



**CITY OF NEWPORT  
PLANNING COMMISSION MEETING  
NEWPORT CITY HALL  
JUNE 13, 2013 – 6:00 P.M.**

Chairperson:	Dan Lund	City Administrator:	Deb Hill
Vice-Chair:	Matt Prestegaard	Executive Analyst:	Renee Helm
Commissioner:	Janice Anderson	Council Liaison:	Tom Ingemann
Commissioner:	Susan Lindoo		
Commissioner:	Anthony Mahmood		

**AGENDA**

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. APPROVAL OF PLANNING COMMISSION MINUTES**

A. Planning Commission Minutes of April 11, 2013

**4. APPOINTMENTS WITH COMMISSION**

- A. **Public Hearing** – To consider an application from Leisa Knauff for Rezoning Property Located on 7<sup>th</sup> Avenue between 3<sup>rd</sup> and 6<sup>th</sup> Streets
1. Memo from Sherri Buss
  2. Application
  3. Notice of Public Hearing
  4. Resolution No. P.C. 2013-4
- B. Discussion Regarding the MN Partition Fence Law Waiver
1. Resolution No. P.C. 2013-5

**5. COMMISSION & STAFF REPORTS**

**6. NEW BUSINESS**

**7. ANNOUNCEMENTS**

A. Upcoming Meetings and Events:

- |  |               |           |
|--|---------------|-----------|
| 1. City Council Meeting                                  | June 20, 2013 | 5:30 p.m. |
| 2. Park Board Meeting                                    | June 27, 2013 | 7:00 p.m. |
| 3. 4 <sup>th</sup> of July – City Offices will be Closed | July 4, 2013  |           |

**8. ADJOURNMENT**



**City of Newport  
Planning Commission Minutes  
April 11, 2013**

**1. CALL TO ORDER**

Chairperson Lund called the meeting to order at 7:00 P.M.

**2. ROLL CALL -**

Commissioners present – Dan Lund, Matt Prestegaard, Janice Anderson, Susan Lindoo, Anthony Mahmood

Commissioners absent –

Also present – Deb Hill, City Administrator; Tom Ingemann, Council Liaison; Sherri Buss, TKDA Planner

**3. APPROVAL OF PLANNING COMMISSION MINUTES**

**A. Planning Commission Minutes of March 14, 2013**

**Motion by Prestegaard, seconded by Anderson, to approve the March 14, 2013 minutes as presented. With 5 Ayes, 0 Nays, the motion carried.**

**4. APPOINTMENTS WITH COMMISSION**

**A. Public Hearing – To consider an application from Newport-St. Paul Cold Storage for Approval of a Variance for Property Located at 2233 Maxwell Avenue, Newport, MN 55055**

Sherri Buss, TKDA Planner, presented on this item as outlined in the April 11, 2013 Planning Commission Packet.

**The Public Hearing opened at 7:19 p.m.**

**The Public Hearing closed at 7:20 p.m.**

**Vice-Chair Prestegaard** – I'd be interested in hearing more about the alternative storm water plan.

**Andrew Greenberg, Newport-St. Paul Cold Storage** – If you take a look at the plans, we need to have these ponds and it becomes a restriction with the tractors. One of alternatives we're looking at is an underground system. We're currently looking at that option.

**Vice-Chair Prestegaard** – Where are the ponds?

**Mr. Greenberg** – They are on the property line that we share with the MnDot property.

**Ms. Buss** – The underground chambers are things that people are using more and more. They are large, underground chambers where the water is held and they slowly infiltrate the ground from the bottom up. It's an option on commercial sites where space is valuable.

**Commissioner Lindoo** – Is the water funneled into these things?

**Mr. Greenberg** – I believe it works through manholes. The water flows through these chambers.

**Commissioner Lindoo** – Does it seep into the river?

**Ms. Buss** – The sediment is cleaned out before going into the river and only clean water goes into it. They'll be sized so that they meet the same requirements.

**Commissioner Lindoo** – Are they sized based on the 100-year flood?

**Ms. Buss** – No, they're sized to deal with water quality.

**Commissioner Anderson** – And you're working with the Watershed District and MPCA?

**Mr. Greenberg** – Yes, the company that we're working with is in contact with the Watershed and MPCA, as well as Sherri and John Stewart.

**Ms. Buss** – They'll need to obtain a City permit and MPCA permit.

**Chairperson Lund** – We seem to be an important group to evaluate the stormwater and I'm not comfortable approving this without seeing a specific plan in regards to the stormwater.

**Commissioner Anderson** – There's a condition that it's subject to the engineer's approval.

**Admin. Hill** – Our engineer has been working with Mr. Greenberg already in regards to the stormwater.

**Chairperson Lund** – Does anyone have any comments on the building itself and the visibility from the river? From the pictures, you can see the building from the river already.

**Mr. Greenberg** – The current building is about 37 feet.

**Vice-Chairperson Prestegaard** – These pictures are from across the river?

**Ms. Buss** – Yes and I don't believe you could see it from the river itself due to all of the vegetation. That was part of the DNR's comment, that this whole area is very industrial and there are several other buildings in that area with less screening. The DNR believes the Cold Storage's screening is better than some in that area.

**Commissioner Lindoo** – The berm will hold right?

**Mr. Greenberg** – It's solid.

**Commissioner Lindoo** – You believe that you'll go ahead with the expansion now?

**Mr. Greenberg** – Yes, four years ago we had a customer pull out of an agreement which was why we weren't able to complete it then.

**Chairperson Lund** – How far is the setback from the river?

**Ms. Buss** – It looks to be about 100 feet from the top of the berm, so I'm guessing it's like 150 feet from the river itself.

**Vice-Chairperson Prestegaard** – The new height of 59 feet is for the addition?

**Ms. Buss** – Yes.

**Vice-Chairperson Prestegaard** – And you don't believe that will be visible from the river?

**Ms. Buss** – I don't think so. Dan, I think you could certainly talk with the engineer about the stormwater issue.

**Chairperson Lund** – Yea, I'm skeptical that the underwater system will work with being so close to the river.

**Commissioner Lindoo** – I think you could have the same issue with ponds.

**Commissioner Mahmood** – Isn't that what the engineer will evaluate? That's not our concern.

**Chairperson Lund** – It's concerning because the Watershed District gave it to us.

**Ms. Buss** – The Watershed District doesn't deal with redevelopments and by giving it to us they're stating that they trust our judgment.

**Chairperson Lund** – That's why I'm concerned, because it's our job now.

**Commissioner Mahmood** – You don't trust the engineer to do the right things?

**Mr. Greenberg** – The underground system serves the same purpose as the ponds, it's just a different way of doing it.

**Vice-Chairperson Prestegaard** – Do we know a lot about the stormwater standards? Maybe it's because we don't understand the standards that we don't know whether or not they're sufficient.

**Commissioner Lindoo** – I believe we had to go through a training of some sort a couple of years ago.

**Ms. Buss** – You did because the Watershed plan was revised. Whenever that happens, each city has a couple years to bring it up to the same standards. Your ordinance is pretty recent due to that. I think part of the issue is that the sediment that is generated from a flood is not easy to clean out of the underground system. It is typical for some of these issues to linger and that's why there are conditions for that.

**Commissioner Lindoo** – How long does this typically take to get resolved?

**Ms. Buss** – It depends on the issues.

**Commissioner Lindoo** – Dan, do you want to talk with John about this?

**Chairperson Lund** – Yes.

**Ms. Buss** – The Watershed District did review the original application a couple years ago and didn't see a significant change in impervious surface so they felt it was ok and didn't feel a need to review it again.

**Admin. Hill** – The engineer, as well as MPCA, need to review and sign off on it, so you're putting it in their hands since they are the experts here.

**Mr. Greenberg** – We did have all of the permits years ago.

**Chairperson Lund** – Can you speak about how the underground chambers discharge to the river?

**Ms. Buss** – I believe there's additional filtration, it depends on how the system is designed. The City does have requirements about the size that it needs to handle, the quality of the discharge, etc. We won't change the standard. The MPCA's permit is in regards to erosion control. The Watershed District allows the City to handle redevelopments up to a certain size.

**Vice-Chairperson Prestegaard** – If the impervious surface isn't changing, why are there different standards now?

**Ms. Buss** – The standards aren't different, he just needs to deal with the issue and is doing it a different way.

**Vice-Chairperson Prestegaard** – I'm talking about the standards when they built.

**Ms. Buss** – They didn't have to deal with the stormwater when they built in 1958.

**Mr. Greenberg** - Anything we're doing now will be better than before.

**Chairperson Lund** – If we were to table it, how would that delay the project?

**Mr. Greenberg** – It would delay us at least a month. We're anxious to get started on it.

**Chairperson Lund** – Can they get started without the stormwater plan?

**Ms. Buss** – No.

**Chairperson Lund** – When do you plan on getting a building permit?

**Mr. Greenberg** – Six weeks or so.

**Chairperson Lund** – I'd prefer to see the plans before approving. I'd be a lot more comfortable if we knew the engineer approved the plans before approving the variance.

**Admin. Hill** – I would recommend having the engineer come to a meeting to explain the process.

**Commissioner Lindoo** – I'm going to trust what the engineer says because he is the expert. I'm comfortable with it since the condition stating that the engineer needs to approve the plan before issuing the permit is in the variance. I know it costs money to wait.

**Ms. Buss** – There isn't a problem having John come to a future meeting to discuss the plan and how it works.

**Motion by Lindoo, seconded by Mahmood, to approve Resolution No. P.C. 2013-3 recommending the City Council approve the Variance as amended. With 4 Ayes, 1 Nay, the motion carried.**

**Commissioner Anderson** – I would still like to have John come to our next meeting to discuss stormwater issues.

**Admin. Hill** – I think that's a good idea, I'll set it up.

## **B. Red Rock Corridor Update from the Red Rock Corridor Commission**

Andy Gitzlaff, Washington County, and Antonio Rosell, Community Design Group, presented on this item as outlined in the April 11, 2013 Planning Commission Packet.

**Vice-Chairperson Prestegaard** – Is there potential development between Newport and Bloomington along 494?

**Mr. Gitzlaff** – It's been discussed but there has not been an official analysis done.

**Vice-Chair Prestegaard** – We don't seem to have a lot of strong evidence that Newport has strong ridership.

**Mr. Gitzlaff** – I believe it's due to the lack of availability for riding. Hopefully ridership will increase once the transit station is built.

**Commissioner Lindoo** – The thought with the park-and-ride was that folks would be coming from Woodbury and other areas which is why it's at the old Knox Lumber site.

**Vice-Chair Prestegaard** – I guess I was just trying to figure out how we can achieve the ridership that we want.

**Commissioner Lindoo** – You had a list of ways that the situation has changed since 2007. What are 2-3 of the biggest things that have changed?

**Mr. Gitzlaff** – I think we know more from 2007. There really wasn't one smoking gun but I guess it would be the Northstar Commuter Rail, the law changes, and the updated capital cost estimates.

**Commissioner Lindoo** – So the new criteria might put heavier weight on BRT?

**Vice-Chairperson Prestegaard** – Why is the new direction going towards BRT?

**Mr. Gitzlaff** – The intent of the study is to take a broader look and do a comparison based on the technical data and what the market needs. There's not a perceived outcome.

**Vice-Chairperson Prestegaard** – It just seemed like the focus tonight was on the positives of BRT.

**Mr. Gitzlaff** – I think that's because it's newer and it takes more time to explain that.

**Chairperson Lund** – Was the Red Rock Corridor going to expand to Minneapolis?

**Mr. Gitzlaff** – The Commuter Rail option had it going all the way to Minneapolis staying on freight rail tracks. It's pretty messy with the rail right now and putting commuter trains on freight tracks. The ultimate goal is Minneapolis. A lot of riders from this corridor are heading to Minneapolis.

**Councilman Ingemann** – Has there been a study on how many commuters are going to Bloomington from this area?

**Mr. Gitzlaff** – There was a study completed years ago and it shows that there are several individuals from this area going to Bloomington. The issue is that there isn't just one stop in Bloomington because it's pretty spread out. Additionally, there's a ton of free parking in that area, which isn't true in Minneapolis and St. Paul, which is another incentive for transit. I think it's worth looking into it.

**Chairperson Lund** – From my perspective, the most important thing is getting people to Minneapolis as quickly as possible. If the current express bus service was replaced with a commuter light rail to St. Paul and they were expected to hop on the light rail from St. Paul to Minneapolis that would probably be a disappointment for people who use the express bus all the way to Minneapolis.

**Ms. Buss** – The LRT is going to be half as fast as the existing express bus service to Minneapolis.

**Chairperson Lund** – I don't think we should do anything to prevent people from getting to Minneapolis as fast as possible.

**Vice-Chairperson Prestegaard** – How does the BRT compare in regards to travel times?

**Mr. Gitzlaff** – It depends. I'm guessing it would be better than what is out there today for the express bus.

**Ms. Buss** – Doesn't it have to do with the number of stops as well?

**Mr. Gitzlaff** – Yes, so it may be premature in taking a guess now.

**Commissioner Lindoo** – It would still be stopping in St. Paul so it wouldn't help people going to Minneapolis.

**Mr. Gitzlaff** – We're taking a step back here and figuring out what we would like the options to do. The one thing that did come out is that it's important to go to St. Paul and Minneapolis. We've also heard a lot about the frequency of service.

**Commissioner Lindoo** – I'm glad to hear that.

**Mr. Rosell** – Through the public process we’re asking about amenities as well such as parking, frequency, etc. The consensus priority has been frequency of service throughout the day and being able to use the transit for access to other cities along the corridor.

**Commissioner Lindoo** – I would look at safety, cleanliness, and how comfortable the buses are.

**Mr. Rosell** – We have heard that, as well as having the ability to conduct work while in transit.

**Chairperson Lund** – I suppose if you were to improve the amenities and maintain the amount of time to Minneapolis then that may increase the desirability to live in this area. I think we should consider if it’s desirable to foster more development or if we like it being a little quieter.

**Vice-Chairperson Prestegaard** – I like the idea of sheltered stations with kiosks so that we could pay in advance with credit cards or large bills. If we have that then we don’t need to deal with having the exact change.

**Ms. Buss** – I think it would be nice if the buses could accommodate more bikes.

## **5. COMMISSION AND STAFF REPORTS**

**Admin. Hill** – I was wondering if it would be fine to move the meetings to 6:00 p.m.?

**Commissioner Lindoo** – That would be fine.

**Vice-Chairperson Prestegaard** – That would be fine.

**Admin. Hill** – Great, I’ll bring that forward to the Council.

## **6. NEW BUSINESS**

## **7. ANNOUNCEMENTS**

### **A. Upcoming Meetings and Events:**

- |                                |                |           |
|--------------------------------|----------------|-----------|
| 1. City Council Meeting        | April 18, 2013 | 5:30 p.m. |
| 2. Park Board Meeting          | April 25, 2013 | 7:00 p.m. |
| 3. City Council Meeting        | May 2, 2013    | 5:30 p.m. |
| 4. Planning Commission Meeting | May 9, 2013    | 7:00 p.m. |

## **8. ADJOURNMENT**

**Motion by Anderson, seconded by Mahmood, to adjourn the Planning Commission Meeting at 8:55 P.M. With 5 Ayes, 0 Nays, the motion carried.**

Signed: \_\_\_\_\_  
Dan Lund, Chairperson

Respectfully submitted,

Renee Helm  
Executive Analyst



444 Cedar Street, Suite 1500  
Saint Paul, MN 55101  
651.292.4400  
tkda.com

## Memorandum

<b>To:</b>	City of Newport Planning Commission	<b>Reference:</b>	Knauff Rezoning Request
<b>Copies To:</b>	Deb Hill, City Administrator	<b>Project No.:</b>	15258.002
<b>From:</b>	Renee Helm, Executive Analyst Leisa Knauff, Trustee	<b>Routing:</b>	
<b>Date:</b>	Sherri Buss, RLA, AICP, Planner		
	June 13, 2013		

**SUBJECT:** Knauff Property Rezoning

**MEETING DATE:** June 13, 2013

**LOCATION:** 14 parcels adjacent to and south of Newport City Hall at 478 7<sup>th</sup> Avenue

**APPLICANT:** Leisa Knauff, Trustee of the William F. Knauff Trust  
478 7<sup>th</sup> Avenue  
Newport, MN 55055

**ZONING:** MX-4 (General Mixed Use)

**ITEMS REVIEWED:** Application Form received May 11, 2013; Newport Comprehensive Plan Update 2010

### BRIEF DESCRIPTION OF THE REQUEST

The applicant is requesting a rezoning of fourteen parcels from MX-4 (General Mixed Use) to B-1 (Business Park/Office/Warehouse). The existing uses on the parcels include Auto Salvage/Recycling/Storage, an Auto Body Shop, and 2 homes.

The applicant and the City have been attempting to market the parcels for a use that would be permitted under the current zoning for the past several years. These efforts indicate that it is unlikely that the parcels can be developed for the uses currently permitted, but could be redeveloped for warehousing, office and/or manufacturing uses. The characteristics that limit the potential for redevelopment under the current zoning will not change in the foreseeable future.

