

NEW SCANDIA TOWNSHIP  
ORDINANCE NO. 30

AN ORDINANCE PROHIBITING EXCESSIVE SOIL LOSS AND ADOPTING  
PROCEDURES TO CONTROL SOIL EROSION

The Board of Supervisors of the Town of New Scandia, Minnesota  
hereby ordains:

SOIL EROSION CONTROL

SECTION 1 AUTHORITY. This ordinance is enacted pursuant to  
Minnesota Statutes, Sections 40.19 to 40.28.

SECTION 2 PURPOSE. The purpose of this ordinance is to  
encourage and guide the use of land in accordance with its  
capabilities, to treat it according to its needs, to prevent the  
degradation of lands, streams, and rivers, and to protect and  
promote the health, safety, and general welfare of the people of  
the Town of New Scandia.

SECTION 3 SCOPE. This ordinance, and soil loss limits  
specified in the ordinance, applies to all land within the Town  
of New Scandia including but not limited to agricultural land,  
woodland, pasture land, and land subject to development  
activity.

SECTION 4 DEFINITIONS For purposes of this ordinance, the  
following terms have the meanings given them in this section:

4.1 Agricultural Use. "Agricultural Use" means use of  
land for the production of livestock, dairy animals, dairy  
products, poultry or poultry products, fur-bearing animals,  
horticultural or nursery stock including sod, fruit,  
vegetables, forage and cash grains, forestry, or bees and  
apiary products. Wetlands, pasture, and woodlands  
accompanying land in agricultural use are also in  
agricultural use.

4.2 Conservation Plan and Time Schedule.  
"Conservation Plan" means a document listing a set of  
practices that when implemented will decrease soil erosion  
to the soil loss limits on a particular parcel of land. The  
"time schedule" sets times to implement, make satisfactory  
progress, and complete the conservation plan.

4.3 Conservation Practices. "Conservation Practices"  
means practices and standards containing a definition,  
purpose and conditions under which the practice

applies, including design requirements and specifications containing a statement of details required for installing a conservation practice, including kinds, quality and quantity of work and materials needed to meet the standards.

A conservation practice may be a permanent or temporary, vegetative or structural measure that when applied to the land will contribute to the control of wind and water erosion and sedimentation. Conservation practices may be used in a development activity area or an agricultural use area.

Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins, and other permanent practices approved by the Minnesota Board of Water and Soil Resources.

Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, fabric filter barriers, filter strips, stormwater inlet and outlet protection and any other cultural practices approved by the Minnesota Board of Water and Soil Resources.

The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

4.4 Township. "Township" means the elected governing body of the Town of New Scandia, or its designated officials or agents. Agents may include districts, water management organization, joint powers boards, watershed districts or other governmental entities responsible for resource management within the Town of New Scandia.

After adopting a soil loss ordinance, the Town may enter into an agreement with its agent allowing the agent to administer the functions and perform the duties of the Town set out in sections 7, 8, 9, 10, 11 and 14.

4.5 Development Activity. "Development Activity" means a physical disturbance, excluding agricultural use, of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining and filling lands. Federal, state, county and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

4.6 District "District" means a soil and water conservation district organized under Minnesota Statutes, Chapter 40.

4.7 Erosion "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice or gravity. Erosion can be accelerated by the activities of man and nature.

4.8 Excessive Soil Loss. "Excessive Soil Loss" means soil loss that is greater than the soil loss limits set out in Section 4.15, or which causes sedimentation on adjoining land or in a body of water, watercourse, or wetland.

4.9 Field Office Technical Guide. "Field Office Technical Guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the district. The technical guide contains methods and procedures by which the various types of erosion can be estimated and conservation practice standards and specifications required in the application of soil and water conservation practices.

4.10 Land Occupier "Land Occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of any land as owner, lessee, renter, tenant, or otherwise. The term includes both the owner and the occupier of the land if they are not the same.

4.11 Sediment. "Sediment" means solid mineral or organic material, that, in suspension, is being transported, or has been moved from its original site by air, water, gravity, or ice and has been deposited at another location.

4.12 Sedimentation "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

4.13 Sedimentation Control Plan; Time Schedule. "Sedimentation Control Plan" means a document listing a set of practices that, when implemented, will decrease sedimentation to the allowable level on a particular parcel of land. A "Time Schedule" must set times to implement, make satisfactory progress on, and complete the sedimentation control plan.

