new bill at [2016 Laws, Chapter 111](#).

Does the law require cities to follow and implement the new temporary family health care dwelling law?

Yes, unless a city opts out of the new law or currently allows temporary family health care dwellings as a permitted use.

Considerations for cities regarding the opt-out?

These new temporary dwellings address an emerging community need to provide more convenient temporary care. Cities may want to consider the below when analyzing whether or not to opt out:

- The new law alters a city’s level of zoning authority for these types of structures.
- While the city’s zoning ordinances for accessories or recreational vehicles do not apply, these structures still must comply with setback requirements.
- A city’s zoning and other ordinances, other than its accessory use or recreational vehicle ordinances, still apply to these structures. Because conflicts may arise between the statute and a city’s local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.
- Although not necessarily a legal issue for the city, it seems worth mentioning that the permit process does not have the individual with the physical or mental impairment or that

¹ [2016 Laws, Chapter 111](#).

² Some cities asked if other states have adopted this type of law. The only states that have a somewhat similar statute at the time of publication of this FAQ are North Carolina and Virginia. It is worth noting that some states have adopted Accessory Dwelling Unit (ADU) statutes to allow granny flats, however, these ADU statutes differ from Minnesota’s Temporary Health Care Dwelling law.

individual's power of attorney sign the permit application or a consent to release his or her data.

- The application's data requirements may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act.
- The new law sets forth a permitting system for both cities and counties³. Cities should consider whether there is an interplay between these two statutes.

Do cities need to do anything to have the new law apply in their city?

No, the law goes into effect September 1, 2016 and automatically applies to all cities that do not opt out or don't already allow temporary family health care dwellings as a permitted use under their local ordinances. By September 1, 2016, however, cities will need to be prepared to accept applications, must have determined a permit fee amount⁴ (if the city wants to have an amount different than the law's default amount), and must be ready to process the permits in accordance with the short timeline required by the law.

What if a city already allows a temporary family health care dwelling as a permitted use?

If the city already has designated temporary family health care dwellings as a permitted use, then the law does not apply and the city follows its own ordinance. The city should consult its city attorney for any uncertainty about whether structures currently permitted under existing ordinances qualify as temporary family health care dwellings.

What process should the city follow if it chooses to opt out of this statute?

Cities that wish to opt out of this law must pass an ordinance to do so. The statute does not provide clear guidance on how to treat this opt-out ordinance. However, since the new law adds section 462.3593 to the land use planning act (Minn. Stat. ch. 462), arguably, it may represent the adoption or an amendment of a zoning ordinance, triggering the requirements of Minn. Stat. § 462.357, subd. 2-4, including a public hearing with 10-day published notice. Therefore, cities may want to err on the side of caution and treat the opt-out ordinance as a zoning provision.⁵

Does the League have a model ordinance for opting out of this program?

Yes. Link to opt out ordinance here: [Temporary Family Health Care Dwellings Ordinance](#)

Can cities partially opt out of the temporary family health care dwelling law?

³ See Minn. Stat. §394.307

⁴ Cities do have flexibility as to amounts of the permit fee. The law sets, as a default, a fee of \$100 for the initial permit with a \$50 renewal fee, but authorizes a city to provide otherwise by ordinance.

⁵ For smaller communities without zoning at all, those cities still need to adopt an opt-out ordinance. In those instances, it seems less likely that the opt-out ordinance would equate to zoning. Because of the ambiguity of the statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

Not likely. The opt-out language of the statute allows a city, by ordinance, to opt out of the requirements of the law but makes no reference to opting out of parts of the law. If a city wanted a program different from the one specified in statute, the most conservative approach would be to opt out of the statute, then adopt an ordinance structured in the manner best suited to the city. Since the law does not explicitly provide for a partial opt out, cities wanting to just partially opt out from the statute should consult their city attorney.

Can a city adopt pieces of this program or change the requirements listed in the statute?

Similar to the answer about partially opting out, the law does not specifically authorize a city to alter the statutory requirements or adopt only just pieces of the statute. Several cities have asked if they could add additional criteria, like regulating placement on driveways, specific lot size limits, or anchoring requirements. As mentioned above, if a city wants a program different from the one specified in the statute, the most conservative approach would involve opting out of the statute in its entirety and then adopting an ordinance structured in the manner best suited to the city. Again, a city should consult its city attorney when considering adopting an altered version of the state law.

What is required in an application for a temporary family health care dwelling permit?

The mandatory application requests very specific information including, but not limited to:⁶

- Name, address, and telephone number of the property owner, the resident of the property (if different than the owner), and the primary care giver;
- Name of the mentally or physically impaired person;
- Proof of care from a provider network, including respite care, primary care or remote monitoring;
- Written certification signed by a Minnesota licensed physician, physician assistant or advanced practice registered nurse that the individual with the mental or physical impairment needs assistance performing two or more “instrumental activities of daily life;”⁷
- An executed contract for septic sewer management or other proof of adequate septic sewer management;
- An affidavit that the applicant provided notice to adjacent property owners and residents;
- A general site map showing the location of the temporary dwelling and the other structures on the lot; and
- Compliance with setbacks and maximum floor area requirements of primary structure.

⁶ New Minn. Stat. § 462.3593, subd. 3 sets forth all the application criteria.

⁷ This is a term defined in law at Minn. Stat. § 256B.0659, subd. 1(i) as “activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.”

The law requires all of the following to sign the application: the primary caregiver, the owner of the property (on which the temporary dwelling will be located) and the resident of the property (if not the same as the property owner). However, neither the physically disabled or mentally impaired individual nor his or her power of attorney signs the application.