## BACKGROUND

The subject property includes 14 parcels that are located along 7<sup>th</sup> Avenue near City Hall, between 7<sup>th</sup> Avenue and an existing major rail line to the east. The applicant's family operated an auto salvage and recycling business on most of the parcels for decades. The parcels also include an auto body shop and two homes. The total area of the parcels is approximately 5.5 acres.

The parcels were placed in the MX-1 (Downtown Mixed Use) District during the 2000 Comprehensive Plan update, and recently rezoned to the MX-4 (General Mixed Use) District. The rezoning to MX-1 in 2000 reflected the City's goals to convert the areas along Highway 61 from auto-oriented uses to other uses after the completion of the Highway 61 project. The recent rezoning to MX-4 was an attempt to expand the types of uses allowed in some of the mixed-use areas along Highway 61 and to allow for expansion of existing uses that would have been limited under the MX-1 classification. During the recent recession, the City has had few redevelopment proposals in the MX areas, and no market information to use as a basis for the zoning classifications. The zoning classifications reflect the City's desire to be flexible to accommodate market conditions and changes as the areas on Highway 61 as they are redeveloped.

The applicants have been working with the City and Washington County HRA for several years to clean up the polluted soils on the site and to try to redevelop it with a use that fits the current zoning for the site. The applicants worked with the previous City Administrator to develop a "brown fields" grant application for funds to clean up the site. The application was not funded because the City did not have a development proposal for the site, so it ranked lower than other sites in the Metro Area that had an identified developer at the time of application. The MPCA recently called Administrator Deb Hill, and indicated that clean-up funding may still be available, if the City can identify a potential developer for the site.

The site owners and the City have been contacted over the past 2-3 years by businesses that are interested in redevelopment of the site. They have included a variety of warehouse, office, and smaller manufacturing uses. The most recent contact was a business interested in developing a furniture warehouse on the site. These uses are not allowed under the MX-4 zoning classification.

The lack of success in marketing the site for the allowed uses in the MX-1 and MX-4 Districts despite a significant effort by City staff, the Washington County HRA and the current owners to market the site calls the current zoning into question. The inability to market the site for residential use and retail/office use is related to characteristics of the site that will not change in the foreseeable future. Based on the characteristics of the site, the only interested purchasers for the site have proposed warehouse, office or manufacturing uses, or a combination of those uses. Developers that have seen the site have noted the following to City staff:

- The site is not suitable for residential development due to the close proximity to the major rail line and the noise and vibration impacts.
- The clean-up required for a residential use on the site will need to meet higher standards and be much more costly than for a commercial or industrial use.
- The site is not suited for retail or other commercial development due to its limited visibility and lack of connection to the existing retail and commercial neighborhoods



in the City. Retail, office or commercial development are more likely to occur in the Hastings Avenue area or near the new Transit Station

Given the information that the City has from its efforts over the past several years to work with the owner to market the site, the owner and City Staff are asking the Planning Commission and Council to evaluate the existing zoning and consider a change to a the B-1 classification.

## **EVALUATION OF THE REQUEST**

The applicant is requesting to change the zoning from MX-4 (General Mixed Use) to B-1 (Business Park/Office/Warehouse). Staff are suggesting that some additional parcels to the south be rezoned to the I-S and I-1 classifications to better reflect their existing and likely long-term use. Section 1310.02, Subd. 3 of the City's Zoning Ordinance addresses rezoning applications. Rezoning requests are evaluated based on the following:

- Existing and proposed land uses on and around the site
- How the proposed zoning would fit in with the general zoning pattern of the neighborhood and city
- The conservation of property values
- Advantages to the entire City
- No change shall be recommended unless it is in the interest of public health, safety and welfare, and is compatible with the comprehensive plan.

The next sections include the staff evaluation of the proposed rezoning based on the criteria in the ordinance listed above. A draft map indicating the proposed zoning changes is attached. It includes rezoning the Knauff parcels to B-1, and rezoning some parcels to the south to I-S and I-1 to better reflect the expected long-term use of the parcels.

### Existing uses on and around the site

The attached map and aerial photograph of the site show the existing uses on and around the site:

- The parcels to the east of the Knauff property are zoned B-1. The area includes railroad property and Businesses on the east side of Highway 61.
- The area to the south (east of 7<sup>th</sup> Avenue) include parcels owned by the St. Paul Park Refinery and an adjacent industrial use. The Planner is suggesting that the parcels east of 7<sup>th</sup> Avenue be rezoned as I-S and I-1 to better reflect their use. The I-S and I-1 Districts would be compatible with the B-1 zoning district.
- Parcels to the north and west of the Knauff parcels are zoned MX-4. They include a mix of residential and commercial uses, as well as the City Hall site and a historic railroad building.
- The Knauff site includes the former auto salvage use, an auto body repair shop, and two residences. The applicants are proposing to redevelop the entire site. Redevelopment may include one or more uses.

The existing uses on the site and to the south and east would be compatible with the proposed B-1 rezoning. The City's Zoning Ordinance includes performance standards and dimensional standards that specifically address compatibility between business and residential uses, such as buffer areas and screening requirements.



*Fit with the City's General Zoning Pattern*

A change to B-1 zoning will be compatible with the general zoning patterns of the City. The southern portion of the city includes areas adjacent to the proposed B-1 District that are zoned for Business and Industrial Uses.

Proposed Businesses uses would need to be designed and operated to be compatible with the existing residential uses and MX-4 District to the west and north. The City would need to enforce its design and performance standards for Nonresidential Uses through the CUP process, so that Business District uses would be required to be designed and operated to be compatible with adjacent residential uses.

The City should require that potential developers obtain a CUP for a manufacturing or warehouse use in the B-1 District (the District currently requires a CUP for manufacturing, but not for warehousing), and the city should use its performance standards to include conditions in the CUP to make the use compatible with the uses in the adjacent MX-4 District. Performance standards that would be considered in the CUP process include:

- Standards for exterior appearance and materials
- Requirements for landscaping
- Prohibition or screening of outdoor storage and utility equipment
- Loading and service areas should not face the road or adjacent residential uses
- Noise limitations
- Lighting requirements
- Traffic
- Restrictions on hours and other operating conditions
- Parking location and requirements

The Planning Commission should listen to comments at the public hearing on June 13, and consider whether a change in the existing standards would be needed to make Business uses compatible with adjacent Mixed-Use areas.

*Conservation of Property Values*

The change to the B-1 zoning is likely to enhance property values on the Knauff parcels, by permitting uses that would allow the property to be redeveloped.

The City will need to consider potential impacts of Business uses on adjacent residential and business properties, and consider whether the existing performance standards will adequately protect the property values of adjacent properties. The clean-up of the property and redevelopment with a compatible use is likely to have a positive impact.

*Advantages for the Whole City*

Newport is actively trying to redevelop several sites in the City, including the Knauff site. Redevelopment has the potential to increase property values, provide jobs, and improve the image of the City.



Compatibility with the Comprehensive Plan

The Comprehensive Plan update adopted in 2010 noted that the City's vision for the area was to redevelop the areas that were occupied by auto-oriented uses related to Highway 61 over the long-term, and encourage redevelopment of the areas along Highway 61 with a mix of residential and commercial uses. The Comprehensive Plan supported zoning for Business Park/Office and Warehouse uses along Highway 61 adjacent to the Knauff property.

Neither the 2010 nor the 2010 Comprehensive Plan included a market analysis of the areas along Highway 61 as the zoning maps were developed. The recession occurring during the 2010 Comprehensive Plan update would have made such an analysis extremely difficult. Efforts to market the Knauff property over the past several years have indicated that conditions on the parcels and adjacent areas make it unlikely that the uses permitted in the MX-1 or MX-4 district will be developed on the Knauff parcels.

The rezoning for Business use is generally compatible with Comprehensive Plan goals to redevelop the areas along Highway 61 with other uses. The performance standards in the City's ordinance should be implemented to require that proposed uses in the B-1 District be compatible with the adjacent mixed-use districts.

Recommended Zoning for the Adjacent Parcels to the South

The attached map indicates proposed rezoning of parcels to the south of the Knauff property to I-S and I-1. The proposed rezoning reflects the existing and probably long-term use of the properties for industrial uses. The parcels share many of the characteristics of the Knauff property, and are unlikely to be redeveloped for residential or retail/office uses due to the adjacent railroads, industrial uses, and lack of visibility for retail use.

**ACTION REQUESTED**

The Planning Commission can recommend to the City Council:

1. Approval
2. Approval with conditions
3. Denial with findings
4. Table the request, if additional information is needed to make a decision

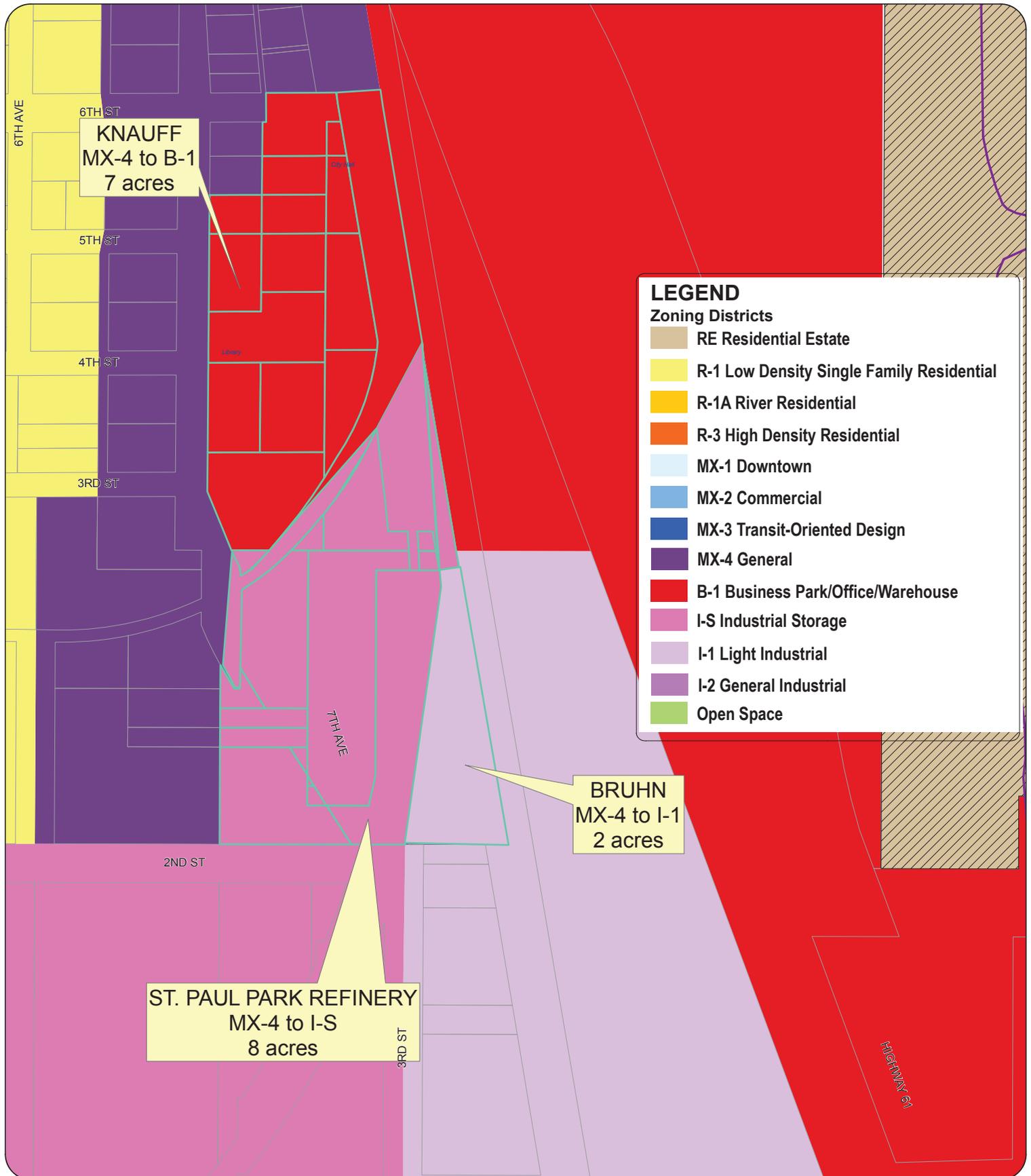
**PLANNING STAFF FINDINGS AND RECOMMENDATIONS**

The Planner recommends that the Planning Commission recommend approval of the Knauff request for a rezoning from MX-4 to B-1, and recommend rezoning the adjacent parcels to the south and east of 7<sup>th</sup> Avenue to I-S and I-1 to be consistent with existing uses. The Planning Commission should listen to comments at the Public Hearing on June 13 identify potential issues for compatibility with surrounding uses and discuss whether the existing performance standards in the zoning ordinance can address any identified concerns.





# Knauff Parcels - proposed rezoning



Data sources: City of Newport, Washington County, Metropolitan Council  
Zoning Map Adopted April 4, 2013  
Map printed June 4, 2013



270 Feet

# City of NEWPORT Planning Request Application

Newport City Hall ♦ 596 7<sup>th</sup> Avenue ♦ Newport ♦ Minnesota ♦ 55055 ♦ Telephone 651-459-5677 ♦ Fax 651-459-9883

Application Date: May 11, 2013 Public Hearing Date: June 13, 2013

## Applicant Information

Name: Leisa Knauff, Trustee Telephone: 612-599-7962  
Mailing Address: 478 7<sup>th</sup> Ave Telephone: \_\_\_\_\_  
City/State/Zip: Newport MN 55055

## Property Owner Information

Name: William F Knauff Trust Telephone: 612-599-7962  
Mailing Address: Same As Above Telephone: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

## Project Information

Location of Property: 310 7<sup>th</sup> Ave, 396 7<sup>th</sup> Ave, 478 7<sup>th</sup> Ave, 500 7<sup>th</sup> Ave + 760 6<sup>th</sup> St  
Legal Description of Property and P.I.D. #: Please see attached...

Zoning District: \_\_\_\_\_ Flood Plain: **AE 0.2% Annual Chance Flood Hazard**

- |  |   |
|--|---|
| <input type="checkbox"/> Comprehensive Plan Amendment          | \$500 or Actual Cost plus \$50 for Additional Staff Hours (10 Hr Min)   |
| <input checked="" type="checkbox"/> Rezoning                   | \$500 plus Escrow   |
| <input type="checkbox"/> Zoning Amendment                      | \$500   |
| <input type="checkbox"/> Variance                              | \$300 plus Escrow   |
| <input type="checkbox"/> Conditional Use Permit                |   |
| <input type="checkbox"/> Residential                           | \$300 plus Escrow   |
| <input type="checkbox"/> Commercial                            | \$450 plus Escrow   |
| <input type="checkbox"/> Subdivision Approval                  |   |
| <input type="checkbox"/> Minor Subdivision                     | \$300 plus Escrow and \$2,000 for Parkland Dedication Fee   |
| <input type="checkbox"/> Major Subdivision                     | \$500 plus Escrow, \$50 per Lot, \$200 for Final Plat, and 10% of land value or fee for Parkland Dedication Fee |
| <input type="checkbox"/> Other: _____                          |   |
| <input type="checkbox"/> Applicable Zoning Code Chapter: _____ |   |
| <input type="checkbox"/> Review by Engineer Cost: _____        |   |
| <input type="checkbox"/> Total Cost: _____                     |   |



ALL MATERIALS/DOCUMENTATION, INCLUDING A SITE-PLAN, MUST BE SUBMITTED WITH APPLICATION THAT IS APPLICABLE TO PLANNING REQUEST.

I HEREBY DECLARE THAT ALL STATEMENTS MADE ON THIS REQUEST AND ON THE ADDITIONAL MATERIAL ARE TRUE.

SIGNATURE OF APPLICANT: Rosa M. Knapp, Trustee

SIGNATURE OF OWNER (IF APPLICABLE): \_\_\_\_\_

For Office Use

Fee: \$500 Date Paid: 05/13/13 Receipt #: 1267

Publication of Notice Date: May 29, 2013

Public Hearing Date: June 13, 2013

P.C. Resolution #: P.C. 2013-4

Council Action Date: June 20, 2013

Council Resolution #: \_\_\_\_\_

To whom it may concern.

For the past several years the Knauff trust has been unsuccessful in marketing the property located just south of Newport City Hall. To keep the bills and taxes paid we have continued the current use of Auto Salvage on the property, but to limited scale as we are very interested in selling. The current zoning of MX-4 has greatly restricted the potential buyers for the property. During the numerous calls that have been taken on the property, the users have not fit into the current zoning and there have been no calls at all for the use of its current zoning MX-4. Currently we have a very interested party that is open to constructing a very nice looking building in the 40,000 sq. ft. range. Again, we find out that the zoning limits this activity. On Wednesday May 8, 2013 we along with our REALTOR, met with the City of Newport Administrator and Newport City Planner. In this meeting we explained our situation and all agreed that the current zoning is very restrictive given that all adjacent property is zoned for more industrial type uses and the railroad also runs adjacent to the property. Given this along with the new potential to have a nice building constructed in downtown Newport we are requesting the Knauff Trust Property be re-zoned to B-1 Business use. While the Knauff Trust has done all we can to sell the property in the current real estate market, our efforts under the current zoning have failed, and now we have to consider what are real options are and if we need to just ramp up the Auto Salvage business and look for a potential buyer of an Auto Salvage Yard instead hoping to sell to redeveloper. A change in zoning will greatly expand our chances of selling which is our ultimate goal.