4.14 Soil. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for growth of land plants.

4.15 Soil Loss Limit. "Soil Loss Limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, allowed on a particular soil. The United States Department of Agriculture Soil Conservation Service has prepared a soil survey that sets out the soil loss tolerances, according to the Field Office Technical Guide, for each soil found in Washington County.

The aforementioned soil survey together with the tolerance and soil loss limits set forth therein is hereby adopted by reference as the official New Scandia Soil Survey and declared to be a part of this ordinance. The official Washington County Soil Survey shall be on file in the office of the Soil Conservation Service, County Auditor and the County Zoning Administrator as well as the New Scandia Town Clerk. The soil loss limit for each soil series found in the Town of New Scandia shall be as set forth in the aforementioned soil survey.

Any other soil found in the Town of New Scandia and not set forth in said soil survey has a maximum soil loss tolerance of 5 tons per acre per year.

4.16 Soil Loss Tolerance "Soil Loss Tolerance" means the maximum level of soil erosion that will permit a high level crop productivity to be sustained economically and indefinitely.

SECTION 5 EXCESSIVE SOIL LOSS PROHIBITED. A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss.

5.1 Agricultural Activity. A land occupier shall:

- (a) if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;
- (b) if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths;
- (c) if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss; and
- (d) if a body of water, watercourse, or wetland is located within an agricultural use area, wooded or open land used for pasture, or a wooded area used for lumber harvest, ensure that proper management and conservation practices are being applied to the surrounding land.

5.2 Development Activity. A person engaged in a development activity that will disturb land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss or sediment from damaging adjacent land, bodies of water, watercourses, or wetlands, to the local government or its agent for approval.

**SECTION 6 EXEMPTIONS.** An occupier of agricultural land is not violating Section 5 if the district report, as developed through Section 8.2 shows that existing farming practices and methods are being effectively applied to control soil loss.

6.1 A land occupier engaged in a development activity will not be required to develop a sediment control plan and will not be considered in violation of Section 5.2 when involved in one of the following activities:

- (a) minor land disturbance activities such as home gardens and individual home landscaping, repairs, and maintenance work;
- (b) construction, installation, maintenance of electric, telephone and utility lines or individual service connection to utility lines;
- (c) septic tank lines or drainage fields unless included in an overall plan for a land development activity relating to construction of a building to be served by the septic tank system;
- (d) preparation for single-family residences separately built, greater than 1000 feet from all public waters identified as such under the provisions of the Washington County Shoreland Management Ordinance, unless in conjunction with multiple construction in subdivision development;
- (e) disturbance of land areas less than 10,000 square feet for commercial or noncommercial uses, except that the Town may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception applies;
- (f) installation of fence, sign, telephone, and electric poles and other kinds of posts or poles; and
- (g) emergency work or repairs to protect life, limb or property.
- (h) mining operations being conducted under New Scandia Township Ordinance 28.

#### SOIL EROSION CONTROL FOR AGRICULTURAL USE

**SECTION 7. COMPLAINT.** An adversely affected land occupier, an elected or appointed official of the Town or a district board member may submit a signed, written complaint to the town if conditions exist that indicate there is excessive soil loss from a tract of land.

7.1 Elements of Complaint. The signed, written complaint must contain:

- (a) the name and address of the allegedly offending land occupier;
- (b) the location of the tract of land with the alleged excessive soil loss;
- (c) other land or water that is allegedly being affected by the excessive soil loss; and
- (d) a description of the nature of the alleged excessive soil loss and resulting sedimentation.

7.2 Complaint to District The Town shall submit the complaint to the district for soil loss determination. The Town shall notify the alleged offending land occupier of the complaint and that the district will be contacting the land occupier to review the site, determine the severity of the problem and assist the land occupier in correcting the problem. The local government shall also name a contact person for further assistance.

**SECTION 8 DISTRICT DETERMINATION OF SOIL LOSS.** The district shall determine the average annual soil loss in tons per acre per year for the tract of land cited in the complaint.

8.1 Entry for Inspection. The district may enter public or private land to make an inspection to determine soil loss or to complete the report. The land occupier must be notified of the time of the inspections and be given an opportunity to be present when the inspection is made.

- (a) The land occupier shall be notified of the time of inspection ten (10) days prior to the date of the inspection.
- (b) The notice shall be delivered either by personal service or by certified mail.
- (c) If the owner of the property and the occupier of the residence differ, both shall receive notification under the procedure stated above.

