

Item #V-a. Recommended change to the Zoning Ordinance related to commercial “dog kennels.”

Recommended amendment to Chapter 7, Section 24

Kennel, Commercial.

- A. Commercial kennels are not permitted in areas zoned for residential.
- B. Commercial kennels require a conditional use permit and a site permit pursuant to the terms of this Ordinance.
- B. The use shall comply with all applicable State and County rules and regulations and:
 - (i) Structures used for animal confinement require a minimum 100 foot setback from any property line and 500 feet from any residential structure, other than the applicants, that exists at the time of application.
 - (ii) On-site waste facilities shall be designed to accommodate all waste generated from kennels including hosing and cleanup.
 - (iii) Kennel facilities shall be designed to accommodate winter boarding including adequate heating, ventilation and lighting.
 - (iv) All outdoor kennel facilities shall provide adequate shelter from the elements including sunlight, rain, snow and cold weather.
 - (v) Kennel facilities shall be adequately drained and maintained in a healthful manner.
 - (vi) Kennel facilities shall not be located on riparian lots.

Recommended addition to Chapter 10, Definitions:

Kennel, Commercial: Any structure or premises on which four (4) or more dogs over four (4) months of age kept for commercial purposes, including but not limited to boarding, sale, breeding, selling, exhibiting, or training.

Item #V-b. Recommended changes to Chapter 7, section 6B relating to the public road exception of a CUP for gravel mining projects.

Chapter 7, Section 6 Extraction of Materials and Minerals

The following regulations shall apply to the extraction of materials and minerals in any land use district.

A. Conditional use permit required. No person shall extract any sand, gravel, stone, coal, clay, peat, subsoil, topsoil or mineral from the land for sale without first obtaining a conditional use permit.

B. Exemption for public roadway projects. Extraction sites to be used for public roadway projects are exempt from provisions of this section with the following conditions:

1. **Land alteration permit required.** Any operator who has a public roadway construction contract shall be granted a land alteration permit provided the following conditions are met:
 - a. The operator shall provide evidence that the operator has been awarded a contract for public roadway construction. The contract shall state that the operator shall reclaim the nonmetallic mining site according to the most recent edition of the Minnesota Department of Transportation Standards Specifications for Construction, with the additional requirements of any applicable sections of this Ordinance.
 - b. The operator shall provide a copy of the contracting agency's Completion Certificate upon completion of the project.
 - c. All other provisions of the Becker County Zoning Ordinance shall apply.
2. A rock crusher or asphalt plant shall not be located on the parcel
3. Gravel shall not be extracted below the ground water.
4. No more than 2.5 acres of gravel shall be mined on a single parcel.
5. The site is to be reclaimed within twelve (12) months of the stoppage of operations.
6. A bond shall be required in accordance with Chapter 7, Section 6 § E. of this ordinance.

Chapter 7, Section 6

E. Bond ~~may~~ shall be required. Bond shall be required by the Board of County Commissioners in such form and sum as the Board shall determine, with sufficient surety running to the County, conditioned to pay the County the extraordinary cost and expense of repairing, from time to time, any highways, streets or other public ways where repair work is made necessary by the special burden resulting from hauling and travel, in removing materials from any extractive process, the amount of cost and expense to be determined by the County Engineer; and conditioned further to comply with all the requirements of this Subdivision and the particular permit, and to pay any expense the County may incur by reason of doing anything required to be done by any applicant to whom a permit is issued.



COUNTY OF BECKER

Planning and Zoning

915 Lake Ave, Detroit Lakes, MN 56501

Phone: 218-846-7314 ~ Fax: 218-846-7266

DATE: December 17, 2015

TO: Zoning Ordinance Advisory Committee
FROM: Eric Evenson-Marden, Zoning Supervisor
RE: Provisions related to public road access for nonconforming lots of record

The Becker County Zoning Ordinance specifies that nonconforming "lots of record" are buildable if they comply with the setback and ownership requirements contained in Chapter 3, Section 8 (Attachment 1). Section 8, Section 4 § E of the ordinance (Attachment 2) specifies that certain road access requirements must be met as a condition of receiving a site permit. While a non-conforming "lots of record" in Becker County may meet the requirements of Chapter 3, Section 8, if it does not meet the road frontage requirements contained in Chapter 8, Section 4 § E, staff is unable to issue a site permit. Which section holds sway?