PID	Legal Description
01.027.22.21.0009	DIV NO.6 ST PAUL PARK Lot 5 Block 3 & LOT 6 & 1/2 VAC ALLEY ADJ
01.027.22.21.0010	DIV NO.6 ST PAUL PARK Lot 7 Block 3 & LOTS 8-10 & 1/2 VAC ALLEY ADJ
01.027.22.21.0011	DIV NO.6 ST PAUL PARK Lot 11 Block 3 & LOTS 12-15 & VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0012	DIV NO.6 ST PAUL PARK Lot 16 Block 3 & LOTS 17-18 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0013	DIV NO.6 ST PAUL PARK Lot 19 Block 3 & LOTS 20 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0014	DIV NO.6 ST PAUL PARK Lot 21 Block 3 & LOT 22 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0015	DIV NO.6 ST PAUL PARK Lot 23 Block 3 & LOT 24 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ & ALL VAC ST LYING N OF LOT 24
01.027.22.21.0016	DIV NO.6 ST PAUL PARK Lot 1 Block 4 LOTS 2-4 & 1/2 VAC ALLEY ADJ
01.027.22.21.0017	DIV NO.6 ST PAUL PARK Lot 5 Block 4 & LOTS 6-11 & VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ & 1/2 PARKER ST ADJ
01.027.22.21.0018	DIV NO.6 ST PAUL PARK Lot 12 Block 4 & LOTS 13-15 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0019	DIV NO.6 ST PAUL PARK Block 5 PT BLK 5 BEING N1/2 OF ALL LYING WEST OF THE C R I & P RR RIGHT OF WAY & S OF THE N LINE OF LOT 18 BLK 3 PROJECTED E TO THE RR R/W & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0020	DIV NO.6 ST PAUL PARK Block 5 PT OF BLK 5 BEING S1/2 FOLL ALL LYING W OF C R I & P RR R/W & SO. OF NO. LINE OF LOT 18 BLK 3 PRO- JECTED EAST RO RR R/W & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0021	DIV NO.6 ST PAUL PARK Block 5 PT OF BLK 5 LYING N OF S LINE OF LOT 19 BLK 3 ELY TO C B & N RY R/W & S OF S LINE OF LOT 23 & 1/2 VAC 8TH AVE ADJ
01.027.22.21.0022	DIV NO.6 ST PAUL PARK Block 5 PT OF BLK 5 LYING N OF THE S LINE OF LOT 23 BLK 3 EXTENDED ELY TO C B & Q RY R/W & 1/2 VAC 8TH AVE ADJ

**South Washington County Bulletin/Woodbury Bulletin  
AFFIDAVIT OF PUBLICATION**

STATE OF MINNESOTA)  
                                  )SS.  
COUNTY OF WASHINGTON )

**Julie M. Klecker** being duly sworn, on oath says that he/she is an authorized agent and employee of the publisher of the newspaper, known as *The South Washington County Bulletin and/or The Woodbury Bulletin*, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualification as a legal newspaper, as provided by Minnesota Statutes 331A.02, 331A.07 and other applicable laws, as amended.

(B) The printed **CITY OF NEWPORT -- REZONING PUBLIC HEARING**

which is attached was cut from the columns of said newspaper, and was printed and published once each week for **1** successive weeks; it was first published on Wednesday, the **29th** day of **May**, 2013 and was thereafter printed and published on every Wednesday, to and including Wednesday, the **29th** day of **May**, 2013.

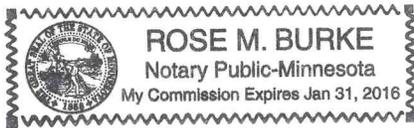
SOUTH WASHINGTON COUNTY BULLETIN  
AND/OR WOODBURY BULLETIN

BY: *Julie M. Klecker*

TITLE: **Legal Notice Clerk**

Subscribed and sworn to before me on this **29th** DAY OF **May** 2013

*Rose M. Burke*  
\_\_\_\_\_  
Notary Public



	Client #	255364
	Order #	1706407
File #		
Publication Fee:	\$	241.95

Please remit payment to: RiverTown Multimedia, PO Box 15, Red Wing, MN 55066

**CITY OF NEWPORT  
PLANNING  
COMMISSION**

**NOTICE OF PUBLIC HEARING  
TO CONSIDER A REQUEST FOR A  
REZONING**

Notice is hereby given that the Newport Planning Commission will hold a Public Hearing on Thursday, June 13th, at 6:00 P.M. or as soon thereafter, in the City Hall Council Chambers at the Newport City Hall, 596 7th Ave., Newport, MN, to consider an application from Leisa Knauff, 478 7th Avenue, Newport, MN 55055 for a Rezoning Request. The request is for 14 parcels located on 7th Avenue between 3rd and 6th Streets, Newport, MN and is zoned MX-4 (General Mixed Use). The request is to change the rezoning from MX-4 to B-1 to allow for businesses such as an office and warehouse. Said property is legally described as:

- PID#01.027.22.21.0009  
LOT 6 & 1/2 VAC ALLEY ADJ Sub-  
divisionName DIV NO.6 ST PAUL  
PARK Lot 5 Block 3 SubdivisionCd  
55455
- PID#01.027.22.21.0010  
LOTS 8-10 & 1/2 VAC ALLEY ADJ  
SubdivisionName DIV NO.6 ST PAUL  
PARK Lot 7 Block 3 SubdivisionCd  
55455
- PID#01.027.22.21.0011  
LOTS 12-15 & VAC ALLEY ADJ &  
1/2 VAC 8TH AVE ADJ Subdivision-  
Name DIV NO.6 ST PAUL PARK Lot  
11 Block 3 SubdivisionCd 55455
- PID#01.027.22.21.0012  
LOTS 17-18 & 1/2 VAC ALLEY ADJ  
& 1/2 VAC 8TH AVE ADJ Subdi-  
visionName DIV NO.6 ST PAUL  
PARK Lot 16 Block 3 SubdivisionCd  
55455
- PID#01.027.22.21.0013  
LOTS 20 & 1/2 VAC ALLEY ADJ &  
1/2 VAC 8TH AVE ADJ Subdivision-  
Name DIV NO.6 ST PAUL PARK Lot  
19 Block 3 SubdivisionCd 55455
- PID#01.027.22.21.0014  
LOT 22 & 1/2 VAC ALLEY ADJ &  
1/2 VAC 8TH AVE ADJ Subdivision-  
Name DIV NO.6 ST PAUL PARK Lot  
21 Block 3 SubdivisionCd 55455
- PID#01.027.22.21.0015  
LOT 24 & 1/2 VAC ALLEY ADJ &  
1/2 VAC 8TH AVE ADJ & ALL VAC  
ST LYING N OF LOT 24 Subdivision-  
Name DIV NO.6 ST PAUL PARK Lot  
23 Block 3 SubdivisionCd 55455
- PID#01.027.22.21.0016  
LOTS 2-4 & 1/2 VAC ALLEY ADJ  
SubdivisionName DIV NO.6 ST PAUL  
PARK Lot 1 Block 4 SubdivisionCd  
55455
- PID#01.027.22.21.0017  
LOTS 6-11 & VAC ALLEY ADJ &  
1/2 VAC 8TH AVE ADJ & 1/2 PARK-  
ER ST ADJ SubdivisionName DIV  
NO.6 ST PAUL PARK Lot 5 Block 4  
SubdivisionCd 55455
- PID#01.027.22.21.0018  
LOTS 13-15 & 1/2 VAC ALLEY ADJ  
& 1/2 VAC 8TH AVE ADJ Subdi-  
visionName DIV NO.6 ST PAUL  
PARK Lot 12 Block 4 SubdivisionCd  
55455
- PID#01.027.22.21.0019  
PT BLK 5 BEING N1/2 OF ALL LY-  
ING WEST OF THE C R I & P R R  
RIGHT OF WAY & S OF THE N  
LINE OF LOT 18 BLK 3 PROJECT-  
ED E TO THE RR R/W & 1/2 VAC  
8TH AVE ADJ SubdivisionName DIV  
NO.6 ST PAUL PARK Block 5 Subdi-  
visionCd 55455

<b>Owner</b>	<b>Address</b>	<b>Owner's Mailing Address</b>	<b>City, State Zip</b>
Ev Acker	615 4th Street	615 4th Street	Newport, MN 55055
Stewart Property	650 4th Street	1985 Lincoln Avenue	St. Paul, MN 55105
Stewart Property	670 4th Street	1985 Lincoln Avenue	St. Paul, MN 55105
Gary Imholte	617 5th Street	617 5th Street	Newport, MN 55055
Abel Alsides	620 5th Street	455 6th Avenue	Newport, MN 55055
Gary Imholte	635 5th Street	617 5th Street	Newport, MN 55055
Blanca Matias	661 5th Street	661 5th Street	Newport, MN 55055
Ed Voss	596 6th Street	596 6th Street	Newport, MN 55055
Randy Strom	615 6th Street	28443 N Lake Drive #1	Mora, MN 55051
Tim Michael	251 7th Avenue	15548 260th Street	Lindstrom, MN 55045
St. Paul Park Refinery	295 7th Avenue	301 St. Paul Park Road	St. Paul Park, MN 55071
Elizabeth Benepe	311 7th Avenue	311 7th Avenue	Newport, MN 55055
David Erickson	481 7th Avenue	481 7th Avenue	Newport, MN 55055
Dustin Ramberg	562 7th Avenue	562 7th Avenue	Newport, MN 55055
Chris Barrett	577 7th Avenue	4150 Lake Ridge Drive	Big Lake, MN 55309
Fred Leimbek	603 7th Avenue	603 7th Avenue	Newport, MN 55055
Usonia Properties	610 7th Avenue	11408 Redwood Curve	Woodbury, MN 55129
Joseph Obitz	628 7th Avenue	7372 Irvin Avenue S	Cottage Grove, MN 55016
Toby Madden	630 7th Avenue	1396 Lincoln Avenue	St. Paul, MN 55105
Mary Sansom	635 7th Avenue	635 7th Avenue	Newport, MN 55055
Steve Lanz	648 7th Avenue	648 7th Avenue	Newport, MN 55055
Norma Kraft	661 7th Avenue	661 7th Avenue	Newport, MN 55055
Don Diederich	670 7th Avenue	670 7th Avenue	Newport, MN 55055
Don Diederich	682 7th Avenue	670 7th Avenue	Newport, MN 55055

**PLANNING COMMISSION  
RESOLUTION NO. P.C. 2013-4**

**A RESOLUTION RECOMMENDING CITY COUNCIL APPROVE A REZONING REQUESTED BY  
LEISA KNAUFF, 478 7<sup>TH</sup> AVENUE, NEWPORT, MN 55055, FOR PROPERTY LOCATED ON 7<sup>TH</sup>  
AVENUE BETWEEN 3<sup>RD</sup> AND 6<sup>TH</sup> STREETS, NEWPORT, MN 55055**

**WHEREAS**, Leisa Knauff, 478 7<sup>th</sup> Avenue, Newport, MN 55055 has submitted a request for a rezoning; and

**WHEREAS**, The proposed rezoning is for property located on 7<sup>th</sup> Avenue between 3<sup>rd</sup> and 6<sup>th</sup> Streets, Newport, MN 55055, and is more fully legally described as follows:

**PID#01.027.22.21.0009** - LOT 6 & 1/2 VAC ALLEY ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 5 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0010** - LOTS 8-10 & 1/2 VAC ALLEY ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 7 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0011** - LOTS 12-15 & VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 11 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0012** - LOTS 17-18 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 16 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0013** - LOTS 20 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 19 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0014** - LOT 22 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 21 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0015** - LOT 24 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ & ALL VAC ST LYING N OF LOT 24 SubdivisionName DIV NO.6 ST PAUL PARK Lot 23 Block 3 SubdivisionCd 55455

**PID#01.027.22.21.0016** - LOTS 2-4 & 1/2 VAC ALLEY ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 1 Block 4 SubdivisionCd 55455

**PID#01.027.22.21.0017** - LOTS 6-11 & VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ & 1/2 PARKER ST ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 5 Block 4 SubdivisionCd 55455

**PID#01.027.22.21.0018** - LOTS 13-15 & 1/2 VAC ALLEY ADJ & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Lot 12 Block 4 SubdivisionCd 55455

**PID#01.027.22.21.0019** - PT BLK 5 BEING N1/2 OF ALL LYING WEST OF THE C R I & P RR RIGHT OF WAY & S OF THE N LINE OF LOT 18 BLK 3 PROJECTED E TO THE RR R/W & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Block 5 SubdivisionCd 55455

**PID#01.027.22.21.0020** - PT OF BLK 5 BEING S1/2 FOLL ALL LYING W OF C R I & P RR R/W & SO. OF NO. LINE OF LOT 18 BLK 3 PRO- JECTED EAST RO RR R/W & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Block 5 SubdivisionCd 55455

**PID#01.027.22.21.0021** - PT OF BLK 5 LYING N OF S LINE OF LOT 19 BLK 3 ELY TO C B & N RY R/W & S OF S LINE OF LOT 23 & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Block 5 SubdivisionCd 55455

**PID#01.027.22.21.0022** - PT OF BLK 5 LYING N OF THE S LINE OF LOT 23 BLK 3 EXTENDED ELY TO C B & Q RY R/W & 1/2 VAC 8TH AVE ADJ SubdivisionName DIV NO.6 ST PAUL PARK Block 5 SubdivisionCd 55455

**WHEREAS**, The described property is zoned General Mixed Use District (MX-4); and

**WHEREAS**, The request is to rezone the property to Business Park/Office/Warehouse District (B-1); and

**WHEREAS**, Chapter 13, Section 1310.02, Subdivision 3, of the Code of Ordinance states; "Proceedings for amendment, which are initiated by the petition of the owner or owners of the property, shall be filed with the Zoning Administrator. All applications shall be accompanied by an administrative fee as prescribed in Subsection 1310.01 and shall include the following information:

- A. The name and address of the applicant or applicants;
- B. A description of the area proposed to be rezoned; the names and addresses of all owners of property lying within such area and a description of the property owned by each;
- C. The present zone classification of the area and the proposed zone classification;
- D. A description of the present use of each separately owned tract within the area, and the intended use of any tract of land therein;
- E. A site plan showing the location and extent of the proposed building, parking, loading, access drives, landscaping and any other improvements;
- F. A statement of how the rezoning would fit in with the general zoning pattern of the neighborhood, and the zoning plan of the entire City;
- G. A map showing the property to be rezoned, and the present zoning of the surrounding area for at least a distance of three hundred fifty (350) feet, including the street pattern of such area, together with the names and addresses of the owners of the lands in each area." and

**WHEREAS**, Following publication, posted, and mailed notice thereof, the Newport Planning Commission held a Public Hearing on June 13, 2013; and

**WHEREAS**, the Planning Commission's findings related to the request for approval of a Rezoning included the following:

1. The proposed rezoning is compatible with the existing uses on and around the site, which include existing business, residential and industrial uses.
2. The proposed B-1 Zoning District fits with the City's general zoning pattern. The proposed Business District is adjacent to another B-1 District, and I-S (Industrial Storage), I-1 (Light Industrial) and MX-4 (General Mixed-Use) Districts.
3. The proposed rezoning is likely to enhance the property values on the site, and the City has adopted performance standards and dimensional standards that will protect the values of adjacent properties as the property is redeveloped.
4. The rezoning provides advantages for the whole City because it will allow redevelopment of the site with an economically viable use.
5. The rezoning is compatible with the general goals of the Comprehensive Plan to redevelop areas along Highway 61 with a variety of uses that are not auto-oriented and provide new jobs and higher property values.

**NOW, THEREFORE, BE IT FURTHER RESOLVED That** the Newport Planning Commission **Hereby Recommends Newport City Council Approval** for a Rezoning of the described property to applicant Leisa Knauff, 478 7<sup>th</sup> Avenue, Newport, MN 55055.

Adopted this 13th day of June, 2013 by the Newport Planning Commission.

VOTE: Lund	_____
Prestegaard	_____
Anderson	_____
Lindoo	_____
Mahmood	_____

Signed: \_\_\_\_\_  
Dan Lund, Chairperson

ATTEST: \_\_\_\_\_  
Deb Hill, City Administrator



11 East Superior Street, Suite 340  
Duluth, MN 55802  
218.724.8578  
tkda.com

## Memorandum

<b>To:</b>	Newport Planning Commission	<b>Reference:</b>	Resolution regarding Minnesota Partition Fence Law
<b>Copies To:</b>	Deb Hill, City Administrator		
	Renee Helm, Executive Analyst		
<b>From:</b>	Sherri Buss, RLA, AICP, Planner	<b>Project No.:</b>	15252.000
<b>Date:</b>	June 4, 2013	<b>Routing:</b>	

Planning Commission Chair Dan Lund requested that the Commission discuss the State Statute related to Partition Fence Law, and consider a resolution that would exempt city residents from the Law. A copy of the Statute and information from the Minnesota House of Representatives are attached.

Minnesota’s Partition Fence Law (Minnesota Statutes 344) was created to address livestock management. It was primarily enforced in rural areas of the state, but the law does not state that it only applies in rural or farm communities.

