

**NORTHERN TIER COALITION  
RESPONSE TO COMMENTS SUBMITTED BY  
EUGENE FAMOLARI  
ON THE PROPOSED ZONING ORDINANCE**

**Ordinance Length and Complexity**

The ordinance is long and complex. Land use management is not a simple endeavor and the lack of standards to address particular situations makes administration of an ordinance more difficult. Most of the detailed standards in the ordinance, which add to its length, apply to nonresidential uses and are intended to minimize impacts on adjoining properties while being reasonable for the development community. Some of the standards will not be used until a particular use is proposed.

**Natural Gas**

Oil and gas wells will be allowed as conditional uses in all zoning districts except in Silver Lake Township where they will be allowed only in the RA District. No change in other mineral extraction activities.

**R v. RA**

Map changes are being considered.

**Nonconformities**

§901.1 clearly states that nonconforming properties lawfully existing at the time of ordinance adoption have a vested right to continue. The ordinance does not restrict the sale or continued use of nonconforming properties. Commonwealth case law supports such nonconformity rights. It is important to make a distinction between nonconforming lots, structures and uses because each is treated differently.

§905 - provides for normal maintenance and repair of nonconforming structures.

§906 - allows for changes of nonconforming uses to another use of equal or lesser nonconformity. A conditional use is required to enable review by the Planning Commission and Governing Body.

§907 - allows for the extensions of nonconforming uses into more structure or property area. Again, a conditional use is required to enable review by the Planning Commission and Governing Body. The extension is limited to a 50% increase without a variance.

§908 - allows the reconstruction of any nonconforming structure or use which is razed or damaged to any extent. Many ordinance prohibit reconstruction if damage exceed 75%.

§910 - allows for the expansion of nonconforming structures. In fact, no variance or special approval is required for any extension of a nonconforming structure which does not increase the nonconformity, and a nonconforming setback can be extended by 50% as a use by right.

§911 - provides for single-family dwelling and commercial development on nonconforming lots of record.

One of the key aspects of a zoning ordinance is to minimize conflicts between incompatible uses. A nonconforming use is of a different character than the other uses allowed in the zoning district. Therefore, §909 governs the abandonment of nonconforming uses by prohibiting the reestablishment of a use which is abandoned for more than 18 months. However, case law dictates that the municipality must show that the owner intended to abandon the use.

NTC has attempted to allow a wide range of uses in most of the NTC area and believes the number of nonconforming uses has been minimized. Based on the recent hearings, the number and size of Residential Districts have been scaled back, thereby further reducing the number of potential nonconforming uses. Nevertheless, some nonconforming uses will inevitably be created. Some difficulties with the sale, lease or transfer of commercial nonconforming uses may be experienced, but the NTC believes this has been minimized based on the above.

The front setback in the proposed NTC Zoning Ordinance is 30 feet, not 50 feet, from the road right-of-way. A basic tenet of zoning is that it applies to new activities and §103.3 is clear on this point. In any case, §910 above provides for extensions of nonconforming structures, most without any variance or special procedures.

**Principal Permitted Uses versus Conditional Uses**

Conditional uses do require review by the Planning Commission and a public hearing before the Governing Body. The conditional uses were classified as such because of the potential for negative effects on adjoining property and the community as a whole. The process gives notice to the community and provides the opportunity for comment. If the use meets ordinance standards, case law requires that it be approved. The Governing Body may attach reasonable conditions to address detrimental effects not addressed by ordinance standards. Any proposed nonresidential use which involves the construction of a new principal structure is also considered a land development and will be reviewed by the Planning Commission with action by the Governing Body (no hearing is required) under the Subdivision and land development ordinance and the land development and conditional use application can be processed concurrently.

Livestock operations are classified as a principal permitted use in the proposed NTC Zoning ordinance and as a conditional use in the proposed Silver Lake Ordinance.

**Horses versus Livestock**

Changes:

**806 Animals, Keeping of**

TABLE 806 LOT SIZE AND SETBACKS FOR KENNELS AND STABLES					
Type of Use (In Districts Where Permitted)	Minimum Lot Size* (acres)	Number of Horses Permitted	Property Line Setback (ft)	Road** Setback (ft)	Existing Building*** Setback (ft)
<u>Private Stables in RA and CI Districts</u>	<u>not regulated</u>				
Private Stables <u>in R and VC Districts</u>	2	2 horses plus 1 horse per each additional full acre	50	50 <u>(see §806.2,E)</u>	100
Commercial Stables, Horses for Hire	5	not regulated	100	75 <u>(see §806.3,E)</u>	100
Kennels	2	not applicable	75	75	200
*The required minimum lot size for the principal structure is included in the minimum lot size for the stable/kennel. **Applies to any public or private road right-of-way. ***Applies to any existing principal residential or commercial building not located on the project premises.					

806.2 Stables, Private

Private stables are permitted as an accessory use to a single-family residence in accord with the Schedule of Uses and in the R and VC Districts the following conditions shall apply:

- A. Parcel Size - Two (2) acres ~~in all Districts.~~
- G. ~~Nuisances; Manure Management - The operation of the stable shall not create any nuisance due to odor, noise, dust or other factor on any neighboring property, and the applicant shall provide a plan for soil erosion and sedimentation control and manure management for approval by the Municipality.~~

Stable, Commercial: A structure ~~or land~~ where horses are kept for remuneration, hire, sale, boarding, riding or show, and which includes the commercial hire of horses to the general public for riding or other purposes.

Stable, Private: An accessory structure ~~or use of land~~ where horses are kept for the sole use of the residents of the principal structure, and which includes no remuneration, hire, boarding or other commercial use.