

Todd County Enforcement Policy

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June 6, 2024

Background

- Todd County had long struggled with enforcement of P&Z violations
- Adopted on December 18, 2018
- Effective January 1, 2019
- First implemented through the summer and fall of 2019.

Process

- Establish the existence of a violation
- Score the violation based on the violation score sheet
- Notify the land owner of the violation and their right to appeal
- Notify the land owner that the violation has not be resolved and the appeal period has passed.
- Notify the land owner the violation has not be resolved and it will be reviewed by the Board of Commissioners.
- Assess the property for the next tax year.

Scoring System

- Impact on Public Health and Welfare
- Impact on Public Safety
- Impact on Natural Resources
- Intensity of permitting required
- How was the violation discovered
- Land owner knowledge of the violation
- Duration of the violation

Success

- Helps to push for resolution of new violations
- Has lead to the resolution of long standing violations
- Enforcement stays within the Department
- Relatively simple but does require ongoing attention

Lessons Learned

- Many of the large issues remain unsolved
- Be sure to use a large length of time to send each letter
- Use your County Attorney if you have the support
- Hire staff to run the program if you can

Current Status

- We have drifted away from the use of this policy
- We have much better County Attorney support

Todd County Planning and Zoning Department Policy

County Land Use Ordinance Compliance and Enforcement

Purpose of This Policy

- Supports the need for effective ordinance compliance and enforcement.
- Details processes to be followed by staff for accepting and investigating ordinance violations, notifying landowners and complainants, and tracking cases.
- Lists ordinance enforcement actions available and how they are commonly utilized.
- Details appeal options available to landowners.

Planning and Zoning Department administers the official controls governing many land uses in the County. The Todd County Land Use Ordinance was first established in rural areas March 1976 and in Shore Land areas in July 1972. The Ordinance has been amended several times since - most recently March 2017.

In Section 1.02 the purposes of the Ordinance are listed:

- A. Protecting the public health, safety, comfort, convenience and general welfare.
- B. Protecting, preserving and developing economically viable agricultural land.
- C. Promoting orderly development of the residential, commercial, industrial, recreational and public areas.
- D. Conserving the natural and scenic beauty and attractiveness of the county.
- E. Conserving and developing natural resources in the county.
- F. Providing for the compatibility of different land uses and the most appropriate use of land throughout the county.
- G. Minimizing environmental pollution.

Planning and Zoning staff's primary duty is to ensure that the Ordinance is implemented. This is largely accomplished by assisting landowners and helping each customer understand and follow ordinances. Staff make every effort to work through problems that arise seeking positive outcomes whenever possible. Staff duties include:

- Assisting landowners with Land Use applications
- Develop and maintain a fee schedule and collection of approved fees
- Develop internal policy and strive for consistency in Ordinance interpretation
- Maintain staff training levels needed to implement Planning and Zoning
- Maintain records, files, maps, and land use permits related to property throughout the county
- Investigate reported violations, follow through to resolve these violations

Importance of Effective Ordinance Compliance and Enforcement

1. Ordinance compliance is an indication that the ideals and purposes of the Comprehensive Plan will be reached. Water Quality protection, Ag Land Preservation, protection of a landowners rights, etc..
2. Non-permitted construction is not taxed until it is detected by assessors. This leaves the full tax burden to other tax payers who are assessed on the full value of their land and structures.
3. Ordinance violators consume an excessive quantity of county services. Effective enforcement measures reduce staff time required to reach ordinance compliance.
4. Ordinance violations can and do impact neighboring property values.
5. Ordinance violations can and do impact natural resources.

Compliance and Enforcement Processes Followed By Staff

Step 1: Acceptance of Complaints

Todd County Board of Commissioners are committed to having all complaints and/or reports of land use violations investigated. The following process outlines how county staff are to respond to complaints and/or reports of land use violations submitted by citizens. This process is consistent with county policy.

1. Complaint information are kept in land use software (RT Vision and shared drive) under parcel number.
2. All complaints and/or reports of land use violations from citizens must be accompanied by the complainant's name and one or more of the following: a. Phone Number, b. Email Address, c. Physical Address
3. All complainant information will be kept confidential unless the County is legally required to disclose this information.
4. All complaints received fulfilling #1 will be investigated as staff time allows as determined by the Planning and Zoning Director.
5. If requested, the Planning and Zoning Director shall ensure that the complainants are provided with the findings of the investigation, when the case is resolved or concluded, and what, if any, actions were taken.