The law requires that neighboring owners of improved land contribute equally to the cost of building and maintaining a partition fence between their lands if either owner wants a fence. Under the law, an owner that wants a fence can compel the adjacent owner to contribute to the cost of the fence if it is approved by “fence viewers.” Fence viewers are typically local officials, such as city council members.

This statute is almost never discussed or enforced in urban communities. The issue has been raised once in recent years in Stillwater Township, when two adjacent owners had a dispute related to livestock on one of the properties.

Section 344.011 of the statute allows the City to pass a resolution exempting adjoining owners or occupants from the Partition Fence statute when their land totals less than 20 acres.

The Planner created a draft resolution, attached, for the Planning Commission to consider at the June meeting.

**PLANNING COMMISSION  
RESOLUTION NO. P.C. 2013-5**

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL EXEMPT RESIDENTS OF  
NEWPORT FROM MINNESOTA STATUTES 344 REGARDING PARTITION FENCES**

**WHEREAS**, Minnesota Statutes 344 includes requirements relating to Partition Fences between adjoining properties that were created to address concerns related to livestock and open range management; and

**WHEREAS**, the Statute includes Section 344.011 that allows the City to exempt adjoining owners or occupants from Chapter 344 when their land considered together is less than 20 acres; and

**WHEREAS**, the majority of properties in the City of Newport are less than 20 acres in size and raising livestock is not permitted in the City;

**NOW, THEREFORE, BE IT RESOLVED That** the Newport Planning Commission **Hereby Recommends that the Newport City Council approve this resolution** exempting adjoining property owners or occupants from Minnesota Statutes 344 when their land considered together is less than 20 acres.

Adopted this 13th day of June, 2013 by the Newport Planning Commission.

VOTE: Lund	_____
Prestegaard	_____
Anderson	_____
Lindoo	_____
Mahmood	_____

Signed: \_\_\_\_\_  
Dan Lund, Chairperson

ATTEST: \_\_\_\_\_  
Deb Hill, City Administrator

## CHAPTER 344

### PARTITION FENCES

344.01	FENCE VIEWERS.	344.10	LANDS BOUNDED BY STREAM.
344.011	EXEMPTION.	344.11	LANDS OCCUPIED IN COMMON.
344.02	KINDS OF PARTITION FENCES.	344.12	VIEWERS TO FIX TIME FOR BUILDING.
344.03	EXPENSE; EQUAL SHARES.	344.13	LANDS FIRST ENCLOSED.
344.04	FAILURE TO BUILD OR REPAIR; RIGHTS OF COMPLAINANT.	344.14	VIEWERS WHEN FENCE ON TOWN LINE.
344.05	REPAIR COSTS RECOVERABLE.	344.16	DIVISION OR RECORDED AGREEMENT RUNS WITH THE LAND.
344.06	CONTROVERSY; DECISION BY FENCE VIEWERS.	344.17	FAILURE OF VIEWER TO PERFORM DUTY; PENALTY.
344.07	FAILURE TO ERECT OR MAINTAIN.	344.18	COMPENSATION OF VIEWERS.
344.08	RECORDED DIVISION; BINDING ON HEIRS AND ASSIGNS.	344.19	VIEWERS IN COUNTIES NOT ORGANIZED INTO TOWNS.
344.09	PARTY ERECTING MORE THAN SHARE.	344.20	TOWN OPTION.

#### 344.01 FENCE VIEWERS.

Supervisors in their respective towns, city council members in their respective wards, commissioners of public works in cities having a commission form of government, and city trustees in statutory cities are fence viewers.

**History:** (7248) *RL s 2748; 1921 c 25 s 1; 1973 c 123 art 5 s 7; 1985 c 265 art 6 s 1*

#### 344.011 EXEMPTION.

A town board may, by resolution, exempt adjoining owners or occupants from this chapter when their land considered together is less than 20 acres.

**History:** *1982 c 616 s 1; 1985 c 265 art 6 s 1*

#### 344.02 KINDS OF PARTITION FENCES.

Subdivision 1. **Legal and sufficient fences.** The following are legal and sufficient fences:

(a) fences consisting of at least 32-inch woven wire and two barbed wires firmly fastened to well-set posts not more than one rod apart, the first barbed wire being above and not more than four inches from the woven wire and the second barbed wire being above and not more than eight inches from the first wire;

(b) fences consisting of at least 40-inch woven wire and one barbed wire firmly fastened to well-set posts not more than one rod apart, the barbed wire being above and not more than four inches from the woven wire;

(c) fences consisting of woven wire at least 48 inches in height, and one barbed wire not more than four inches above the woven wire firmly fastened to well-set posts not more than one rod apart;

(d) fences consisting of at least four barbed wires with at least 40 barbs to the rod, the wires firmly fastened to posts not more than one rod apart, the top wire not more than 48 inches high and the bottom wire 12 to 16 inches from the ground; and

(e) fences consisting of rails, timbers, wires, boards, stone walls, or any combination of those materials, or streams, lakes, ditches, or hedges, which are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.

Subd. 2. **Determination of kind of fence.** If adjoining land owners disagree as to the kind of fence to be built on any division line, the matter must be referred to the fence viewers, who shall determine what kind of fence should be built on the line and order it built.

Subd. 3. **Special case.** If the lands of two persons adjoin and the land of one is enclosed by a woven wire fence on all sides except the side forming a division line between the lands, each person shall erect and maintain a fence along one-half the total length of the division line. The fences must be similar in character and quality.

**History:** (7249) *RL s 2749; 1915 c 282; 1917 c 408 s 1; 1985 c 265 art 6 s 1*

### **344.03 EXPENSE; EQUAL SHARES.**

Subdivision 1. **Adjoining owners.** If all or a part of adjoining Minnesota land is improved and used, and one or both of the owners of the land desires the land to be partly or totally fenced, the land owners or occupants shall build and maintain a partition fence between their lands in equal shares. The requirement in this section and the procedures in this chapter apply to the Department of Natural Resources when it owns land adjoining privately owned land subject to this section and chapter and the landowner desires the land permanently fenced for the purpose of restraining livestock.

Subd. 2. [Repealed, 1989 c 335 art 4 s 109; 1Sp1989 c 2 s 8]

**History:** *RL s 2750; 1913 c 525 s 1; 1915 c 173; 1965 c 717 s 1; 1969 c 1129 art 3 s 1; 1971 c 24 s 38; 1985 c 265 art 6 s 1; 1989 c 335 art 4 s 109; 1Sp1989 c 2 s 8; 1994 c 623 art 1 s 40*

### **344.04 FAILURE TO BUILD OR REPAIR; RIGHTS OF COMPLAINANT.**

If a person fails to build, repair, or rebuild a partition fence which the person is required to build or maintain, the affected party may complain to the fence viewers. The fence viewers shall give notice to the parties and examine the fence or look into the need for a proposed fence. If they determine that an existing fence is insufficient or a new fence is necessary, they shall notify the delinquent owner or occupant in writing to that effect and order the owner or occupant to build, repair, or rebuild the fence within a reasonable time. If the delinquent fails to comply with the order, the complainant may build, repair, or rebuild the fence and obtain reimbursement pursuant to section 344.05.

**History:** (7251) *RL s 2751; 1915 c 173; 1985 c 265 art 6 s 1*

### **344.05 REPAIR COSTS RECOVERABLE.**

If a complainant builds, repairs, or rebuilds a fence according to section 344.04 and the fence viewers consider it sufficient, they shall give the occupants reasonable notice and an opportunity to be heard, determine the cost of the fence or repair, and give to the complainant who built, repaired, or rebuilt the fence a signed certificate of their decision and of the cost of the fence or repair and the viewers' fees. The complainant may demand, either of the owner or the occupant of the adjoining land where the fence was wanting or deficient, the viewers' fees and double the amount of the ascertained expense. If the owner or occupant does not pay that amount within one month after demand, the complainant may recover the amount, with interest, in a civil action.

**History:** (7252) *RL s 2752; 1915 c 173; 1985 c 265 art 6 s 1*

**344.06 CONTROVERSY; DECISION BY FENCE VIEWERS.**

If a controversy arises concerning the rights in partition fences of the respective occupants or their obligation to maintain the fences, either party may apply to the fence viewers, who, after due notice to the parties, may assign to each a share in the fence and direct the time within which the fence must be erected or repaired. The assignment may be recorded with the county recorder after which it is binding upon the parties and upon all succeeding occupants of the lands.

**History:** (7253) *RL s 2753; 1976 c 181 s 2; 1985 c 265 art 6 s 1; 2005 c 4 s 64*

**344.07 FAILURE TO ERECT OR MAINTAIN.**

If a party fails to erect or maintain the part of a fence assigned under section 344.06, the aggrieved party may erect and maintain the fence, and be entitled to double the cost of the construction and maintenance as ascertained and recovered in section 344.05 in the case of repairs.

**History:** (7254) *RL s 2754; 1985 c 265 art 6 s 1*

**344.08 RECORDED DIVISION; BINDING ON HEIRS AND ASSIGNS.**

All divisions of fences which are made by fence viewers under this chapter, or which are made by owners of adjoining lands, in writing, witnessed by two witnesses, signed and acknowledged by the parties, and recorded with the county recorder, are valid against the parties to the divisions and their heirs and assigns.

**History:** (7255) *RL s 2755; 1976 c 181 s 2; 1985 c 265 art 6 s 1; 2005 c 4 s 65*

**344.09 PARTY ERECTING MORE THAN SHARE.**

If there is a controversy between occupants of adjoining lands as to their respective rights in any partition fence and the fence viewers decide that either occupant has voluntarily erected or otherwise become the proprietor of more than that occupant's just share of the fence before a complaint was made, the other occupant shall pay for the share of the fence assigned to the other to repair and maintain. The value of the fence must be ascertained and recovered pursuant to section 344.05.

**History:** (7256) *RL s 2756; 1985 c 265 art 6 s 1; 1986 c 444*

**344.10 LANDS BOUNDED BY STREAM.**

If lands of different persons must be fenced and are bounded upon or divided by a stream or pond which, in the judgment of the fence viewers, is not in itself a sufficient fence, and if the viewers determine that it is impracticable, without unreasonable expense, for a partition fence to be made on the waters at the true boundary line, and if the occupant on either side fails to join with the occupant on the other side in making a partition fence on one side or the other, then the fence viewers, on application of either party, shall view the stream or pond, and, after giving due notice to the parties, determine, in writing, on which side of the stream or pond the fence must be erected and maintained, or whether partly on one side and partly on the other. If either party fails to build or maintain the assigned part of the fence according to the viewers' determination, the other party may build and maintain the fence, and the delinquent party must pay the charges and costs provided for in other cases in this chapter.

**History:** (7257) *RL s 2757; 1985 c 265 art 6 s 1*

**344.11 LANDS OCCUPIED IN COMMON.**

If one of the occupants of enclosed lands belonging to different persons in severalty, which have been occupied by them in common without a partition fence, desires that the part occupied by that person be occupied in severalty, and the other party fails to divide the land or to build a fence on part of the land when it has been divided, the party desiring it may have the land divided and assigned by the fence viewers in the manner provided in this chapter.

**History:** (7258) *RL s 2758; 1985 c 265 art 6 s 1; 1986 c 444*

**344.12 VIEWERS TO FIX TIME FOR BUILDING.**

If fence viewers have divided land and assigned fence responsibilities, they may set in writing a reasonable time for building the fence, having regard to the season of the year. If either party fails to build part of the fence within the time assigned, the other party may, after completing part of the fence, build the other part, and recover the viewers' fees and double the cost of building the other part, as determined pursuant to this chapter.

**History:** (7259) *RL s 2759; 1985 c 265 art 6 s 1*

**344.13 LANDS FIRST ENCLOSED.**

When unenclosed lands are afterwards enclosed, the owner or occupant of the lands shall pay one-half of the value of each partition fence extending upon the line between that person's land and the enclosure of any other owner or occupant. If the parties do not agree, the value must be ascertained by the fence viewers and stated in writing. If an owner or occupant fails to pay within 60 days after the value is ascertained and a demand made, the owner of the fence may recover the value and the cost of ascertaining it in a civil action.

**History:** (7260) *RL s 2762; 1985 c 265 art 6 s 1*

**344.14 VIEWERS WHEN FENCE ON TOWN LINE.**

If a partition fence is to be built on a line between towns, or partly in one town and partly in another, two supervisors, one from each town, shall be the fence viewers.

**History:** (7261) *RL s 2763; 1985 c 265 art 6 s 1*

**344.15 [Repealed, 1974 c 116 s 1]****344.16 DIVISION OR RECORDED AGREEMENT RUNS WITH THE LAND.**

If the line upon which a partition fence is to be built between unimproved lands has been divided by the fence viewers or by the recorded agreement of the parties, the several landowners, and their heirs and assigns forever, shall erect and maintain fences in accordance with the divisions.

**History:** (7263) *RL s 2765; 1985 c 265 art 6 s 1*

**344.17 FAILURE OF VIEWER TO PERFORM DUTY; PENALTY.**

A fence viewer who unreasonably fails to perform a duty required by this chapter shall forfeit \$5 to the town or city and be liable to the injured party for all resulting damages.

**History:** (7264) *RL s 2766; 1985 c 265 art 6 s 1*

**344.18 COMPENSATION OF VIEWERS.**

Fence viewers must be paid for their services by the person employing them. The town board may by resolution require the person employing the fence viewers to post a bond or other security acceptable to the board for the total estimated costs before the viewing takes place. The total estimated costs may include the cost of professional and other services, hearing costs, administrative costs, recording costs, and other costs and expenses which the town may incur in connection with the viewing.

**History:** (7265) *RL s 2767; 1949 c 719 s 1; 1979 c 89 s 1; 1985 c 265 art 6 s 1; 2009 c 152 s 6*

**344.19 VIEWERS IN COUNTIES NOT ORGANIZED INTO TOWNS.**

In counties not organized into towns, the county commissioners are fence viewers and are governed by this chapter, except that county commissioners shall not receive the per diem provided in section 344.18 but may be paid a per diem pursuant to section 375.055, subdivision 1, and their necessary expenses, including mileage in accordance with section 471.665.

**History:** (7266) *RL s 2768; 1975 c 301 s 6; 1985 c 265 art 6 s 1*

**344.20 TOWN OPTION.**

If eight or more landowners in a town petition the town board for a vote on a partition fence policy, the town board may adopt its own policy and procedures for dealing with partition fences, including enforcement procedures. The policy must be approved by the electors of the town at an annual or special town meeting, in which case this chapter does not apply in that town.

This chapter applies to any partition fence lying on the boundary between a town which has adopted its own partition fence policy and any other political subdivision unless the other political subdivision is a town which has adopted a similar policy.

**History:** *1982 c 616 s 2; 1985 c 265 art 6 s 1; 2004 c 228 art 2 s 9*

Sam Rankin, Legislative Analyst  
Gary Currie, Legislative Analyst

---

# **Minnesota Partition Fence Law**

## **Minnesota Statutes, Chapter 344**

Minnesota partition fence law requires neighboring owners or occupants of “improved and used” land to contribute in equal shares to the cost of building and maintaining a partition fence between their lands if either owner wants to fence the land. This law is administered and enforced by “fence viewers,” local officials designated by the law. This information brief describes Minnesota fence law and identifies case law that has interpreted the law. It also reviews recent legislative actions and judicial decisions on fence law in other states.

---

### **Introduction: Fence law and livestock management**

Since humankind began to domesticate animals (livestock) for food, fiber, hides, and draft work more than 9,000 years ago, a key social and legal issue has been how to keep the livestock within secure, safe, and suitable areas. Many societies practice “open range” management; herders are principally responsible for keeping livestock in designated areas. Other societies rely mostly on fences, walls, or other structures to limit the mobility of livestock.

Like most western cultures, the United States and individual states have developed laws that supercede practices suitable to an open range environment. These laws determine who is ultimately responsible for limiting the unchecked mobility of domestic livestock. The Minnesota partition fence law (hereinafter referred to as “fence law”) imposes obligations on owners of improved land to build and maintain “partition fences.” This responsibility is broadly shared; not limited merely to owners of livestock. The following paragraphs summarize and discuss Minnesota fence law. The Appendices include a detailed section-by-section summary of the law and a discussion of court decisions in Minnesota and other states on the constitutionality of fence laws.

## **Common Law superceded by Fence Law: Restraint of livestock**

Under common law, a landowner need not fence his or her land against the livestock of another, but the livestock owner is required to restrain his or her livestock from entering a neighbor's land. In Minnesota, this common law concept is articulated in [Minnesota Statutes, chapters 346 and 561](#).<sup>1</sup> However, the common law concept is supplemented by [Minnesota Statutes, chapter 344](#), usually referred to as "Minnesota partition fence law."

Minnesota fence law establishes rules governing the construction and upkeep of partition fences. A partition fence is a fence on or very near the boundary line separating adjoining properties. [If a fence is built which does not create a shared-cost obligation, it is a division fence rather than a partition fence.] Fence law provisions are intended to resolve disputes when the adjoining landowners are unable to agree on:

- the need for a fence
- the type and minimum construction standards for a fence
- the value of an existing fence
- the proper division of the costs for the construction and maintenance of a fence

[Chapter 344](#) also provides for local enforcement. The law is administered and enforced by fence viewers. Failure to comply with an order issued by the fence viewers can result in the noncompliance landowner being responsible for the full cost of a partition fence. Further, an order under the law to construct and maintain a partition fence "runs with the land" and is binding on subsequent owners, if and when the order is filed with the county recorder.