Who can host a temporary family health care dwelling?

Placement of a temporary family health care dwelling can only be on the property where a “caregiver” or “relative” resides. The statute defines caregiver as “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.” The definition of “relative” includes “a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece of the mentally or physically impaired person. Relative also includes half, step and in-law relationships.”

Is this program just for the elderly?

No. The legislature did not include an age requirement for the mentally or physically impaired dweller.⁸

Who can live in a temporary family health care dwelling and for how long?

The permit for a temporary health care dwelling must name the person eligible to reside in the unit. The law requires the person residing in the dwelling to qualify as “mentally or physically impaired,” defined as “a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified by a physician, a physician assistant, or an advanced practice registered nurse, licenses to practice in this state.” The law specifically limits the time frame for these temporary dwellings permits to 6 months, with a one-time 6 month renewal option. Further, there can be only one dwelling per lot and only one dweller who resides within the temporary dwelling

What structures qualify as temporary family health care dwellings under the new law?

The specific structural requirements set forth in the law preclude using pop up campers on the driveway or the “granny flat” with its own foundation as a temporary structure. Qualifying temporary structures must:

- Primarily be pre-assembled;
- Cannot exceed 300 gross square feet;
- Cannot attach to a permanent foundation;
- Must be universally designed and meet state accessibility standards;

⁸ The law expressly exempts a temporary family health care dwelling from being considered “housing with services establishment”, which, in turn, results in the 55 or older age restriction set forth for “housing with services establishment” not applying.

- Must provide access to water and electrical utilities (by connecting to principal dwelling or by other comparable means⁹);
- Must have compatible standard residential construction exterior materials;
- Must have minimum insulation of R-15;
- Must be portable (as defined by statute);
- Must comply with Minnesota Rules chapter [1360](#) (prefabricated buildings) or [1361](#) (industrialized/modular buildings), “and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2”¹⁰; and
- Must contain a backflow check valve.¹¹

Does the State Building Code apply to the construction of a temporary family health care dwelling?

Mostly, no. These structures must meet accessibility standards (which are in the State Building Code). The primary types of dwellings proposed fall within the classification of recreational vehicles, to which the State Building Code does not apply. Two other options exist, however, for these types of dwellings. If these structures represent a pre-fabricated home, the federal building code requirements for manufactured homes apply (as stated in Minnesota Rules, Chapter 1360). If these structures are modular homes, on the other hand, they must be constructed consistent with the State Building Code (as stated in Minnesota Rules, Chapter 1361).

What health, safety and welfare requirements does this new law include?

Aside from the construction requirements of the unit, the temporary family health care dwelling must be located in an area on the property where “septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.”

What local ordinances and zoning apply to a temporary health care dwelling?

The new law states that ordinances related to accessory uses and recreational vehicle storage and parking do not apply to these temporary family health care dwellings. However, unless otherwise provided, setbacks and other local ordinances, charter provisions, and applicable state laws still apply. Because conflicts may arise between the statute and one or more of the city’s other local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

What permit process should cities follow for these permits?

The law creates a new type of expedited permit process. The permit approval process found in Minn. Stat. § 15.99 generally applies; however, the new law shortens the time frame for which the local governmental unit has to make a decision on granting the permit. Due to the time sensitive

⁹ The Legislature did not provide guidance on what represents “other comparable means”.

¹⁰ ANSI Code 119.2 has been superseded by NFPA 1192. For more information, the American National Standards Institute website is located at <https://www.ansi.org/>.

¹¹ New Minn. Stat. § 462.3593, subd. 2 sets forth all the structure criteria.

nature of issuing a temporary dwelling permit, the city has only 15 days (rather than 60 days) (no extension is allowed) to either issue or deny a permit. The new law waives the public hearing requirement and allows the clock to restart if a city deems an application incomplete. If a city deems an application incomplete, the city must provide the applicant written notice, within five business days of receipt of the application, telling the requester what information is missing. For those councils that regularly meet only once a month, the law provides for a 30-day decision.

Can cities collect fees for these permits?

Cities have flexibility as to amounts of the permit fee. The law sets the fee at \$100 for the initial permit with a \$50 renewal fee, unless a city provides otherwise by ordinance

Can cities inspect, enforce and ultimately revoke these permits?

Yes, but only if the permit holder violates the requirements of the law. The statute allows for the city to require the permit holder to provide evidence of compliance and also authorizes the city to inspect the temporary dwelling at times convenient to the caregiver to determine compliance. The permit holder then has sixty (60) days from the date of revocation to remove the temporary family health care dwelling. The law does not address appeals of a revocation.

How should cities handle data it acquires from these permits?

The application data may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act. To minimize collection of protected health data or other nonpublic data, the city could, for example, request that the required certification of need simply state “that the person who will reside in the temporary family health care dwelling needs assistance with two or more instrumental activities of daily living”, without including in that certification data or information about the specific reasons for the assistance, the types of assistance, the medical conditions or the treatment plans of the person with the mental illness or physical disability. Because of the complexities surrounding nonpublic data, cities should consult their city attorneys when drafting a permit application.

Should the city consult its city attorney?

Yes. As with any new law, to determine the potential impact on cities, the League recommends consulting with your city attorney.

Where can cities get additional information or ask other questions.

For more information, contact Staff Attorney Pamela Whitmore at pwhitmore@lmc.org or LMC General Counsel Tom Grundhofer at tgrundho@lmc.org. If you prefer calling, you can reach Pamela at 651.281.1224 or Tom at 651.281.1266.