In the case of Day v. Wright County, 391 N.W.2d 32 (Minn. App. 1986), the Minnesota Court of Appeals determined the County could only apply those sections of the ordinance related to "lots of record." In this case, the Court held that as a matter of law a "lot of record" was entitled to the issuance of a building permit if it complied with the restriction stated in the lot of record section.

The Wright County ordinance specified that lots of record shall be allowed as residential building sites provided they met two conditions: 1. They have frontage on an existing public right of way or on an existing easement or other private road; and 2. They have at least 20,000 square feet. The lot in question met these two requirements, but Wright County denied the issuance of a permit because the lots did not comply with other requirements of the ordinance for sewer and setbacks. The Minnesota Court of Appeals rejected the County's position and ordered the issuance of the permit.

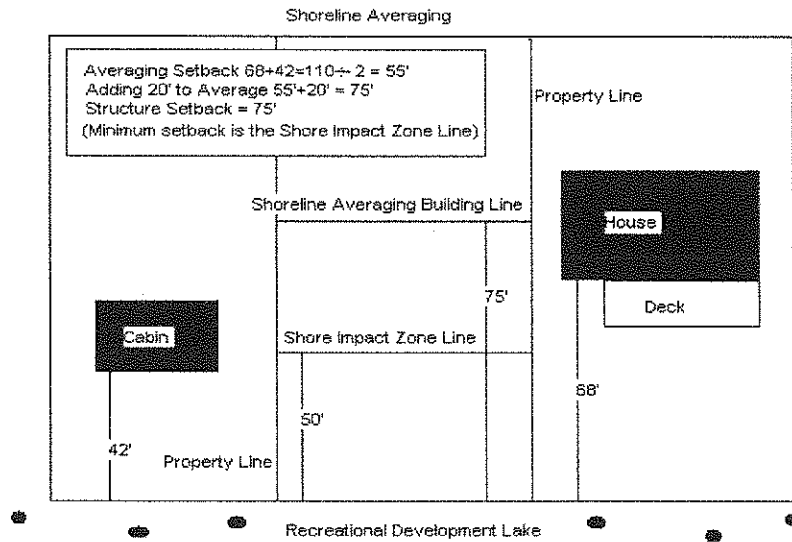
This case is analogous to what can happen in Becker County. The section of our ordinance that specifies that lots of record shall be allowed as residential building sites is silent on the issue of road access. To avoid a situation similar to what happened in Wright County, staff recommends that our ordinance be changed as highlighted in Attachment 4.

Attachment 1
Becker County Zoning Ordinance

Chapter 3, Section 8 Lots of Record

A lot that was a buildable lot before the enactment of this ordinance is a lot of record. A lot of record is a buildable lot though it does not meet the requirements of this Ordinance but is subject to the requirements in paragraphs A through C, immediately below. The use of a lot of record shall conform to the requirements of this Ordinance.

- A. **Side yards.** Side yard requirements on a lot of record shall conform as nearly as possible to the requirements of this Ordinance. If compliance is not possible the side yard shall not be less than five (5) feet or ten percent (10%) of the lot width at the building line whichever is larger. The eave of the structure cannot encroach more than two (2) feet toward the side property line.
- B. **Setback averaging.** Setback averaging is the horizontal distance of a proposed structure obtained by adding the horizontal distance, as measured from the ordinary high water mark of the lake, of the like structures on the adjacent lots and dividing that sum by two (2).
1. If structures exist on the adjoining lots on both sides of a proposed building site, the required setbacks shall be that of the average horizontal distance of the like structures plus twenty (20) feet, not to exceed the required lake setback. (Example: deck to deck, house to house)
 2. If a building on one side of a lot does not comply with the setback requirements of this ordinance and if the lot on the other side is vacant, or if the structure exceeds the required setback, the setback for the lot shall be equal to one half (1/2) the sum of the horizontal distance as measured from the ordinary high water mark of the lake to the like structure and the setback required by this ordinance plus twenty (20) feet, not to exceed the required lake setback
 3. Notwithstanding the above, a building site shall not be located in whole or in part within a shore impact zone or a bluff impact zone.
 4. Whenever the setback averaging method is allowed to establish a lakeside structure setback and the property is a substandard size property, as provided for in subsections B1 and B 2, above, the deficiency area between the setback determined by the setback averaging and the setback required by this Ordinance must be mitigated by the installation of a shoreline vegetative buffer. The criteria and provisions for the shoreline vegetative buffer contained in Chapter 3, Section 11, Mitigation Requirements for Nonconformities in Shoreland Areas, are applicable.
 5. If a dwelling unit is used for the lakeshore averaging, the dwelling must be of average livable condition.
 6. Adjacent like structures used for the setback averaging must be located within the width and area of a standard lot size.