While the statute generally applies to property owners throughout the state, its only significant application occurs in rural areas.

---

<sup>1</sup> **Animals running at large.** In Minnesota, a livestock owner is bound by the common law duty to keep the livestock restrained on the owner's land. [Minnesota Statutes, sections 346.16, 561.09, and 609.605](#) strengthen this common law duty by making it unlawful for an owner or person having control of livestock to permit the animals to run at large. The law provides that any person who knowingly permits the running at large is liable to the person harmed for treble damages. ([Minnesota Statutes, sections 561.09 and 609.605](#), subdivision 1, (b)(1) apply to running at large or trespass within a city.)

## **Rights and Obligations: Building and maintaining a partition fence**

Minnesota fence law requires that a “legal and sufficient”<sup>2</sup> partition fence between adjoining properties be built and maintained in equal shares by the owners or occupants if two conditions are met:

- One of the owners desires to have the land totally or partly fenced.<sup>3</sup>
- The land of one or both of the owners or occupants is wholly or partly improved and used.

In practice, this means that a landowner may compel the owner or occupant of the adjoining property to build and maintain one-half of the fence between the two properties. Under the provisions of fence law, when an owner or occupant of unenclosed land uses a neighbor’s existing fence to enclose his or her land, the owner taking advantage of the existing fence must pay one-half of the existing fence’s current value to the owner of that fence.

## **Enforcement and Administration: Fence viewers**

Under Minnesota fence law, fence viewers serve as referees to resolve controversies between neighbors about partition fences. The law designates fence viewers based on the type of governmental unit in which the neighboring properties are located.<sup>4</sup>

---

<sup>2</sup> [Minnesota Statutes, section 344.02](#) defines a “legal and sufficient” fence. “The following are legal and sufficient fences:

- (a) fences consisting of at least 32-inch woven wire and two barbed wires firmly fastened to well-set posts not more than one rod apart, the first barbed wire being above and not more than four inches from the woven wire and the second barbed wire being above and not more than eight inches from the first wire;
- (b) fences consisting of at least 40-inch woven wire and one barbed wire firmly fastened to well-set posts not more than one rod apart, the barbed wire being above and not more than four inches from the woven wire;
- (c) fences consisting of woven wire at least 48 inches in height, and one barbed wire not more than four inches above the woven wire firmly fastened to well-set posts not more than one rod apart;
- (d) fences consisting of at least four barbed wires with at least 40 barbs to the rod, the wires firmly fastened to posts not more than one rod apart, the top wire not more than 48 inches high and the bottom wire 12 to 16 inches from the ground; and
- (e) fences consisting of rails, timbers, wires, boards, stone walls, or any combination of those materials, or streams, lakes, ditches, or hedges, which are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.”

<sup>3</sup> [Minn. Stat. § 344.03](#) (1998)

<sup>4</sup> [Minn. Stat. § 344.01](#) (1998)

<b>Type of Governmental Unit</b>	<b>Designated Fence Viewer</b>
Town (township)	One or more of the town supervisors
Home rule charter city	The city council member for the ward
City with commission form of government	The commissioner of public works
Statutory city	One or more members of the city council
Unorganized townships	One or more commissioners of the relevant county

An owner or occupant may submit a complaint to the fence viewers when he or she believes a neighbor has failed to build, repair, or maintain a partition fence in equal shares as required by Minnesota fence law. When neighboring landowners cannot reach agreement, the fence viewers will investigate and assign to each owner the portion of a fence to be constructed and maintained. Fence viewers may likewise determine the “sufficiency” of a partition fence and whether a new fence should be built or an existing fence rebuilt or repaired. Also, if adjoining landowners disagree as to the kind of fence to be built, the fence viewers must make that decision and order the fence built.

Fence viewers may also be called on to appraise the value of an existing fence and determine the cost of fence construction or repair. They must establish the value of an existing fence when an adjoining landowner makes use of the fence to enclose his or her land. They also have a duty to determine whether the land of one or both of the adjoining owners is in whole or in part “improved” relative to the burden of building a cost-shared partition fence between the properties.

Fence viewers do not determine exactly where on or near a property line a partition fence should be located. Further, fence viewers do not have authority under fence law to fix disputed boundary lines between properties involved in a fence viewing proceeding.

The duties of fence viewers are judicial in nature and notice to the parties is necessary to give the fence viewers jurisdiction in the proceedings. Failure of the fence viewers to give required notice to the parties voids the proceedings. The decision of fence viewers on questions within their jurisdiction, in the absence of fraud or mistake, is conclusive unless set aside on appeal.

Fence viewers are compensated \$15 for each day of service. The person employing the fence viewers deposits \$60 with the local government unit represented by the fence viewers. The deposited amount is used to compensate the fence viewers. Any remainder of the deposit is returned to the person upon completion of the service. A fence viewer who unreasonably fails to perform a duty required by the fence law must forfeit a penalty of \$5 to the town or city and is liable to the injured party for all resulting damages.

## **Damages: Failure to comply with fence viewer order**

If a person fails to build, repair, or rebuild a partition fence as required by an order of the fence viewer(s), and the adjoining property owner proceeds with the work, the person actually doing the building or repair work may recover from the adjoining landowner double the amount of the expenses or costs that would have been the adjoining landowner's share of the fence. The fence viewer(s) reach a determination on the cost or value of the fence. In essence, the noncompliant landowner is required to pay for the full cost of the fence.

## **Exemptions: Situations where [chapter 344](#) does not apply**

Under certain circumstances Minnesota fence law does not apply:

- **Voluntary agreements.** If neighboring landowners agree orally or in writing to construct and maintain a partition fence between their properties, that agreement controls; regardless of its terms. An oral agreement between neighbors does not bind subsequent owners who have not recognized and acted upon it. If the agreement is in writing and filed with the county recorder, however, it “runs with the land” and binds later owners and residents of the properties with respect to management and cost-sharing of the partition fence.
- **Town law option.** Towns (townships) may adopt their own fence law. These town fence laws may differ slightly or substantially from Minnesota fence law. The procedure is for eight or more freeholders of a town to petition the town board for development of an alternative partition fence policy. The town board may then draft a partition fence ordinance and present it for adoption by the voters of the town. If the town voters approve the proposed local policy, the provisions of the new ordinance constitute fence law within the town and [chapter 344](#) does not apply in that town.<sup>5</sup>
- **Partial waiver by a town.** A town board may, by ordinance, waive the application of Minnesota fence law in cases where the two neighbors have a combined total of less than 20 acres of neighboring land.
- **Special law for St. Louis County.** St. Louis County has a special statutory provision that modifies the cost-sharing requirements and the determination of need or benefit under the fence law.

## **Constitutionality: Fence law challenged**

At least one district court in Minnesota has held the Minnesota partition fence law unconstitutional as a violation of due process. As an unpublished trial court decision, this case has little precedential value.

---

<sup>5</sup> The legislature granted this authority in 1982, but to date no town has exercised this option.

Courts in other states have split on the issue of whether laws similar to Minnesota fence law are unconstitutional. An intermediate appellate court in New York has held a New York law similar to Minnesota's to be an unconstitutional taking of property. By contrast, the Iowa Supreme Court has upheld the constitutionality of the nearly identical Iowa law. These cases are discussed in more detail in [Appendix A](#).

## **Legislative Proposals: Changing core provisions of Minnesota fence law**

Legislation was introduced in the 1992 legislative session that would have instituted flexible apportionment of the cost of a partition fence between adjoining landowners. The bill, House File 2115, proposed to exempt a landowner who had no need for a fence from paying any of the costs for the construction or maintenance of a fence. It provided that if a controversy arose about the need for a fence, either property owner could apply to the fence viewers. The fence viewers would then determine the relative need for a fence. If the fence viewers determined that one party had no need for the fence, that landowner would not be obligated to pay any of the cost for the fence. The bill provided further that if the fence viewers decided that an assignment of shares in the fence was appropriate, the shares must be assigned in accordance with the relative need and benefit of each party. The assigned shares would not need to be equal.

The proposed legislation also made it clear that a decision by the fence viewers could be appealed to district court.

H. F. 2115 passed the House but was amended in the Senate to be a special law applicable only within St. Louis County. The special legislation became Laws 1992, Chapter 519, and is now codified in Minnesota Statutes as [section 383C.809](#).<sup>6</sup>

In 1994, the legislature amended [section 344.03](#), subdivision 1, to clarify that it also applies to the Minnesota Department of Natural Resources when the department owns land adjoining private land and the owner of the private land wants the land permanently fenced for the purpose of restraining livestock.

---

<sup>6</sup> **383C.809 ST. LOUIS COUNTY; PARTITION FENCE CONTROVERSIES.** Notwithstanding [chapter 344](#), when an owner or occupant of land in St. Louis county applies to the fence viewers for settlement of a partition fence controversy under [chapter 344](#), the fence viewers shall not require an owner or occupant who can establish to the fence viewers that the establishing owner or occupant has no need for a fence to pay any share of the cost of construction or maintenance of the fence. If an owner or occupant is exempt from payment of any of the costs of a partition fence because the owner or occupant does not need the fence, but that owner's or occupant's circumstances change to include the need for a partition fence within seven years of completion of the partition fence, either owner or occupant may request the fence viewers to perform a reevaluation and reassignment of shares of the cost of construction and maintenance in accordance with [section 344.06](#). If the landowners or occupants disagree about the need for a fence, it is a controversy under that section. A decision by the fence viewers of a controversy relating to a partition fence may include an assignment of shares of the cost of construction, repair, or maintenance of a partition fence in accordance with the need and benefit of each party. Except as provided in this section, all other controversies relating to partition fences shall conform to [chapter 344](#).

## Appendix A

### Court Cases and Fence Law

In spite of the fact that Minnesota fence law dates from territorial days, relatively few court cases regarding the law have reached the appellate level. Of these, no case at the appellate level directly challenged the constitutionality of the act. However, one case in a Minnesota district court did question the act's constitutionality.

#### Constitutional Challenge in the Ninth Judicial District

The case of *Emil J. Radaich v. Blandin Paper Company* was decided in the Ninth Judicial District Court in September 1982. The case presented a direct constitutional challenge to Minnesota Statutes, chapter 344.

The case involved the assignment and recovery of costs and expenses incurred by the plaintiff (Emil J. Radaich) for the construction of a partition fence between his land and the adjoining land of the defendant (Blandin Paper Company). Radaich's chief need for the fence was to prevent his cattle, which pastured on his land, from straying onto Blandin Paper's land. Blandin was growing trees on its adjoining land for use in the manufacture of paper products. Radaich wanted Blandin to pay one-half of the costs for erecting the partition fence under [Minnesota Statutes, chapter 344](#).

As provided in [chapter 344](#), Radaich requested two town supervisors acting as fence viewers to view the proposed fence line. The fence viewers, under [sections 344.01, 344.04, and 344.06](#), assigned the duty to build and maintain a partition fence between the Radaich and Blandin lands in equal shares. Representatives of Blandin made it clear that Blandin believed it would receive no benefit from the fence and would not participate.

Radaich then completed the erection of the entire fence between the two adjoining properties. After completing the fence he asked for another viewing of the fence by the viewers under [section 344.05](#). A final viewing took place and the fence viewers determined the sufficiency of the fence and the total reasonable cost sustained by Radaich in erecting the fence.<sup>7</sup> Blandin was notified but did not comply with the fence viewers' order. Radaich then commenced legal action to recover his expenses.

Radaich argued that Blandin had an obligation to build and maintain the fence in equal shares with him as determined by the fence viewers and that he should be reimbursed the expenses associated with building the fence. The attorney for Blandin argued that the company did not want or need the fence and received no benefit from it, thus for Blandin to be made responsible for one-half of the cost would be to deprive the Blandin of its property in violation of the [14th Amendment](#) of the U. S. Constitution.

---

<sup>7</sup> Because of certain circumstances the viewers assigned only one-half of the total costs to Blandin, rather than the entire costs as is permitted.

Although several issues were involved in the case, the central issue was the constitutionality of the act itself. [Section 344.03](#) and its predecessor are crucial to that question in this case.

Before 1915 what is now section 344.03 read:

The respective owners or occupants of land inclosed [sic] by fences shall keep up and maintain partition fences between their own and the next adjoining inclosures [sic] in equal shares.

Laws 1915, chapter 173, changed the language of section 344.03 to read:

The adjoining owners or occupants of lands of this state when the land of one or both of such owners is in whole or in part improved and used, and one or both of such owners desires his or their land to be in whole or in part fenced, shall build and maintain the partition fence between their lands in equal shares.

Finally, Laws 1985, chapter 265, article 6, section 1, a revisor's bill, changed the language in a non-substantive way to read:

If all or part of adjoining Minnesota land is improved and used, and one or both of the owners of the land desires the land to be partly or totally fenced, the land owners or occupants shall build and maintain a partition fence between their lands in equal shares.

These changes, other than the 1985 law, are significant. Before 1915 the language related to owners or occupants of land *enclosed by fences* (emphasis added). Pasturage of cattle was sufficient to constitute improvement of land and thereby trigger the fence law. In the pre-1915 language, both parties are assumed to benefit from a partition fence. When the lands were enclosed, the landowners mutually enjoyed the use and benefit of the fence and therefore incurred the right and obligation to maintain it.

However, the current language relates to adjoining land that is improved and used, but is not enclosed. The criteria to effect application of the fence law is if the land of adjoining owners is improved and used and one or both of the owners wants the land to be fenced. [Section 344.03](#), the critical section of [chapter 344](#), does not contain expression of need or benefit.<sup>8</sup>

The district judge in the *Radaich* case ruled in favor of Blandin and declared that the whole of the fence law was “unworkably in violation of the [14th Amendment](#) Due Process Clause, and totally unconstitutional.” Blandin neither needed nor received any benefit from the erection of the partition fence and hence to compel Blandin to contribute to the construction, maintenance,

---

<sup>8</sup> The Minnesota Supreme Court in a case decided in 1975—the case was not a constitutional challenge to the fence law—invited the legislature's attention to potential inequities in [section 344.01](#). See *Brom v. Kalmes*, 304 Minn. 244, 230 N.W.2d 69, (1975) n. 5. It should be noted also that the court alluded to the prospect that section 344.03 is a condition precedent to application of other provisions of [chapter 344](#), but because the question was not directly before the court, it offered no opinion.

and repair of the fence deprived Blandin of its property without due process of law.<sup>9</sup> The judge refused to declare the law unconstitutional in this case because the defendant, Blandin, did not begin an action placing the constitutionality of the fence law in issue before the plaintiff completed the partition fence. Blandin stood by while Radaich assumed the expense of building his own, and the portion of the fence assigned to Blandin.

*Radaich v. Blandin Paper Company* was a trial court case. Apparently the district court decision was not appealed, or at least the case was never heard by a higher court. Therefore, the ruling is not binding in statewide application.

Unlike decisions of appellate courts which are regularly reported (e.g., *Minnesota Reports* and *North Western Reporter*), decisions of district courts are not included in any series of law reports in daily use and, in the absence of such reports, the doctrine of precedent is likely to be ineffective. At the district court level, district court judges are not bound by a decision of other district court judges within or without the particular district, except in class action cases. Another judge could find the fence law constitutional if the judge faced the question of the law's constitutionality with the same or similar conditions found in the *Radaich* case. Also, the *Radaich* case applies only to the particular case for which the decision was rendered. However, some concluding remarks of the presiding judge in the case may be instructive.

... [D]efendant and others similarly situated may rest assured that they will not be faced with the provisions of [chapter 344](#), Minnesota Statutes in the future, unless my decision is reversed, or the statute is redrawn in a manner which will pass constitutional muster.

A recent decision of the Iowa Supreme Court that challenged the constitutionality of Iowa's fence law, which is similar to that of New York at the time of the New York decision referenced in footnote 9, reached a different conclusion from the New York courts.

---

<sup>9</sup> The judge cited favorably the decision in a New York case, which involved a situation similar to the *Radaich* case, that challenged the constitutionality of that state's town fence law. One party to the suit owned a dairy farm of about 200 acres on which he kept and grazed dairy cows. The other party owned and resided on about 158 acres of land without livestock and with only about ten acres under cultivation. The owners shared a common boundary. Fence viewers issued a directive that the owner without livestock must repair one half of an existing partition fence between the properties. The property owner refused to repair the fence and brought action challenging the constitutionality of the fence law.

The court said that the fence law, if applied to the properties in question, would deprive the landowners without livestock of their property, since they would be compelled to erect and maintain at their own expense fences which they neither needed nor wanted. The court went on to declare that even if a statute providing that each owner of two adjoining tracts of land must erect and maintain a just and equal portion of a division fence between such lands that benefitted the general public, such provision requiring an adjoining owner, who did not keep livestock to share the cost of a fence for the benefit of a neighbor who did keep livestock, was not necessary to any legitimate public purpose and was oppressive and unconstitutional. (*Sweeny v. Murphy*, 39 A.D 306, 344 N.Y.S. 2d 239 (1972) affirmed without opinion, 31 N.Y. 2d 1042, 342 N.Y.S. 2d 70, 294 N.E. 2d 855 (1973). Subsequent to the ruling of the New York courts, the New York Legislature statutorily modified the fence law to accommodate the decision by exempting an owner of an adjacent tract of land who did not keep animals on it from obligation or liability for erecting, maintaining, or repairing a division fence under the fence law.

