

MEMORANDUM

To: Windemere Township Town Board
Windemere Township Planning Commission

From: Jason M. Hill, Town Attorney

Date: February 24, 2026

Re: Zoning Ordinance Amendment Concerns

This memorandum is intended to address concerns raised by Town residents regarding the proposed zoning ordinance (“Ordinance”), primarily addressing the concerns surrounding legal, nonconforming uses.

Legal, Nonconforming Uses

The language of the proposed Ordinance aligns with State statutes, specifically Minnesota Statutes, section 462.357, subd. 1e. The primary issue raised by Town residents is the lot dimension requirements – lot size and lot width – and the claim that building, additions or lot splits may be limited or require a “hard-to-get” variance. It’s important to recognize the difference between a nonconforming “**lot**” and a nonconforming “**use**” or “**structure**”. A change to the lot size requirement does not mean that the existing structure on the property is nonconforming, and it does not significantly impact the ability to build on property.

For example, if a home is on a 4-acre parcel, and it meets all zoning requirements and performance standards that are already in place (setbacks, impervious surface, septic, etc.), it can be expanded, so long as it still meets the additional requirements. Just as an example, if the side setback for a parcel is 10 feet, and the existing home is set back 30 feet, the home can be expanded to the 10-foot setback without the need for a variance. The lot size requirement does not impact the ability to expand the structure or building under these circumstances.

There has also been a concern expressed about “modifying” nonconforming structures. Again, if a structure (not a lot) is nonconforming after the adoption of the Ordinance, the use of the structure can be continued, including through repair, replacement, restoration, maintenance, or

improvement, but the **nonconformity** cannot be expanded. For example, if a home is now within a setback, the home cannot be expanded further into the setback, but it can be improved or expanded in other areas, when meeting zoning ordinance criteria, without the need for a variance.

The increased lot size requirement will impact subdivisions, but it's also important to note that the Town has worked closely with the DNR, and the DNR has drafted, or approved of, the language in the 2025 ordinance and the proposed Ordinance.

Additional Concerns

I did also want to address a few additional concerns –

- The Town is addressing inconsistencies with the Town's comprehensive plan and will amend the plan as necessary parallel to the adoption of the Ordinance.
- The Planning Commission, per statute and as has always been the case, can impose conditions upon CUP's and other permits. The entire basis for CUP's is to allow uses that may have an impact upon neighboring properties, but to impose conditions to mitigate the impact the use may have.
- If there is an increase in fees, it is solely to ensure that the Town is able to recover costs that it must incur in processing applications, and most importantly, to ensure that those costs are not imposed upon the other taxpayers in the Town.

JMH