Note: A complaint is not a violation. Only when the complaint is verified by staff can it be considered a violation.

Step 2: Completing a Reasonable Investigation

Alleged ordinance violations shall be referred to the Director. The Director, or the Director's designee, shall make a reasonable investigation and determine whether or not a violation exists (10.04).

If it is determined that no violation exists – this information will be documented as “no violation” in the parcel file. This saves significant time in the future if the case needs to be re-researched. Follow-up with the individual that filed the complaint may be necessary and noted in the log.

If it is determined that a violation exists a violation entry is created in RT Vision. Facts supporting this determination are collected such as photos, measurements, and recorded by parcel.

Step 3: Notifying and Contacting Landowners

It is policy to attempt to notify landowners prior to entering their property. If a landowner cannot be reached then the staff must limit their search to “off property” photography or those features that can be documented.

a. Initial Contacts after violation confirmed – can be phone, email or letter, or an on-site visit

It is relayed to the landowner that there is a violation. Focus is on collecting information and establishing communication with the landowner. This is to document what has occurred and what ordinance has been violated.

In addition to using proper letterhead, date, and whom to contact about the violation, the following should be included in correspondence:

- (1) the action required on the part of the property owner to eliminate or resolve the violation; and
- (2) a reasonable time in which the violation must be remedied; and
- (3) no permits shall be issued to the landowner for the property in question until the violation is resolved;
- (4) If not resolved further enforcement action may be taken.
- (5) Landowner right to appeal any staff decision.

b. If landowner does not respond to initial correspondence or take steps to solve a problem, notify them in writing a second time. Indicate that cost is increasing with ATF fees and there is potential for assessment of a noncompliance fee.

Step 4: Landowner Right to Appeal Staff Decisions

Landowners that believe that an error has been made have the option to appeal any staff determination. Staff are encouraged to request that landowners submit a written request to the Director for decision clarification prior to appealing a decision to the Board of Adjustment. Appealing with fee should be the last option for the landowner.

Decision appealed by landowner suspends violation actions until the case is heard unless there is threat to public health and welfare that can be demonstrated. Successful appeal by a landowner can eliminate consequences of a violation.

Relevant Ordinance - Section 5.02 (K)

The Board of Adjustment shall have the authority to order the issuance of variances, hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of MN Statutes 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future public use on an official map and perform such other duties as required by the official controls. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a township, municipality, county, or state. In exercising its powers under this subdivision, the Board of Adjustment shall take into consideration the township board's recommendation when the Board of Adjustment's decision directly affects land within the township.

Step 5: Recording and Tracking Violations

When violations occur that cannot be resolved within 30 days a Violation Score Sheet will be completed within the RT Tracking software. Major violations will be entered in land use system and scored upon notification of the landowner. Ranking of violations will be done using the following criteria:

- Impact on Ordinance Purpose
- Landowner Knowledge of Violation
- Number of Landowners Impacted by the violation
- The number of ordinance violations involved in case
- Duration of violation

Step 6: Enforcement Actions

If initial and follow up actions have not convinced landowners to resolve the violation some form of enforcement action may be necessary for resolution. Staff should consult the Director to determine what course of action needs to be taken and when. Since there are a high number of existing violations – the cases needing enforcement action may require prioritizing to avoid impacts to regular work duties. The following enforcement options can be used alone or in combination.

A. Stop ability for Land Use Permits on property by documenting in land use software - standard Exception is to allow permits that solve the violation or reduce its severity.

B. Issue Cease and Desist or Restoration Order – if active construction. Follow up with written instruction and timeline.

Cease and Desist Order

In some cases a Cease and Desist order can be used if there is active construction on a project that is proceeding in violation of the ordinance. If a Cease and desist Order is issued it is important to inform the rest of P&Z staff so they can be alerted to the situation. Always follow up a Cease and Desist order with written correspondence clearly defining what needs to be corrected with a timeline.