The operative section of the Iowa Code on fence law states:

**359A.1 Partition fences.**

The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.

The case involved owners of adjacent tracts of land and the construction and maintenance of a partition fence under the Iowa statute. One of the landowners leased a portion of his land for growing crops while the adjacent owner raised and pastured miniature horses on his tract of land. The owner with cultivated land challenged the validity of the statute when the fence viewers entered an order requiring him to maintain a portion of a fence between the properties as provided by law. The Iowa courts found the fence law to be constitutional on its face and a valid exercise of the state's police power. It declared that the statute was not unconstitutional as applied to landowners who did not own animals but were required to pay part of the maintenance on fences adjoining land on which horses were raised; that the statute applied equally to all adjoining landowners without regard to use of the land; and the statute was not unduly oppressive. (*William and Terri Gravert v. Max and Ruth Nebergall*, 359N.W. 2d 184 (Iowa 1995)).

## **Appendix B**

### **Minnesota Fence Law; a brief section-by-section description**

#### **Section 344.01. Fence Viewers.**

Designates as fence viewers town supervisors in towns and city council members in cities. (Section 344.19 designates county commissioners as fence viewers in counties not organized into towns.)

#### **Section 344.011. Exemption.**

Authorizes a town board to exempt adjoining owners from the partition fence law when their land taken together is less than 20 acres.

#### **Section 344.02. Kinds of Partition Fences.**

Defines a “legal and sufficient” fence. It also authorizes the fence viewers to determine the kind of fence to be built if the adjoining property owners or occupants disagree on the matter.

#### **Section 344.03. Expense; Equal Shares.**

Requires adjoining landowners or occupants to build and maintain a partition fence between their lands in equal shares when of one or both of the owners of the land wishes the land to be fenced and all or part of the adjoining land is improved and used.

#### **Section 344.04. Failure to Build or Repair; Rights of Complainant.**

Establishes a procedure for complaint and adjustment when one of the property owners or occupants who is required to build or maintain a fence fails to do so. If the delinquent party fails to comply with an order by the fence viewers, the complainant may build, rebuild, or repair the fence and be reimbursed for it.

#### **Section 344.05. Repair Costs Recoverable.**

Allows the party who built, rebuilt, or repaired the fence to recover from the delinquent owner or occupant double the amount of the cost of the fence or repair as ascertained by the fence viewers (i.e., the total cost of the fence or double the cost of replacing or repairing one-half of a partition fence), together with the viewer’s fees. If the amount is not paid within one month, recovery may be made by a civil action.

#### **Section 344.06. Controversy; Decision by Fence Viewers.**

When a controversy arises between neighbors concerning a partition fence, either party may apply to the fence viewers, who, after notice to the parties, may assign to each party a share in the fence and stipulate the time within which the fence must be erected or repaired. The assignment may be filed for record with the county recorder after which it is binding on the parties and on all succeeding owners or occupants of the properties.

**Section 344.07. Failure to Erect or Maintain.**

If a party does not erect or maintain the part of a partition fence assigned them, the other party may erect and maintain the fence, and is entitled to double the cost of the construction and maintenance.

**Section 344.08. Recorded Division; Binding on Heirs and Assigns.**

Makes all divisions of fences made by the fence viewers or made by owners of neighboring properties, in writing, and filed with the county recorder, valid against the neighbors and to their heirs and assigns.

**Section 344.09. Party Erecting More than Share.**

Provides that if there is a controversy between neighbors relating to their respective rights in a partition fence, and the fence viewers decide that one of the occupants has voluntarily erected more than that occupant's share of a fence before a complaint was made, the other occupant must pay for the share of the fence assigned to the other. The value of the fence is to be determined by the fence viewers.

**Section 344.10. Lands Bounded by a Stream or Pond.**

When neighboring properties are separated by a stream or other body of water where a fence can not reasonably be constructed, the fence viewers must determine on which side of the stream or pond the fence should be built.

**Section 344.11. Lands Occupied in Common.**

When properties have been occupied in common without a partition fence and one of the occupants desires that the property be divided and fenced, the fence viewers are responsible to order that the divided land be fenced and the costs of the fence shared equally.

**Section 344.12. Viewers to Fix Time for Building.**

If fence viewers have divided and assigned fence responsibilities on land previously occupied in common, they may set a time for building the fence. If either party does not build the assigned part of the fence within the assigned time, the other party may build both parts of the fence and recover viewers' fees and double the cost of building the part not assigned to him or her.

**Section 344.13. Lands First Enclosed.**

When unenclosed lands are enclosed (fenced), the owner or occupant of each property must pay one-half of the value of the partition fence separating the person's land from that of each neighboring owner or occupant. If the parties do not agree, the value is determined by the fence viewers. If the owner or occupant does not pay within 60 days after the value is determined and demanded, the owner of the fence may recover the value and cost of determining it in a civil action.

**Section 344.14. Viewers When Fence on Town Line.**

When a partition fence is to be built on a line between towns, or partly in one town and partly in another, one supervisor from each town serve as the fence viewers.

**Section 344.16. Division or Recorded Agreement Runs with the Land.**

If a partition fence is built between unimproved lands, and the fence viewers have determined the portion of the fence for which each land owner is responsible, or if a voluntary agreement by the parties has been recorded, that agreement or division is forever binding on the property owners and their heirs or assigns.

**Section 344.17. Failure of Viewer to Perform Duty; Penalty.**

A fence viewer who fails to perform a duty is required to forfeit \$5 to the town or city and be liable for all resulting damages.

**Section 344.18. Compensation of Viewers.**

Requires fence viewers to be paid \$15 a day by the person employing them. A \$60 deposit is required before services are performed.

**Section 344.19. Viewers in Counties not Organized into Towns.**

Designates county commissioners as fence viewers in counties not organized into towns, but county commissioners may be paid a per diem pursuant to section 375.055, subdivision 1 (county commissioner compensation), and mileage in accordance with section 471.665.

**Section 344.20. Town Option.**

A town board is granted the option of designing and adopting its own partition fence law, including enforcement procedures, upon a petition of eight or more freeholders of the town. The policy must be approved by the town electors at the annual or a special town meeting. If the electors vote in favor of adopting the proposed policy, the provisions of chapter 344 no longer apply in that town.

## Appendix C

### Decisions and Opinions Relating to Minnesota Partition Fence Law

#### Appellate Court Decisions:

*Boening v. Hornburg*, 1877, 24 Minn. 307  
*Oxborough v. Boesser*, 1882, 30 Minn. 1, 13 N.W. 906  
*McClay v. Clark*, 1890, 42 Minn. 363, 44 N.W. 255  
*Davis v. Board of County Commissioner of St. Louis County*, 1896, 65 Minn. 310, 67 N.W. 971  
*Youngman v. Ahrens*, 1908, 104 Minn. 531, 116 N.W. 1135  
*Tuebert v. Sons*, 1911, 116 Minn. 195, 133 N.W. 467  
*James v. Williams*, 1925, 165 Minn. 415, 206 N.W. 654  
*Brom v. Kalmes*, 1975, 304 Minn. 244, 230 N.W.2d 69  
*Miles v. Althoff*, 1985, 373 N.W.2d 655 (Minn. App. 1985)  
*Rice v. Kringler*, 1994, 517 N.W.2d 607 (Minn. App. 1994)

#### Appellate Court Decisions Relating to Particular Sections:

##### Section

344.02	<i>Boening v. Hornburg</i> , 1877, 24 Minn. 307 <i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906
344.03	<i>Brom v. Kalmes</i> , 1975, 304 Minn. 244, 230 N.W.2d 69
344.04	<i>McClay v. Clark</i> , 1890, 42 Minn. 363, 44 N.W. 255 <i>Davis v. Board of County Commissioner of St. Louis County</i> , 1896, 65 Minn. 310, 67 N.W. 1135 <i>Miles v. Althoff</i> , 1985, 373 N.W.2d 655 (Minn. App. 1985) <i>Rice v. Kringler</i> , 1994, 517 N.W.2d 607 (Minn. App. 1994)
344.05	<i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906
344.06	<i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906 <i>McClay v. Clark</i> , 1890, 42 Minn. 363, 44 N.W. 255 <i>James v. Williams</i> , 1925, 165 Minn. 415, 206 N.W. 654
344.07	<i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906
344.08	<i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906 <i>Tuebert v. Sons</i> , 1911, 116 Minn. 195, 133 N.W. 467
344.13	<i>Boening v. Hornburg</i> , 1877, 24 Minn. 307 <i>Brom v. Kalmes</i> , 1975, 304 Minn. 244, 230 N.W.2d 69

## **Attorney General Opinions Relating to Partition Fence Law**

### Section

344.02	631-L, April 8, 1953, 631-H, June 22, 1948, 631-A, June 22, 1956
344.03	631-H, August 28, 1952, 631-N, September 20, 1949, 631-H, June 2, 1964
344.04	631-H, April 5, 1950, 631-N, September 20, 1949
344.05	631-H, April 23, 1956
344.06	631-H, April 5, 1950
344.08	631-H, June 2, 1964
344.18	631-H, April 23, 1956

## UNDERSTANDING AND ADMINISTERING THE MINNESOTA FENCE LAW

---

**ATTENTION:** This information is intended to serve only as a basic explanation and guide to the fence law. As with all materials of this type provided by the Minnesota Association of Townships, this memo does not cover every scenario a township may encounter. Furthermore, this information is subject to change as the law is interpreted by the courts, the Attorney General's Office, or amended by the legislature. Be sure to seek appropriate legal assistance when applying these laws to a specific set of facts.

---

The Minnesota fence law is, to say the least, an interesting piece of legislation that actually predates the formation of Minnesota as a state. In its long history, the fence law has seen remarkably few changes. To some, this consistency is comforting given the rapid changes seen in other areas of the law. On the other hand, there are some who view the fence law as archaic and outdated.

A number of bills have been introduced over the years to modify the law by exempting those owners who have no need of a partition fence from sharing in the obligation to build and maintain such fences. Except for the creation of special law in St. Louis County, these attempts have been unsuccessful. Therefore, except for St. Louis County and those towns that have adopted their own fence law, the obligation of adjoining owners to share equally in the building and maintenance of partition fences remains. Viewers in St. Louis County and towns with their own locally adopted fence law will need to pay special attention to the amended law that applies in their area.

Court challenges have also been brought arguing the fence law is not constitutional because it requires someone to pay half of the costs of a fence they may not need. Except for some individual successes at the district court level (which are not binding in other cases), the appellate courts of this state have upheld the constitutionality of the law. In the most recent published case on this issue, the Minnesota Court of Appeals in Petition of Bailey, 626 N.W.2d 190 (Minn. App. 2001) reaffirmed the constitutionality of the law. "We believe it is clear that the partition fence law serves the broad purposes of mediating boundary, fence, and trespass disputes by requiring adjoining landowners to share the cost of a partition fence." Id. at 195. The court adopted a position of presuming the adjacent property owner is benefited unless they can present evidence to the contrary. Id. at 196. Benefits derived by an owner without livestock include "freedom from intrusion by neighboring livestock and increased privacy." Id.

Town supervisors play a much more significant role in viewing fences than other local government officials. Because of the statutory duties associated with viewing fences and the liability that could result from failing to properly undertake those duties, town supervisors must take care to follow the proper procedures. As with many statutorily prescribed procedures, if any step along the way is missed or done improperly, the entire process could be jeopardized.

Additionally, the fence law must be distinguished from local zoning ordinances that may regulate fences. The Minnesota fence law is codified in state law and automatically applies to

partition fence disputes brought under it. On the other hand, local ordinances are developed by the local governing body to address issues within their own community. It is not uncommon for cities of some size to adopt ordinances regulating the placement, heights, and materials used for fencing in their community. While the fence law does apply throughout the state, few cities are even aware of it. Instead, they turn to their own ordinances if they are confronted with a fence dispute. In cities, focusing on local fence ordinances rather than the fence law makes practical sense since most city residents would not want a barbed wire fence built between them and their neighbor. Few town boards have adopted fence ordinances and instead turn toward the operation of the fence law. However, before undertaking a fence viewing, boards should contact the county zoning office to learn if the county has adopted any fencing ordinances. In lakes areas, it is not uncommon for the county to impose setbacks for structures such as fences from shorelands. To the extent possible, the boards need to be aware of these ordinances so they do not direct the owners to do something that violates the county ordinance. If there is an irreconcilable conflict between the fence law and a county ordinance, the board should make the appropriate order under the fence law and notify the county of the conflict.

The following materials are divided into an outline exploring basic elements of the fence law, checklists discussing the procedures involved in resolving the two most common types of fence disputes, and an appendix of forms and special procedures. Use these materials in conjunction with the statutory provisions contained in Minn. Stat. Chap. 344.

## **I. OBLIGATION OF ADJOINING OWNERS**

A. **Equal Shares:** When one or both of adjoining land owners desires the land to be partly or totally fenced and all or part of the land of at least one of the owners is improved and used, both owners are responsible for erecting and maintaining a partition fence between their lands in equal shares. Minn. Stat. § 344.03; Rice v. Kringler, 517 N.W.2d 606, 608 (Minn. App. 1994).

1. “OWNER”: As used in this paper, owner refers to either the actual owner or the occupant of the land. The fence law indicates the obligation goes to the “owner or occupant.”

a. Be sure to identify, as soon as possible, whether the person on the land is the owner or merely the occupant. The county auditor should be able to assist in determining the owner of record.

b. If an occupant is present, the notice by the viewers concerning the initial fence viewing should be sent to both the occupant and the owner. Failure to identify and include the proper party at the beginning of the fence proceedings could invalidate those proceedings.

2. “IMPROVED AND USED”: In order for this statute to apply, all or part of the land of at least one of the owners must be improved and used. No explanation is provided on what constitutes a sufficient improvement and use. However, the Minnesota Supreme Court has held that pasturing cattle is a sufficient improvement and use under the statute. Brom v. Kalmes, 230

N.W.2d 69 (Minn. 1975). In an unpublished decision, the Minnesota Court of Appeals held that the fence viewers do not need to develop specific factual findings on “need.” Kiecker v. Wellington Township Board, 1997 WL 769496 (Minn App. 1997).

3. **ST. LOUIS COUNTY:** In 1992 special legislation was passed for St. Louis County which exempted certain owners who do not need partition fences from the requirements of the fence law. This special law went into effect the day after the county board approved it on December 22, 1992 (Resolution #1030). Minn. Stat. § 383C.809. See Appendix I for details of the special law.
4. **DEPARTMENT OF NATURAL RESOURCES:** The DNR is now subject to the requirements of the fence law, and is therefore required to share costs when an adjoining owner desires the land permanently fence for the purpose of restraining livestock. Minn. Stat. § 344.03.
5. **LOCAL UNITS OF GOVERNMENT:** Lands owned or managed by a local unit of government (LUG) are not expressly included in the obligations of the fence law. Application of the fence law to LUG’s remains uncertain.

a. The Attorney General’s Office has approached this issue by focusing on the type of maintenance and control the LUG exercises over the land. Op.Atty.Gen., 631-h, May 20, 1947. If the maintenance and control of the land by the LUG constitutes a “government function,” the obligations of the fence law do not apply to the LUG. However, if the LUG’s exercise and control of the land constitutes a “proprietary function,” the fence law does apply.

This leaves the viewers with a rule that is easy to state but difficult to apply. In the opinion that provided the rule, the AG stated that a city was not obligated to fence the boundary of a city-operated cemetery since the maintenance and control of the cemetery by the city constituted a governmental function. A later opinion referred to the same rule, but did not discuss whether ownership of an old railroad right-of-way by a village constituted a governmental or proprietary function. Op.Atty.Gen., 631h, June 2, 1964.

6. **LIMITED SCOPE:** The obligations under the fence law only apply to fences built on the boundary lines between properties. Therefore, this law does not, for instance, require an owner to build a fence along a public road that is located on the boundary line when the owner on the other side of the road desires the land fenced. See Op.Atty.Gen. 631-A, June 22, 1956.

- B. Optional Exemption:** Town boards may pass a resolution exempting adjoining properties from the obligations of the fence law when those lands, when taken

together, contain less than 20 acres. Minn. Stat. § 344.011. This exemption is particularly important around lakes and residential areas of a town.

- C. **Town Option:** The fence statutes provide an option for towns to adopt its own fence law policy. Under Minn. Stat. § 344.20, eight or more landowners in a town may petition the town board for a vote on a partition fence policy. Upon such a petition, the board may draft its own policies and procedures, including enforcement procedures, for dealing with partition fences. Any such policy must be approved by a vote of the electors at an annual or special town meeting. If authorized and adopted, the local policy controls over the statutory fence law. However, the fence law still applies to fence disputes on the line between towns.

Town boards must be extremely careful in choosing to exercise this option. Whatever the board adopts will become the law for the town. As law, if it is not sufficiently clear or applied in a fair and consistent manner, it could cause more problems than would have otherwise been experienced under the statutory fence law.