- C. **In shoreland areas.** In shoreland areas, the lot shall be in separate ownership from contiguous lands and all sanitary and dimensional requirements of the Ordinance are complied with insofar as practical.
1. **Same ownership requires combination of lots.** If, in a group of two or more contiguous lots under the same ownership, any individual lot that is not a buildable lot shall not be considered as a separate parcel of land for the purposes of sale or development, the lot shall be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements for building. When adjacent substandard parcels are in the same ownership, they shall be joined into one parcel and shall no longer be allowed as individual building sites.

Attachment 2
Becker County Zoning Ordinance

Chapter 8, Section 4 Site Permits

- A. **When required.** No person, firm, or corporation shall erect, alter, repair, place or replace a building or structure without first getting a site permit.
1. **Exceptions.** An alteration or repair that does not change the exterior dimensions of a building or structure does not require a site permit. A site permit is not required for such buildings or structures as agricultural buildings, fish houses, play houses, dog kennels, or swing sets; however, the required building setbacks shall apply.
- B. **Application requirements.** Each application for a site permit shall be accompanied by a plan drawn to scale showing the dimension of the lot to be built upon and the size and location of the building or structure and accessory buildings or structures to be erected or placed.
- C. **Application review criteria.** The Zoning Administrator shall issue the site permit only if the plans and the application comply with this Ordinance.
- D. **Length of permit.** The site permit will be valid for a period of one (1) year. If the exterior of the structure is not complete within one year, a one (1) time, one (1) year extension may be permitted.
- E. **Road frontage requirement.** No site permit shall be issued for a lot, plot or tract of land not having frontage on a public road unless:
1. The property has no access to a public road except by an easement over the land of others;
 2. The easement from the property to a public road must be at least thirty-three (33) feet wide when servicing one (1) or two (2) tracts of land;
 3. The easement from the property to the public road must be at least sixty-six (66) feet wide when servicing three (3) or more tracts of land; except that this provision does not apply to property that is accessed by a forest management road; and
 4. The easement from the property to the public road has a graded and serviceable driving surface.

Attachment 3
Day v. Wright County

KeyCite Yellow Flag - Negative Treatment
Distinguished by State v. Kramer, Minn.App., May 27, 2005
391 N.W.2d 32
Court of Appeals of Minnesota.

Stephan DAY, Appellant,
v.
WRIGHT COUNTY, Respondent.

No. C9-85-2252. | July 29, 1986. | Review Denied
September 24, 1986.

Property owner sought peremptory writ of mandamus to compel county board of adjustments to declare that property constituted “**buildable lot**” entitling him to necessary building permits and licenses. The District Court, Wright County, Harold J. Dahl, J., denied petition, and property owner appealed. The Court of Appeals, Foley, J., held that compliance with ordinance permitting lots of certain minimum size and with frontage on existing roadway to be residential building sites required issuance of permits and licenses notwithstanding alleged noncompliance of lot with sewer and set back requirements.

Reversed and remanded.

West Headnotes (2)

^[1] **Zoning and Planning**
 ⚙️ Architectural and Structural Designs

County was required to issue necessary building permits and licenses to property owner seeking to build single-family dwelling on lot which complied with county ordinance, permitting lots of certain minimum size with frontage on roadway to be residential building sites, notwithstanding alleged noncompliance of lot with setback and sewer requirements of other sections of zoning ordinance.

1 Cases that cite this headnote

^[2] **Mandamus**
 ⚙️ Nature and existence of rights to be protected or enforced
 Mandamus
 ⚙️ Nature of acts to be commanded

Mandamus will issue only when petitioner has shown existence of legal right to compel performance of duty clearly and positively required by law, so clear and complete as not to admit any reasonable controversy. M.S.A. § 586.04.