8.2 Report. The district shall submit a report to the town that states the average soil loss in tons per acre per year for each tract of land and whether that soil loss is excessive under the applicable soil loss limits.

- (a) If the soil loss is excessive the report must include identification of existing farming practices and a preliminary conservation plan and time schedule that will prevent excessive soil loss.
- (b) If the district report shows that soil loss from the tract of land is equal to or below the soil

loss tolerance for that soil series, the Town may dismiss the complaint and notify the land occupier.

**SECTION 9 NOTICE OF EXCESSIVE SOIL LOSS.** The Town shall issue a notice of excessive soil loss to the land occupier. This notice shall:

- (a) describe the land and state the extent to which soil loss exceeds the soil loss limits;
- (b) be delivered by either personal service or by certified mail; and
- (c) state a time, no more than 90 days after the date of delivery of the order, by which mediation must be commenced.

**9.1 Appointment of Mediator.** The Town may appoint the planning and zoning director, a planning commissioner, or other Town official to act as mediator. The Town may also contract with a mediation center to provide mediation services.

**9.2 Settlement.** The land occupier and the Town must attempt to agree on a conservation plan and time schedule that will reduce soil loss to the local soil loss limits.

**9.3 Filing of Settlement.** A mediated settlement must be approved by the local government and the land occupier, put in writing, and filed with the county.

**9.4 Cost-share Funds.** The land occupier has 90 days after the settlement is filed to apply for state cost-share funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent cost-share may be provided if the application is not made within 90 days after the settlement is filed. The land occupier must apply for 50 percent cost-share within 270 days after the mediated settlement is filed.

**9.5 Penalty.** A land occupier who does not comply with the provisions of the mediated written agreement is subject to a civil penalty up to \$500.00.

**SECTION 10 FORWARD COMPLAINT TO TOWN ATTORNEY.** If the Town and land occupier do not reach a mediated settlement, or if the land occupier refuses to participate in mediation, the Town shall forward the complaint to the Town Attorney. The Town Attorney may petition the district court for a hearing under section 11.

**SECTION 11 DISTRICT COURT HEARING.** If the land occupier and the Town do not reach a mediated written agreement or if the land occupier has refused mediation, the Town attorney may petition the district court for a hearing. The land occupier

may present a conservation plan and time schedule as an alternative to the town's conservation plan and time schedule. The court shall follow the procedure and the criteria set out at Minnesota Rules, part 8400.4055 in issuing an order for the implementation of a conservation plan and time schedule.

11.1 Cost-Share funds. If the court orders the implementation of:

- (a) The land occupiers conservation plan and time schedule, amends the conservation plan and time schedule, or develops a new conservation plan and time schedule, the land occupier is eligible to apply for 75% cost-share funds for permanent conservation practices. The land occupier must apply for the cost-share 90 days after the court order. If the land occupier does not apply within 90 days for the cost share funds, the cost-share must be reduced to 50 percent. The court shall establish a time when the land occupier is not eligible for cost-share funds if an application is not made; or
- (b) The conservation plan and time schedule developed by the Town the land occupier shall be eligible for 50 percent cost-share funds if the land occupier applies within 90 days after the court order.

11.2 Penalty If the land occupier does not comply with the provisions of the court order, the land occupier is subject to a civil penalty up to \$500.00.

**SECTION 12 DISTRICT ASSISTANCE.** A land occupier who has filed a mediated written settlement under Section 9.3 or who has received a court order under Section 11 may request the district to assist in the planning, design and application of practices necessary to reduce soil loss to the soil loss limits set out in Section 4.15. The district must give the land occupier a high priority for technical and cost-share funds assistance.

**SECTION 13 COST-SHARE APPLICATION.** The method of application and eligibility requirements for cost-share funds shall follow Minnesota Rules, part 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements shall follow the current state or federal guidelines.

#### SOIL EROSION CONTROL FOR DEVELOPMENT ACTIVITIES

**SECTION 14 SEDIMENTATION CONTROL PLAN FOR DEVELOPMENT ACTIVITIES.**

14.1 Sedimentation Control Plan. A person engaged in a development activity that will disturb land must submit

a sedimentation control plan and time schedule that will prevent excessive soil loss or sediment from damaging adjacent land, bodies of water, watercourses, or wetlands, to the town or its agent for approval.