## II. POSSIBLE DISPUTES

- A. Fence viewers do not become involved in a partition fence unless there is a dispute. The law presumes landowners understand their fencing obligation under the law and will work out the details of cooperatively building and maintaining a line fence. It is only when they fail to agree that they can then petition the fence viewers to settle the dispute. If the board is properly called upon to act as fence viewers, it is very important to understand the procedural requirements of the law and the limits of the board's authority over the dispute. The activities of fence viewers are judicial in nature and must strictly accord to the applicable statutes. As is explained elsewhere, a failure to follow proper procedure or to remain within the scope of the viewer's authority could result in significant consequences.
- B. The fence law recognizes a variety of possible disputes in which the fence viewers may become involved. In each case, an aggrieved owner requesting a fence viewing and depositing a required security with the town treasurer is what triggers the duties of the fence viewers. When a request is made, the town official should attempt to solicit as much factual information about the dispute as possible in order to help identify the type of disputes involved. The following are the partition fence disputes identified in Chapter 344:
1. Failure to build, rebuild, or maintain a partition fence. Minn. Stat. § 344.04. Refer to **Checklist One**. In St. Louis County refer to **Appendix I**.
  2. Dispute over shares in the fence (i.e., who is responsible for which portion of the fence). Minn. Stat. § 344.06. Refer to **Checklist Two**.
  3. Disagreement over the kind of fence to be built. Minn. Stat. § 344.02, subd. 2 & 3. Refer to **Checklist Three**.

- a. When one of the lands is enclosed by a woven wire fence on all sides except the side forming a division line between the lands, refer to Minn. Stat. § 344.02, subd. 3.
  4. Disagreements occurring when an enclosed piece of land held in common is later divided into separate parcels and one of the owners desires a fence built on the new partition line. Minn. Stat. §§ 344.11-12.
    - a. As is explained below, fence viewers have no authority to determine boundary lines or otherwise divide land. Therefore, do not attempt to exercise the provision in Minn. Stat. § 344.11 discussing the viewers dividing the land.
  5. A unpaid claim for reimbursement arising from the viewers' determination, as part of dividing responsibility in a fence, that one of the owners had voluntarily erected or otherwise become the proprietor of more than the owner's just share of the fence before a complaint about shares in the fence was made. Minn. Stat. § 344.09.
  6. Request for payment of one-half of an existing fence when the adjacent owner, whose land was not previously fenced and who did not assist in the building of the existing fence, later fences the owner's land and takes advantage of the existing fence. In other words, an owner has started using a fence but did not help build it so the adjacent owner is seeking reimbursement for that use. Minn. Stat. § 344.13; Brom, 230 N.W.2d 69; Boenig v. Hornberg, 24 Minn. 307 (1877).
  7. Failure to agree on which side of a stream or pond the partition fence is to be built. Minn. Stat. § 344.10; See Appendix J.
- C. **Boundary Disputes:** Fence disputes frequently involve disagreement over the location of the boundary line. Viewers must always keep in mind that they have no authority to set or determine boundary lines. See e.g., Jones v. Williams, 206 N.W. 654 (Minn. 1925). In most cases, if the viewers learn that the boundary line is in dispute, they should inform the owners, in writing, that they cannot continue with the fence proceedings until the owners resolve the boundary line dispute. Once the line is sufficiently established, one of the owners can renew the request for the viewers to conduct the initial viewing.

### III. FENCE VIEWERS

- A. **Defined:** Town supervisors, with respect to townships, are the fence viewers. Minn. Stat. § 344.01. If the fence is on the line between two towns, one supervisor from each town will be the fence viewers. Minn. Stat. § 344.14. In unorganized territories, the county commissioners are the fence viewers. Minn. Stat. § 344.19.

- B. **Duties:** The duties of fence viewers are not discretionary. If an owner properly requests the viewers to view a fence they must do so within a reasonable time. Op. Atty. Gen., 631-N, Sept. 20, 1949. Once the process is initiated, the viewers are obligated to make the necessary determinations and take the steps warranted by those determinations within a reasonable time.
- C. **Authority:** Fence viewers have only the authority granted them by statute. Therefore, the viewers may only become involved with and decide those issues specifically given them by the statutes.
  - 1. Viewers must not attempt to set boundary lines, become involved in the actual building of the fence, or make any efforts to collect money on behalf of an owner beyond those specifically stated in the statutes.
  - 2. If one of the supervisors has a direct or indirect personal interest in a fence, that person must not participate as a fence viewer to resolve a dispute regarding the fence.
- D. **Payment:** Fence viewers must be paid for their services by the person employing them. The town board may by resolution require the person employing the fence viewers to post a bond or other security acceptable to the board for the total estimated costs before the viewing takes place. The total estimated costs may include the cost of professional and other services, hearing costs, administrative costs, recording costs, and other costs and expenses which the town may incur in connection with the viewing.
- E. **Liability:** A fence viewer who unreasonably fails to perform a duty required under the fence law must forfeit \$5 to the town and is liable to the injured party for all resulting damages. Minn. Stat. § 344.17. Because of the potential liability, it is recommended that at least two supervisors are involved in a viewing and an accurate record of the proceedings be kept.

#### IV. KINDS OF PARTITION FENCES

- A. **Legal Fences:** The types of fences considered legal and sufficient are listed in Minn. Stat. § 344.02, subd. 1. Most of the fences listed are a combination of woven and barbed wire. However, the last provision in the statute is a catch-all which includes “fences consisting of rails, timbers, wires, boards, stone walls, or any combination of those material, or streams, lakes, ditches, or hedges, which are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.” Minn. Stat. § 344.02, subd. 1(e). Since the fences made of these other materials must be equivalent to the other fences listed, it appears they can only be considered sufficient if they are as effective as the woven and barbed wire fences.

A Minnesota Court of Appeals case had confounded the issue of what type of fence can be built under the shared obligation requirement of the fence law (i.e., what can

be considered a legal fence under the fence law). In Petition of Bailey, 626 N.W.2d 190 (Minn. App. 2001), the Minnesota Court of Appeals dealt with a dispute over a 96” fence to confine “farmed cervidae.” Cervidae are essentially deer and related animals such as moose, elk, and caribou. Bailey brought two petitions at different times. The first petition asked the neighbor to contribute the cost to construct a five-strand barbed wire fence toward the construction of the 96” woven wire fence. Instead of contributing cash, the neighbor offered to construct a five wire fence. However, the viewers denied the offer and ordered the contribution of the cost of the materials and labor toward the fence.

While the first petition was being considered, Bailey submitted a second petition asking for contribution on another line for the full 96” fence. The neighbor again offered to construct the fence on his own to save labor costs. This time the viewers agreed and ordered the neighbor to construct his portion of the 96” fence.

The neighbor challenged the order on a number of grounds, including that the viewers had exceeded their statutory authority by ordering a type of fence that is not listed in the statute as a legal fence. Even though a 96” fence designed to keep in elk or caribou is clearly beyond the types of fences listed in the fence law, the court upheld the authority of the viewers in Minn. Stat. § 344.02, subd. 2 to decide the kind of fence to be constructed. The court also pointed out that the farmed cervidae statute specifically requires a confinement fence of at least 96”. Minn. Stat. § 17.452, subd. 10(a)(3).

Even though the court has acknowledged broad authority on the kind a fence the fence viewers can order, the imprudent use of that authority to order expensive specialty fences could lend significant support to the arguments of those wishing to amend the fence law to restrict the cost sharing requirement.

- B. **Disputes:** If the owners cannot agree as to the kind of fence to be built, the matter must be referred to the viewers. The viewers will determine the kind of fence to be built and order it built. Minn. Stat. § 344.02, subd. 2.
- C. **Consistency:** If an owner’s land is fenced on three sides by a woven wire fence, the fence built on the remaining side must be similar in character and quality to the existing fences. Minn. Stat. § 344.02, subd. 3. This essentially creates a right to expect the remaining side of the fence will match the existing fence.

## V. THE IMPORTANCE OF PROPER NOTICE

- A. **Jurisdiction:** Because the duties of fence viewers are judicial in nature, proper notice is necessary in order for the viewers to have jurisdiction over a particular fence dispute. Failure to provide proper notice to the parties will render the viewers’ proceedings **void**. McClay v. Clark, 44 N.W. 255, 256 (Minn. 1890); Miles v. Altoff, 373 N.W.2d 655, 658 (Minn. App. 1985).

1. The court of appeals upheld the notion that failure to provide proper notice will void the proceedings of the viewers. The court held to that rule even though it recognized that the viewers were attempting to resolve the dispute informally and that the party who did not received notice of the viewing later admitted that the fence was in need of repair. Rice, 517 N.W.2d at 609.

## CHECKLIST ONE

### FAILURE TO BUILD OR REPAIR

Minn. Stat. §§ 344.04 - .05

If one of the owners fails to build or repair a fence as required by the fence law, the other owner (the aggrieved owner) may complain to the fence viewers and request a viewing. The following outlines the steps involved in requesting a fence viewing and in conducting a viewing under Minn. Stat. §§ 344.04-05. If the dispute also involves the kind of fence to build, incorporate the steps outlined in **Checklist Three** into this procedure.

(1)\_\_\_ Aggrieved owner deposits the required security with the town treasurer and requests a viewing by the fence viewers. Minn. Stat. § 344.18.

(2)\_\_\_ The viewers select a date and time to view the fence and then must provide notice to the parties. Minn. Stat. § 344.04.

The notice should be sent by certified mail to each owner at least 14 days before the date set for the viewing. See Appendix A for a sample notice.

To avoid potential claims under the Open Meeting Law, notice of the viewing should also be posted at the town's regular posting places at least five days before the viewing.

(3)\_\_\_ At the designated day and time, the viewers meet and view the fence, or look into the need for a proposed fence. The viewers must determine whether an existing fence is insufficient and must be repaired or, if there is no fence, whether a new fence is necessary. Minn. Stat. § 344.04.

A written record of the proceedings should be developed and retained on file with the town.

The viewers must keep in mind that at least one of the lands involved must be at least partially improved and used. Minn. Stat. § 344.03.

The viewers are paid for their services from any security the township has deemed required. Minn. Stat. § 344.18.

If the kind of fence to be built is disputed, refer to **Checklist Three**.

(4)\_\_\_ If the viewers find that the fence does not need to be repaired, or that a fence does not need to be built, they must make specific written findings of that fact and mail them to each owner by certified mail.

If the lands involved are divided by a stream or pond refer to **Appendix J** for additional information and procedures.

(5)\_\_\_ If the viewers determine that the fence must be repaired or built, they must notify the delinquent owner of that fact in writing and order the owner to build, repair, or rebuild the fence within a specified reasonable time. The order should be sent to both owners by certified mail. Minn. Stat. § 344.04. See Appendix B for a sample order.

(6)\_\_\_ The township's fees and costs are deducted from the deposited security and any excess must be returned to the depositor. Minn. Stat. § 344.18.

(7)\_\_\_ If the delinquent owner does not comply with the viewer's order by the specified date, the aggrieved owner may build, repair, or rebuild the fence and seek reimbursement of the costs as follows. Minn. Stat. § 344.04.

Before an aggrieved owner attempts to build or repair the fence, s/he should notify the viewers of the fact that the delinquent owner did not comply with the order and that he intends to build or repair the fence. One of the supervisors may want to take a look at the fence to confirm that the order was not followed.

The aggrieved owner should be told to keep receipts and detailed records of the time and cost involved in finishing the fence. These records will assist the viewers in certifying the costs.

This automatic triggering of the aggrieved owner's right to finish the fence is why the viewers must be extremely cautious when one of the owners claims the boundary line is uncertain or incorrect. If the viewers issue an order, it sets in motion a series of events that could actually result in a suit against the aggrieved owner. For instance, if the aggrieved owner decides to finish the fence after the delinquent owner has failed to comply with the viewers' order, and the delinquent owner can establish that the fence was not built on the actual line, it could result in a trespass action against the aggrieved owner or a dismissal of the aggrieved owner's claim for double the fence costs.

On the other hand, there are times when an owner will purposely attempt to disrupt the proceedings by disputing the boundary line even though the line has been clearly established (e.g., long standing survey markers or a new survey).

(8)\_\_\_ If the aggrieved owner builds or repairs the other owner's portion of fence, the aggrieved owner deposits the required security with the town treasurer and requests a hearing by the viewers.

(9)\_\_\_ The viewers must give notice to both owners indicating that a hearing will be held on-site. Minn. Stat. § 344.05.

The notice should be sent by certified mail at least 14 days before the date of the hearing. See Appendix C for a sample notice. Notice should also be posted at least four days before the hearing.

- The purpose of the hearing is to: determine whether the fence is sufficient; allow both parties an opportunity to be heard; determine the cost of the fence or repair; and to give the aggrieved owner a signed certificate of the viewer's decision, the cost of the fence or repair, and the viewers' fees. **See Appendix D** for a sample certificate.
- It is important for the viewers to remember that this hearing and the issuance of the certificate are the only actions they take if the order is not followed. They do not attempt to enforce the order or collect damages for the aggrieved owner.

- (10)\_\_\_ The certificate of expenses developed by the viewers should be sent to both parties by certified mail.
- (11)\_\_\_ The viewers' fees are deducted from the deposited security and any excess must be returned to the depositor. Minn. Stat. § 344.18.
- (12)\_\_\_ The aggrieved owner may demand that the delinquent owner pay the viewers' fees and double the amount of the expenses indicated on the certificate for building or repairing the fence. Minn. Stat. § 344.05.
- (13)\_\_\_ If the delinquent owner does not pay the aggrieved owner the demanded amount within one month, the aggrieved owner may bring a civil action to recover the amount plus interest. Minn. Stat. § 344.05.

## **CHECKLIST TWO ASSIGNING SHARES**

### **Minn. Stat. §§ 344.06 - .08**

If a dispute arises regarding rights and obligations towards a partition fence, either party may apply to the viewers to resolve the dispute. These disputes focus primarily on who is responsible for which portion of the fence. Resolving these disputes may involve assigning shares in the fence to each owner and then ordering the fence be built or repaired. The following outlines the steps involved in handling these complaints as provided in Minn. Stat. §§ 344.06-.08.

(1)\_\_\_ When owners cannot agree as to the proper division of a fence or the obligations towards the fence, either may request the services of the viewers. Minn. Stat. § 344.06.

These disputes are not the same as disputes related to the location of a boundary line.

(2)\_\_\_ The requesting owner must file the required security with the town treasurer and request the services of the viewers. Minn. Stat. § 344.18.

(3)\_\_\_ The viewers select a day and time for the viewing and provide notice to the parties. Minn. Stat. § 344.06. See Appendix E for a sample notice.

The notice should be sent by certified mail to each owner at least 14 days before the date set for the viewing.

Notice should also be posted at the town's regular posting places at least five days before the viewing.

(4)\_\_\_ At the viewing, the viewers may assign to each owner a share in the fence and order that the fence be erected or repaired by a specific date. See Appendix F for a sample division form.

The goal of the division is to achieve a roughly equal burden among the owners with respect to cost and maintenance work. This usually involves dividing the fence in the middle and assigning each owner one end of the fence. However, an equal division of cost and work may involve something other than a 50/50 division. For instance, if one end of the fence is or would be located on rough terrain or through a swamp, the cost and maintenance burden for each end of the fence would likely be dramatically different. As such, the viewers may determine to divide the fence off center to more equalize the burdens. Keep in mind that if the fence is divided at something other than 50/50, the viewers must develop detailed findings of fact to explain and support the division.

- The often-stated rule of the owners facing each other at the center of the fence and then each taking the portion of the fence to their right is not in the law. While this rule continues to be a useful rule of thumb for dividing responsibility for a fence, the viewers should not consider themselves constrained by what is in essence a folk remedy to fence disputes.
- If the viewers find that either owner has voluntarily erected or otherwise become the proprietor of more than the owner's just share in the fence before a complaint was made, the other owner is required to pay for the share of the fence assigned to the other owner for repair and maintenance. The viewers are to determine the value of the fence and the owner can seek recovery of the costs in accordance with Minn. Stat. § 344.05. Minn. Stat. § 344.09.
- If the lands are divided by a stream or pond, refer to **Appendix J** for further information and procedures.

- (5)\_\_\_ The assignment of shares in the fence and order to build or repair the fence must be in writing and must be mailed by certified mail to each owner.
- (6)\_\_\_ The assignment of shares may be filed with the county recorders office. Once filed, it becomes binding on the parties and upon all succeeding occupants of the lands. Minn. Stat. §§ 344.06; 344.16. Recording the assignment is typically in the best interests of the aggrieved owner in order to avoid problems that could occur upon change of ownership or occupancy of the neighboring property.
- (7)\_\_\_ If an owner fails to comply with the viewers' order, the aggrieved owner may build or repair the fence and seek double the cost of the construction and maintenance. The procedures involved are the same as those outlined in (8)-(13) of the **Checklist One**.

**CHECKLIST THREE**  
**DISPUTES OVER THE KIND OF FENCE TO BE BUILT**  
**Minn. Stat. § 344.02**

Owners may disagree over the type of fence to be built on a partition line for any number of reasons. These disputes could stand alone, but more commonly are part of other disputes such as whether the fence is needed at all. If the only issue in dispute is the type of fence to be built, then follow the basic process set out in checklist one, changing the language as needed. If other issues are involved, follow the appropriate checklist, and incorporate the following steps to address the dispute concerning the type of fence.