5 Cases that cite this headnote

***32 Syllabus by the Court**

1. The trial court erred in denying appellant a peremptory writ of mandamus compelling the county board of adjustments to issue necessary building permits and licenses when it was undisputed that appellant’s previously-recorded lot fully complied with an ordinance regulating the use of land.
2. The trial court’s finding that appellant did not demonstrate compliance with sewer and set-back requirements was clearly erroneous when the reasoning behind the board of adjustments’ denial of the building permits on these grounds was not made part of the record.

Attorneys and Law Firms

Randall T. Skaar, Thomas W. Richards, Skaar & Richards, P.A., Buffalo, for appellant.

***33** William MacPhail, Wright Co. Atty., Thomas N. Kelly, Asst. Co. Atty., Buffalo, for respondent.

Considered and decided by LESLIE, P.J., and FOLEY and WOZNIAK, JJ., with oral argument waived.

OPINION

FOLEY, Judge.

Stephan Day appeals from a November 15, 1985 order denying his petition for a peremptory writ of mandamus which sought to compel the Wright County Board of Adjustments to declare that certain real property Day owns constitutes a “buildable lot” and entitles him to necessary building permits and licenses. On appeal, Day contends that Wright County Ordinance Section 404 is a grandfather clause which deems his property “buildable” as a matter of law and that, accordingly, a peremptory writ of mandamus was the appropriate remedy. We reverse and remand.

FACTS

Appellant Stephan Day is the fee owner of approximately three acres of lakeshore property in Wright County, Minnesota. Appellant acquired the property in July 1977. The property is essentially a peninsula, long and narrow and surrounded on three sides by Lake Sylvia. A private roadway fronts the property and was in existence prior to January 1, 1977. A previously recorded covenant specified that the property may have two detached single family dwellings. A certificate of survey described the area of property as exceeding 20,000 square feet.

In August 1978, respondent Wright County adopted Wright County Ordinance Section 404, which regulates the use of property located within the county. Section 404 provides in pertinent part:

Lots of record in the office of the County Recorder prior to the effective date of this Ordinance shall be allowed as residential building sites provided:

1. They have frontage on an existing public right-of-way or have frontage on an existing easement or other private roadway existing prior to January 1, 1977.
2. They have at least 20,000 square feet of area.

In early 1985, appellant attempted to obtain necessary building permits and licenses for the construction of a single family dwelling on the subject property. All requests were denied. Appellant then appealed to the Wright County Board of Adjustments. In October 1985, the Board denied appellant’s request for permits and licenses determining that the property was not “buildable” since it did not meet sewer and set-back requirements. Appellant then brought a petition for a peremptory writ of mandamus to the district court.

The matter was heard at special term in November 1985.

At the close of arguments, the trial court requested briefs from counsel addressing the question of whether a writ of mandamus was appropriate under the facts. Each party additionally submitted a statement of the proceedings.

Appellant argued that the Board was without discretion to deny his request for building permits and licenses since his lot fully complied with Section 404. The County conceded that appellant’s lot complied with Section 404, but argued that it excused compliance with lot area requirements only and did not exempt the parcel from compliance with other aspects of the zoning ordinance, particularly set-back, sewer and well requirements as found in Wright County Ordinance Sections 612 and 716. The trial court agreed with the County and on November 15, 1985, issued an order denying appellant’s petition for a peremptory writ of mandamus. In its memorandum, the trial court stated:

The effect of section 404 requires clarification. “In construing a zoning ordinance, as in construing any language ... a paragraph or section may not be taken from its context. Specific language must be construed in the context of the entire ordinance so that all parts thereof *34 may be given their intended effect....” [Footnotes omitted]

Section 404 is part of a larger division of zoning ordinances dealing with lot area requirements. Interpreting the effect of section 404 in light of the context in which it is found, it is evident that this section was intended to exempt parcels from area requirements only, and does not authorize exemptions from other zoning ordinances. Admittedly, section 404 could have been better drafted by explicitly limiting its effect to lot area regulations. Nevertheless, its scope is effectively limited by the context in which it appears.

Appellant contends that the plain wording of Section 404 renders his property “buildable” for a residential dwelling as a matter of law. Accordingly, he argues that mandamus was the appropriate remedy under the facts and that the trial court’s refusal to allow the writ was error.

ISSUE

Does compliance with Wright County Ordinance Section 404 render appellant’s property a buildable site for a residential dwelling as a matter of law, making a peremptory writ of mandamus the appropriate remedy?