Restoration Order

A restoration order is used primarily when a landowner significantly alters a site through earth moving or vegetation removal. The restoration order specifies what is needed to be completed by the landowner to resolve the violation. This may include leveling the site to its original grade, removal of features installed, erosion control measures, planting of trees & shrubs, etc.. Also include a reasonable timeline for the work to be completed.

C. After-The-Fact Fees (ATF) - These apply when permits are needed but work has been substantially completed prior to permit application.

- ATF fees only apply if a permit is needed. Doesn't apply for nuisance, wetland, livestock and manure problems, diverting water onto another's property, soil erosion, etc..
- ATF fees do not apply if a permit CAN NOT be written.
- When it is inappropriate to apply ATF fees:
 - Actions of prior landowner
 - Variance needed to correct problem – conditions can be instituted
 - Error of contractor that was not the intention of the landowner
 - Miscommunication on setback location

The table below allows administrative flexibility considering above situations.

Rate	Amount of Contact	Project Completion	Landowner
1X Permit Fee	1 st notice Minor Violation – Significant actions taken within 30 days	Not yet completed Started but not yet Completed	No prior violations No previous correspondence SSTS applications
2X Permit Fee	Multiple site visits will be needed Minor post 30 days Major immediately	Totally completed project	Had prior contact and knew about rules with this or previous situation based on permit history. Variances and CUP's
3X Permit Fee	Corresponded 3 or more times and has exceeded time frames Minor post 60 with no action Major post 30 day	Completed major project or continued work after cease and desist	Prior correspondence on file for the specific project indicating need for permits or process to follow

D. Criminal Persecution – charged with misdemeanor – court – follow up on cases – costly, slow, and raises additional problems such as cost to prosecute cases and time to guide cases through court system. The following materials are prepared and submitted to the sheriff's office when this option is chosen:

- Request sheriff's office to issue a citation of Todd County Planning and Zoning Ordinance
 - Include: Landowner, site address, property description. Describe offense.
 - Chronological Order detailing all contact with landowner.

Ordinance sections(s) violated

Include photos & copies of correspondence with landowner

Once received in the Sheriff's office - a deputy will issue a citation and a court date will be scheduled. Often times the issue can be resolved prior to the court date if staff are available to concentrate on the case which can be difficult during the May – October period.

E. Noncompliance Fee

This fee would be assessed to a property related to a specific Todd County Land Use Ordinance Violation(s) after other approaches prove ineffective. Purposes of the Noncompliance Fee:

- Provide a deterrent to future violations.
- Provide incentive to landowner to resolve identified violations in a timely manner.
- Reduce staff hours necessary to obtain compliance using other approaches.
- Support Todd County's comprehensive plan
- Support the Todd County Land Use ordinance which protects public health, safety, welfare
- Support Todd County Water Plan.

Process:

1. Zoning staff work to support Todd County Ordinances which includes identifying violations, accepting reports of violations, investigating potential violations, communicating with landowners and complainants.
2. Every effort is made to obtain quick and voluntary landowner compliance. A Noncompliance Fee will be considered when:
 - Violations are field verified by staff within the past six months,
 - When landowners were notified in writing about the situation
 - When the violation(s) are ranked as a major violation using the Violation Scoresheet
 - When landowners were offered - but refused to utilize – their right of appeal to the BOA
3. Once per year the Planning Director will utilize Violation Scoresheet information to rank outstanding zoning ordinance violations and provide the Board of Commissioners with a List of parcels recommended for assessment of a Noncompliance Fee.
4. Landowners on the recommended Noncompliance Fee List will be sent a notice that they have been flagged for a Noncompliance Fee Assessment to their property.
5. The Board of Commissioners will review the Noncompliance Fee list for a minimum of two weeks prior to a regular scheduled Board meeting. Concerns can be taken up with the Planning Director prior to the meeting.
6. Board of Commissioners will vote to assess Noncompliance Fees on the identified parcels at a regularly scheduled Board meeting by November 1 of each year.
7. Once the Noncompliance Fee list is accepted by vote of Commissioners the list is passed to the Auditor Treasurer's Office for assessment of the fees on the next year's property tax statement.
8. Noncompliance fees may be imposed in succeeding years if the violation is not resolved.
9. Fees: \$1000 first occurrence \$2000 for second occurrence \$3000 for third occurrence and thereafter.