- (1)\_\_\_ In preparation for handling the dispute, review the list of fences the legislature has listed as legal and sufficient fences:

“The following are legal and sufficient fences:

(a) fences consisting of at least 32-inch woven wire and two barbed wires firmly fastened to well-set posts not more than one rod apart, the first barbed wire being above and not more than four inches from the woven wire and the second barbed wire being above and not more than eight inches from the first wire;

(b) fences consisting of at least 40-inch woven wire and one barbed wire firmly fastened to well-set posts not more than one rod apart, the barbed wire being above and not more than four inches from the woven wire;

(c) fences consisting of woven wire at least 48 inches in height, and one barbed wire not more than four inches above the woven wire firmly fastened to well-set posts not more than one rod apart;

(d) fences consisting of at least four barbed wires with at least 40 barbs to the rod, the wires firmly fastened to posts not more than one rod apart, the top wire not more than 48 inches high and the bottom wire 12 to 16 inches from the ground; and

(e) fences consisting of rails, timbers, wires, boards, stone walls, or any combination of those materials, or streams, lakes, ditches, or hedges, which are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.” Minn. Stat. § 344.02, subd. 1.

[] Fence viewers have some discretion under subdivision 1(e) to accept other types of fences and materials as sufficient fences. Furthermore, courts have acknowledged even broader discretion under Minn. Stat. § 344.02, subd. 2 to resolve these types of disputes. However, town boards are strongly encourage to remain with one of the specific types of fences listed in the statute when resolving these disputes. Deviating in any significant way from the list of fences the legislature has labeled as “legal” in favor of some variation or specialty fence is inviting a legal challenge.

- (2)\_\_\_ At a meeting, set a date for a fence viewing and mail notice of the viewing to the parties. **See Appendix G** for a sample notice.

- (3)\_\_\_ At the fence viewing, ask the parties to explain the type of fence they believe should be built and why. Pay particular attention to the reasons they give as to why they want, or do not want, a particular type of fence be built. The rational that the board believes to be most persuasive and well grounded will likely serve as the core to the findings of the fact the board will develop to support its order.
- (4)\_\_\_ Record in the minutes of the viewing or subsequent meeting at which the decision is to be made the findings of fact the viewers relied upon to reach a decision.
- (5)\_\_\_ If this is a stand alone dispute, develop an order that orders a particular type of fence to be built. See Appendix H for a sample order.
- (6)\_\_\_ Mail a copy of the order to all parties, preferably by certified mail, return receipt requested.

**APPENDIX A  
SAMPLE NOTICE**

STATE OF MINNESOTA )  
County of \_\_\_\_\_ )  
Township of \_\_\_\_\_ )

PLEASE TAKE NOTICE that a complaint has been filed with the town supervisors, as the fence viewers for the town, by \_\_\_\_\_ claiming that \_\_\_\_\_ has not complied with his/her obligation under the Minnesota Fence Law (Minn. Stat. Chap. 344) by failing to repair (or rebuild, or build) a portion of partition fence on the line between:

(describe the location of the fence with reasonable certainty)

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ a.m./p.m., meet at the site of the fence to conduct a viewing and determine whether a partition fence must be built, repaired, or rebuilt. You may attend the viewing and be heard regarding this matter.

Questions regarding this hearing should be addressed to \_\_\_\_\_ at (\_\_\_\_)  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Town Clerk

**APPENDIX B**  
**SAMPLE ORDER**

STATE OF MINNESOTA )  
County of \_\_\_\_\_ )  
Township of \_\_\_\_\_ )

WHEREAS, the supervisors, as the fence viewers of \_\_\_\_\_ Township, received a complaint from \_\_\_\_\_ claiming that \_\_\_\_\_ has failed to comply with his/her obligation under the Minnesota Fence Law; and

WHEREAS, the fence viewers did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after providing due notice to the parties, examine the partition fence located between:

(describe the location of the fence as in the original notice);

WHEREAS, the fence viewers have determined that the portion of fence for which you are responsible, that being the (South) half of the fence, is in need of repair (or must be rebuilt, or must be built);

IT IS HEREBY ORDERED that \_\_\_\_\_ repair (or rebuild, or build) the (South) half of the partition fence by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Failure to comply with this order may result in the owner who filed the complaint repairing (or rebuilding, or building) such portion of the fence at his/her own expense and seeking reimbursement of the viewers' fees related to this matter and double the ascertained costs to build such portion of the fence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest: \_\_\_\_\_  
Town Clerk

BY THE TOWN BOARD

\_\_\_\_\_  
Town Board Chair

**APPENDIX C  
SAMPLE NOTICE**

STATE OF MINNESOTA )  
County of \_\_\_\_\_ )  
Township of \_\_\_\_\_ )

PLEASE TAKE NOTICE that \_\_\_\_\_ has filed a complaint with the town supervisors, as the fence viewers, claiming that the order issued by this board on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ordering \_\_\_\_\_ to repair (or rebuild, or build) the portion of the partition fence for which he/she is responsible, located between:

(describe the location of the fence as in the original notice)

has not been complied with. Furthermore, that due to the failure to comply with the order, \_\_\_\_\_ repaired (or rebuilt, or built) that portion of the fence and is now seeking reimbursement of the costs pursuant to Minn. Stat. 344.05.

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ a.m./p.m., examine the fence and will, after giving the parties an opportunity to be heard, determine whether the fence is sufficient and the cost of the fence or repair.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest: \_\_\_\_\_  
Town Clerk

BY THE TOWN BOARD

\_\_\_\_\_  
Town Board Chair

**APPENDIX D**

SAMPLE CERTIFICATE

STATE OF MINNESOTA )  
County of \_\_\_\_\_ )  
Township of \_\_\_\_\_ )

WHEREAS, a complaint was made by \_\_\_\_\_ to the town supervisors, as the fence viewers, that \_\_\_\_\_ has failed to repair (or rebuild, or build) the portion of partition fence, for which he/she is responsible, on the line between:

(describe the location of the fence as in the original notice);

WHEREAS, the supervisors did, after due notice to the parties, examine the fence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

WHEREAS, the supervisors did determine that the portion of fence for which \_\_\_\_\_ is responsible, that being the (South) half of the fence, was in need of repair (or must be rebuilt, or must be built);

WHEREAS, the supervisors issued an order on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ordering \_\_\_\_\_ to repair (or rebuild, or build) the portion of fence by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

WHEREAS, \_\_\_\_\_ filed a complaint with the supervisors indicating that \_\_\_\_\_ did not comply with the order by the date indicated, that as a result he/she repaired (or rebuilt, or built) the portion of fence, and requested a fence viewing;

WHEREAS, the supervisors did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after providing due notice to the parties and providing an opportunity for them to be heard, did examine the fence;

THE BOARD DOES HEREBY FIND AND CERTIFY:

1. The portion of fence for which \_\_\_\_\_ was ordered by this board to build (or rebuild, or build), but which was built by \_\_\_\_\_ upon failure to comply with the order, is sufficient.
2. The cost of repairing (or rebuilding, or building) that portion of fence was \_\_\_\_\_ dollars (\$\_\_\_\_\_).
3. The viewers fees in this matter are \_\_\_\_\_ dollars (\$\_\_\_\_\_).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest: \_\_\_\_\_  
Town Clerk

BY THE TOWN BOARD

\_\_\_\_\_  
Town Board Chair

**APPENDIX E  
SAMPLE NOTICE OF  
ASSIGNING SHARES**

STATE OF MINNESOTA            )  
County of \_\_\_\_\_        )  
Township of \_\_\_\_\_     )

PLEASE TAKE NOTICE that the town supervisors, as fence viewers for the town, received a request to conduct a fence viewing based on a controversy that has arisen concerning the rights of \_\_\_\_\_ and \_\_\_\_\_ in a partition fence and the obligation to erect or repair said fence located on the line between:

(describe the location of the fence with reasonable certainty);

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., meet at the site of the fence to conduct a viewing, assign to each party a share in the fence, and direct the time within which the fence must be erected or repaired. You may attend the viewing and be heard regarding this matter.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE BOARD

\_\_\_\_\_  
Town Board Chair

Attest: \_\_\_\_\_  
Town Clerk

**APPENDIX F**

**SAMPLE ASSIGNMENT  
FORM**

STATE OF MINNESOTA            )  
County of \_\_\_\_\_        )  
Township of \_\_\_\_\_      )

WHEREAS, \_\_\_\_\_ requested the town supervisors, as fence viewers for the town, to conduct a fence viewing regarding a controversy which has arisen between him/her and \_\_\_\_\_ concerning their respective rights in and obligations toward a partition fence located on the line between:

(describe the location of the fence as in the original notice);

WHEREAS, the viewers did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after providing due notice to the parties, view the fence and provide an opportunity for the parties to be heard regarding the matter;

THE BOARD DOES HEREBY ASSIGN to each party a share in the partition fence as follows:

To \_\_\_\_\_ we assign \_\_\_\_\_ and

To \_\_\_\_\_ we assign \_\_\_\_\_;

FURTHERMORE, THE BOARD DOES HEREBY DIRECT that each party shall erect (or repair) the portion of fence above assigned by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE BOARD

\_\_\_\_\_  
Town Board Chair

**APPENDIX G  
SAMPLE NOTICE**

STATE OF MINNESOTA )  
County of \_\_\_\_\_ )  
Township of \_\_\_\_\_ )

PLEASE TAKE NOTICE that a request has been filed with the town supervisors to conduct a fence viewing as the town fence viewers under Minn. Stat. Chap. 344 to determine the kind of fence to be built on the partition line as provided in Minn. Stat. § 344.02. The partition line related to this dispute is located

(describe the location of the fence with reasonable certainty)

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ a.m./p.m., meet at the site of the proposed fence to conduct a viewing and determine the kind of fence to be built. You may attend the viewing and be heard regarding this matter.

Questions regarding this hearing should be addressed to \_\_\_\_\_ at (\_\_\_\_)  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Town Clerk

**APPENDIX H**  
**Sample Order Determining**  
**Type of Fence To Be Built**

STATE OF MINNESOTA            )  
County of \_\_\_\_\_        )  
Township of \_\_\_\_\_      )

**WHEREAS**, the town board supervisors of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota, received a request from \_\_\_\_\_ to conduct a fence viewing in their capacity as fence viewers under the Minnesota Fence Law (Minn. Stat. Chap. 344) of the partition line between his/her property and the property owned by \_\_\_\_\_;

**WHEREAS**, the purpose of the viewing was to resolve a dispute over the type of fence to be built on the partition line as provided in Minn. Stat. § 344.02;

**WHEREAS**, the positions of the parties can be summarized as follows:  
[describe some of the specifics regarding the dispute (example: Joe Smith believes a 32 inch woven wire fence should be built because.... Bill Jones believes a barbed wire fence would be sufficient because ....)];

**WHEREAS**, the fence viewers did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after providing due notice to the parties, conduct a viewing of the partition line located between:  
[describe the parcels of property adjacent to the partition line on which the fence is to be built]

**WHEREAS**, the legislature has listed in Minn. Stat. § 344.02, subd. 1 what it considers to be legally sufficient fences for the purpose of the fence law;

**WHEREAS**, the fence viewers find that [summarize the points that lead to the conclusion the viewers have reached];

**WHEREAS**, the fence viewers have determined the following kind of fence is appropriate under the facts of this dispute: [describe the specifics of the type of fence to be built]

**IT IS HEREBY ORDERED** that the parties shall construct the kind of fence described above, using substantially similar quality of materials and workmanship, on the partition line described above.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**BY THE TOWN BOARD**

\_\_\_\_\_  
Town Board Chair

Attest: \_\_\_\_\_  
Town Clerk

**APPENDIX I**

## ST. LOUIS COUNTY SPECIAL LEGISLATION

### Minn. Stat. § 383C.809

In 1992 the legislature passed the following language with regard to fences in St. Louis County:

Notwithstanding chapter 344, when an owner or occupant of land in St. Louis county applies to the fence viewers for settlement of a partition fence controversy under chapter 344, the fence viewers shall not require an owner or occupant who can establish to the fence viewers that the establishing owner or occupant has no need for a fence to pay any share of the cost of construction or maintenance of the fence. If an owner or occupant is exempt from payment of any of the costs of a partition fence because the owner or occupant does not need the fence, but that owner's or occupant's circumstances change to include the need for a partition fence within seven years of completion of the partition fence, either owner or occupant may request the fence viewers to perform a reevaluation and reassignment of shares of the cost of construction and maintenance in accordance with section 344.06. If the landowners or occupants disagree about the need for a fence, it is a controversy under that section. A decision by the fence viewers of a controversy relating to a partition fence may include an assignment of shares of the cost of construction, repair, or maintenance of a partition fence in accordance with the need and benefit of each party. Except as provided in this section, all other controversies relating to partition fences shall conform to chapter 344.

The key difference between this statute and the fence law requirements is the exemption provided for owners who can establish they have no need for a fence. The following outlines the steps to be followed when responding to complaints regarding an owner's failure to build or maintain a partition fence.

- (1)\_\_\_\_\_ Aggrieved owner deposits required security with the town treasurer and requests a viewing by the fence viewers. Minn. Stat. § 344.18.
- (2)\_\_\_\_\_ The viewers select a date and time to view the fence and then must provide notice to each owner. Minn. Stat. § 344.04.
  - The notice should be sent by certified mail to each owner at least 14 days before the date set for the viewing. See Appendix A for sample notice.
  - Notice of the viewing should also be posted at the town's regular posting places.
  - The notice should contain, at the bottom, a statement similar to the following: "If either of the owners or occupants can establish to the fence viewers that he or she has no need for a partition fence, that person will not be required to pay any share of the cost of construction or maintenance of the fence. However, if circumstances change and a need for the fence develops within seven years from the

completion of the fence, the fence viewers may be requested to perform a reevaluation and reassignment of shares of the cost of construction and maintenance.”

(3)\_\_\_\_\_ If an owner can establish to the viewers that s/he has no need for the fence, the viewers shall not require the owner to pay any share of the construction or maintenance costs.

Be sure to keep detailed records regarding the viewers’ determination of need.

(4)\_\_\_\_\_ If both owners are found to have need for the fence, the board may assign to each owner a share in the fence and order that it be built or repaired by a specified date. Refer to Minn. Stat. § 344.06 and **Checklist Two** for further information on how to proceed from this point.

Be aware that Minn. Stat. § 383C.809 contains language that possibly expands the role of the viewers when assigning shares in a fence. While Minn. Stat. § 344.06 allows the viewers to assign to each party a share of the fence, Minn. Stat. § 383C.809 allows the “assignment of shares of the cost of construction, repair, or maintenance of a partition fence in accordance with the need and benefit of each party.” (emphasis added). This language seems to create the authority for the viewers to assign responsibility for a fence on a sliding scale based on needs and benefits of each party.

(5)\_\_\_\_\_ If within seven years from the completion of the fence the circumstances of the owner, or subsequent owner, changes so that s/he has a need for the fence, the viewers may be requested to perform a reevaluation and reassignment of shares of the cost of construction and maintenance in accordance with Minn. Stat. § 344.06 (“Assigning Shares Checklist”).

## LANDS DIVIDED BY A STREAM OR POND

### Minn. Stat. § 344.10

The specific provisions of this statute apply when:

- (1) a fence must be built;
- (2) the lands are bounded upon or divided by a stream or pond;
- (3) the viewers determine the stream or pond is itself not a sufficient fence;
- (4) the viewers determine that it is impracticable, without unreasonable expense, for a partition fence to be built on the waters at the true boundary line; and
- (5) either owner fails to join with the other owner in building a fence on one side or the other.

If all of these conditions are present, either owner can apply to the viewers to resolve the dispute. The following are the steps involved in handling these specific situations.

- (1)\_\_\_\_\_ Aggrieved owner deposits required security with the town treasurer and requests a viewing by the fence viewers. Minn. Stat. § 344.18.
- (2)\_\_\_\_\_ The viewers select a date and time to view the fence and then must provide notice to each owner. Minn. Stat. § 344.04.
  - The notice should be sent by certified mail to each owner at least 14 days before the date set for the viewing. See Appendix A for sample notice.
  - Notice of the viewing should also be posted at the town's regular posting places.
- (3)\_\_\_\_\_ The viewers must view the stream or pond and determine whether each of the five conditions listed above are present. The findings related to each condition should be recorded in the record of the proceeding.
- (4)\_\_\_\_\_ If all of the conditions are met, the viewers must determine on which side of the stream or pond the fence must be erected and maintained, or whether partly on one

side and partly on the other. The determination may also include an assignment of responsibility regarding a divided share in the fence.

- (5)\_\_\_\_\_ The viewers must put its determination in writing and mail it by certified mail to each owner.
- (6)\_\_\_\_\_ The viewers' fees are deducted from the deposited required security and any excess must be returned to the depositor. Minn. Stat. § 344.18.
- (7)\_\_\_\_\_ If either owner fails to build or maintain the assigned portion of the fence, the aggrieved owner can institute the procedures provided to resolve such disputes (i.e., Minn. Stat. § 344.04-.05).