ANALYSIS

[1] [2] Mandamus will issue only when the petitioner has

shown the existence of a legal right to the act demanded which is so clear and complete as not to admit any reasonable controversy. *State ex rel. Anderson v. Bellows*, 287 Minn. 373, 179 N.W.2d 307 (1970). Similarly, mandamus will lie only to compel performance of a duty which the law clearly and positively requires. *International Union of Operating Engineers, Local No. 49 v. City of Minneapolis*, 305 Minn. 364, 374, 233 N.W.2d 748, 754 (1975); *Friends of Animals and Their Environment v. Nichols*, 350 N.W.2d 489, 491 (Minn.Ct.App.1984), *pet. for rev. denied*, (Minn. Dec. 20, 1984). In contrast to an alternative writ, a peremptory writ of mandamus may issue upon a first showing that the "right to require the performance of the act is clear, and it is apparent that no valid excuse for non-performance can be given." Minn. Stat. § 586.04 (1984).

Appellant argues chiefly that Section 404 is a grandfather clause enacted by Wright County to insure that lots of at least 20,000 square feet, recorded prior to the effective date (August 1977), would be deemed residential building sites and exempt owners from seeking variances. We agree and find language in *Enright v. City of Bloomington*, 295 Minn. 186, 187, 203 N.W.2d 396, 397 (1973) controlling:

[I]f the party seeking the [conditional-use] permit meets all the standards prescribed in the ordinance, the council has no discretion to deny the permit. Its refusal to grant the permit in such circumstances is arbitrary as a matter of law, and mandamus will lie to compel the council to grant the permit.

Section 404 specifically provides that lots recorded prior to the effective date of the ordinance "shall be allowed as residential sites" if the requirements of the section are fulfilled. (Emphasis supplied.) Section 3 of the Ordinance, the definitional section, provides:

The language set forth in the text of this Ordinance shall be interpreted in accordance with the following rules of construction:

(3) The word "shall" is mandatory, and the word "may" is permissive. (Emphasis supplied.)

Whether appellant's property complies with the requirements of Section 404 is not at issue here. The County has conceded that the subject property complies in all respects. Moreover, a plain reading of Section 404 in its entirety plainly illustrates that an owner of property of at least 20,000 square feet is not required to prove

housing and sanitary set backs can be provided as a prerequisite to obtaining building permits and licenses. In relevant part, the second half of Section 404 provides:

*35 Lots smaller than 20,000 square feet may be used as dwelling sites if the owner can prove that adequate sanitary facilities can be provided. * * *.

The Board of Adjustment shall decide if lots smaller than 20,000 square feet may be used for dwelling sites in accord with Section 502.2. * * *. The Board of Adjustment may note in its review * * * if adequate sanitary facilities for year-round occupancy cannot be provided.

A contrary reading would leave Section 404 nothing more than mere verbiage. Zoning ordinances are "in derogation of the common law and should be construed strictly against the city and in favor of the property owner. * * * To be effective any restriction on land use must be clearly expressed." *Chanhassen Estates Residents Association v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn.1984).

It is also significant that the introductory sentence to Section 404 specifies application to "[l]ots of record." This language is meaningless unless construed to "grandfather" in previously recorded lots that fully comply with the ordinance and exempt owners from seeking variances.

In *Curtis Oil v. City of North Branch*, 364 N.W.2d 880 (Minn.Ct.App.1985), the court stated that mandamus was an appropriate remedy when the city council failed to provide any rational basis for its denial of a conditional use permit. "[A]t a minimum, [city councils and zoning boards must] have reasons for [their] decision recorded or reduced to writing and in more than just a conclusory fashion." *Id.* at 883 (quoting *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn.1981)). In the present case, the reasoning behind the Board's decision was not made part of the district court record. Therefore, the trial court's finding that appellant "has not demonstrated compliance with * * * [set-off] regulations" is clearly erroneous.

DECISION

The trial court erred in denying appellant a peremptory writ of mandamus. The matter is reversed with direction to enter the writ and compel the issuance of necessary building permits and licenses.

Reversed and remanded.