14.2 A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process. These methods include, but are not limited to, the use of: temporary and permanent seedings, fabric, plastic, or straw barriers, mulch, sediment control basins, or other conservation practices adequate to prevent erosion and sediment damage. A sedimentation control plan is not required for the following development activities:

- (a) minor land disturbance activities such as home gardens and individual home landscaping, repairs, and maintenance work;
- (b) construction, installation, maintenance of electric and telephone utility lines or individual service connection to the utility lines;
- (c) septic tank lines or drainage field unless included in an overall plan for a land development activity relating to construction of a building to be served by the septic tank system;
- (d) preparation for single-family residences separately built, greater than 1000 feet from Halfbreed Lake (Sylvan Lake), Bone Lake, Goose Lake and Big Marine Lake, unless in conjunction with multiple construction in subdivision development;
- (e) disturbance of land areas less than 10,000 square feet for commercial or noncommercial uses, except that the governing body of the local unit of government may reduce this exception to a smaller area of disturbed land or quality the conditions under which this exception applies;
- (f) installation of fence, sign, telephone and electric poles and other kinds of posts or poles; and
- (g) emergency work and repairs to protect life, limb or property.

14.3 The following must be addressed in developing and implementing a sedimentation control plan:

- (a) stabilization of denuded areas and stockpiles;
- (b) establishment of permanent vegetation;

- (c) protection of adjacent areas;
- (d) timing and stabilization of sediment trapping measures;
- (e) use of sediment basins;
- (f) stabilization of cut and fill slopes;
- (g) stormwater management for controlling off-site erosion;
- (h) stabilization of waterways and outlets;
- (i) stormsewer inlet protection;
- (j) working in or crossing waterbodies;
- (k) underground utility construction;
- (l) construction of access roads;
- (m) disposition of all temporary measures; and
- (n) maintenance of all temporary and permanent urban conservation practices.

The time schedule accompanying the sedimentation control plan must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan.

14.4 The Minnesota Construction Site Erosion and Sediment Control Planning Handbook shall be the minimum planning standard for a sedimentation control plan. Any other procedures must be approved by the local unit of government and the district prior to its use.

14.5 Any conservation practice developed for the sedimentation control plan may not be located in violation of any existing ordinance the town is currently enforcing.

14.6 Review The Town may appoint the zoning or planning director, building inspector, engineer or district to review the sedimentation control plan and time schedule. The Town must forward the sedimentation control plan and time schedule to the appointed reviewer within 7 days of receiving the sedimentation control plan and time schedule from the land occupier.

The appointed reviewer must review the sedimentation control plan and time schedule within 21 days of receiving the plan from the town. The town shall notify the land occupier of its decision after receipt of the comments from the reviewer and no more than 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

14.7 Permit required. If the reviewer determines that the sedimentation control plan and time schedule will control sedimentation, the town shall issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan.

If the reviewer determines that the sedimentation control plan and time schedule do not control sedimentation, the Town shall not issue a permit for the development activity. The sedimentation control plan and time schedule shall be re-submitted for approval before the development activity begins.

14.8 Penalty A person engaged in a development activity who does not secure a sedimentation control plan and time schedule or make satisfactory progress to complete the plan and schedule is subject to a civil penalty of \$500.00. The Town shall file the complaint with the Town Attorney.

**SECTION 15 VARIANCE.** A land occupier may petition the local government for a variance from the ordinance.

15.1 The land occupier must document in the variance the economic hardship or technical infeasibility for the petition.

**SECTION 16 MORE RESTRICTIVE STANDARD CONTROLS.** In the event of any conflict between the provisions of this ordinance and the provisions of an erosion control ordinance adopted by any township or home rule or statutory city, the more restrictive standard prevails.

**SECTION 17 SEVERABILITY.** If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance is not affected.

**SECTION 18 INCORPORATION OF RULES AND DOCUMENTS.** Minnesota Rules, part 8400.4000 to 8400.4075 are incorporated by reference into this ordinance. The priority cost-share assistance contract is incorporated by reference into this ordinance.

**SECTION 19 PROVISIONS ARE CUMULATIVE.** The provisions of this ordinance are cumulative to all other laws, ordinances and regulations heretofore passed, or which may be passed hereafter, covering any subject matter in this ordinance.

**SECTION 20 EFFECTIVE DATE.** This ordinance shall be effective the day after its passage and publication.

Passed and adopted by the Town Board, Town of New Scandia,  
Minnesota this 20<sup>th</sup> day of January, 198~~9~~<sup>90</sup>  
Town of New Scandia

By Russell Jackson  
Russell Jackson  
Chairman

ATTEST:

Dolores Peterson  
Dolores Peterson  
Town Clerk