All Citations

Attachment 4
Recommended Changes to the Becker County Zoning Ordinance

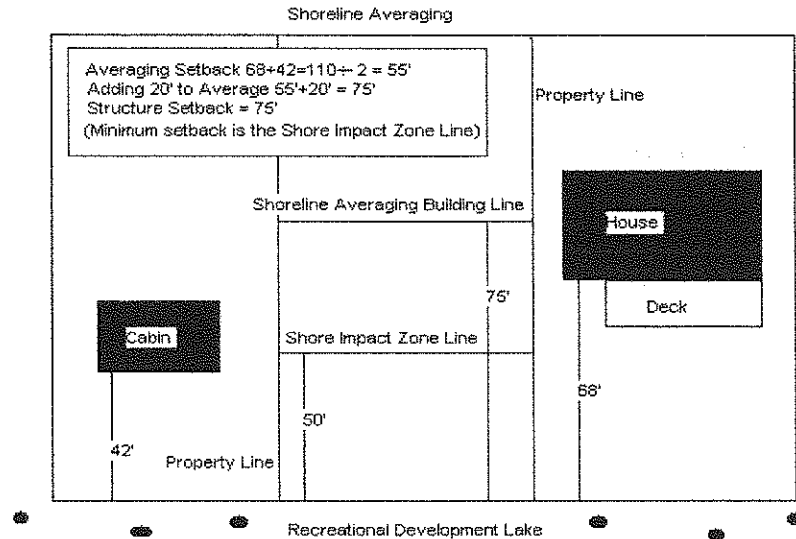
Chapter 3, Section 8 Lots of Record

A lot that was a buildable lot before the enactment of this ordinance is a lot of record. A lot of record is a buildable lot though it does not meet the requirements of this Ordinance but is subject to the requirements in paragraphs A through D, immediately below. The use of a lot of record shall conform to the requirements of this Ordinance.

- A. Side yards.** Side yard requirements on a lot of record shall conform as nearly as possible to the requirements of this Ordinance. If compliance is not possible the side yard shall not be less than five (5) feet or ten percent (10%) of the lot width at the building line whichever is larger. The eave of the structure cannot encroach more than two (2) feet toward the side property line.
- B. Road frontage requirement.** No site permit shall be issued for a lot, plot or tract of land not having frontage on a public road unless:

 - 1. The property has no access to a public road except by a recorded easement over the land of others;
 - 2. The easement from the property to a public road must be at least thirty-three (33) feet wide;
- C. Setback averaging.** Setback averaging is the horizontal distance of a proposed structure obtained by adding the horizontal distance, as measured from the ordinary high water mark of the lake, of the like structures on the adjacent lots and dividing that sum by two (2).

 - 1. If structures exist on the adjoining lots on both sides of a proposed building site, the required setbacks shall be that of the average horizontal distance of the like structures plus twenty (20) feet, not to exceed the required lake setback. (Example: deck to deck, house to house)
 - 2. If a building on one side of a lot does not comply with the setback requirements of this ordinance and if the lot on the other side is vacant, or if the structure exceeds the required setback, the setback for the lot shall be equal to one half (1/2) the sum of the horizontal distance as measured from the ordinary high water mark of the lake to the like structure and the setback required by this ordinance plus twenty (20) feet, not to exceed the required lake setback
 - 3. Notwithstanding the above, a building site shall not be located in whole or in part within a shore impact zone or a bluff impact zone.
 - 4. Whenever the setback averaging method is allowed to establish a lakeside structure setback and the property is a substandard size property, as provided for in subsections B1 and B 2, above, the deficiency area between the setback determined by the setback averaging and the setback required by this Ordinance must be mitigated by the installation of a shoreline vegetative buffer. The criteria and provisions for the shoreline vegetative buffer contained in Chapter 3, Section 11, Mitigation Requirements for Nonconformities in Shoreland Areas, are applicable.
 - 5. If a dwelling unit is used for the lakeshore averaging, the dwelling must be of average livable condition.
 - 6. Adjacent like structures used for the setback averaging must be located within the width and area of a standard lot size.



- D. **In shoreland areas.** In shoreland areas, the lot shall be in separate ownership from contiguous lands and all sanitary and dimensional requirements of the Ordinance are complied with insofar as practical.
1. **Same ownership requires combination of lots.** If, in a group of two or more contiguous lots under the same ownership, any individual lot that is not a buildable lot shall not be considered as a separate parcel of land for the purposes of sale or development, the lot shall be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements for building. When adjacent substandard parcels are in the same ownership, they shall be joined into one parcel and shall no longer be allowed as individual building sites.