

ORDINANCE #24

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF BENTON COUNTY:

The Benton County, Iowa Agricultural Land Preservation ordinance, adopted and enacted on May 6, 1986, is hereby repealed and Ordinance #24 titled "Benton County, Iowa, Agricultural Land Preservation ordinance" is adopted in lieu thereof, and adopted pursuant to the authority conferred on the Benton County Board of Supervisors by the CODE OF IOWA.

THEREFORE IT IS HEREBY ORDAINED BY THE BENTON COUNTY BOARD OF SUPERVISORS AS FOLLOWS:

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ARTICLE I

GENERAL

Including: Title, Purpose and Objectives, Authority, Jurisdiction Interpretation of Standards, Special Exemptions, Relationship to Land Preservation and Use Plan, and Iowa Open Meetings Law.

SECTION 1. TITLE

This Ordinance shall be known and may be cited and referred to as the "Benton County, Iowa, Agricultural Land Preservation Ordinance" or "the Ordinance".

SECTION 2. PURPOSE AND OBJECTIVES

This Ordinance is adopted in accordance with the Benton County Land Preservation and Use Plan, adopted May 6, 1986, and as specifically permitted and authorized in Chapters 335, County Zoning and 352 County Land Preservation and Use Commission, Code of Iowa, 1993 and any subsequent amendments.

This Ordinance is intended and designed to meet the specific objectives of Section 335.5, Code of Iowa, 1993:

- To preserve the availability of agricultural land;
- To consider the protection of soil from wind and water erosion;
- To encourage efficient urban development patterns;
- To lessen congestion in the street or highway;
- To secure safety from fire, flood, panic, and other dangers;
- To protect health and the general welfare;
- To provide adequate light and air;
- To prevent the overcrowding of land;
- To avoid undue concentrations of population;
- To promote the conservation of energy resources;
- To promote reasonable access to solar energy; and
- To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

This Ordinance is intended and designed to meet the specific purposes of Section 352.1, Code of Iowa, 1993:

- To provide local citizens and local governments the means by which agricultural land may be protected



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from nonagricultural development pressures;

To preserve the availability and use of agricultural land for agricultural production;

To provide for the orderly use and development of land and related natural resources in Benton County, Iowa, for residential, commercial, industrial, recreational, and other purposes;

To preserve private property rights;

To protect significant natural and historic resources and fragile ecosystems of the state and county including forests, wetlands, rivers, streams, lakes and their shorelines, aquifers, prairies, and recreational areas;

To promote the efficient use and conservation of energy resources;

To promote the creation and maintenance of wildlife habitat; and

To consider the protection of soil from wind and water erosion.

This is accomplished through a process that emphasizes the participation of citizens and local governments for the creation of the Benton County Land Preservation Plan and Policies, the adoption of this Benton County Agricultural Land Preservation Ordinance, in which substantial agricultural activities are encouraged, so that land inside those areas shall be conserved for the production of food, fiber and livestock, thus assuring the preservation of agriculture as the major factor in the economy of Benton County, Iowa.

Furthermore, this Ordinance is intended and designed to meet the specific use restrictions of an Agricultural Area (District) of Section 352.6, Code of Iowa, 1993. Therefore, the following incentives for agricultural land preservation, Sections 352.10, 352.11, 352.12 and Section 6B.3, Subsection 6, Code of Iowa, 1993, shall apply to farms and farm operations, located within such district:

- Limitation on power of certain public agencies to impose public benefit assessments or special assessments. A political subdivision or a benefitted district providing public services such as sewer, water, lights or for non-farm drainage shall not impose benefit assessments or special assessments on land used primarily for agricultural production within an agricultural area on the basis of frontage, acreage, or value, unless the benefit assessments or special assessments were imposed prior to the formation of the agricultural area, or unless the service is provided to the landowner on the same basis as others having the service.

- Nuisance restriction. A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area other than by withdrawal as provided in Section 352.9 of

the Code of Iowa, 1993. The following exceptions apply:

- This does not apply to a nuisance which is the result of a farm operation determined to be in violation of a federal statute or regulation or state statute or rule.
- This does not apply if the nuisance results from the negligent operation of the farm or farm operation.
- This does not apply to actions or proceedings arising from injury or damage to a person or property caused by the farm or a farm operation before the creation of the agricultural area.
- This does not affect the or defeat the right of a person to recover damages for an injury or damage sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land, unless the injury or damage is caused by an act of God.

A person shall not bring an action or proceeding based on a claim of nuisance arising from a farm operation unless the person proceeds with mediation as provided in Chapter 654B of the Code of Iowa, 1993. If a defendant is a prevailing party in an action or proceeding based on a claim of nuisance and arising from a farm operation conducted on farm land within an agricultural area, the plaintiff shall pay court costs and reasonable attorney fees incurred by the defendant, if the court determines that the claim is frivolous.

- Water priority. In the application for a permit to divert, store, or withdraw water and in the allocation of available water resources under a water permit system, the Department of Natural Resources shall give priority to the use of water resources by a farm or farm operations, exclusive of irrigation, located in an agricultural area over all other uses except the competing uses of water for ordinary household purposes.

- State regulation. In order to accomplish the purposes set forth in Section 352.1, a rule adopted by a state agency after July 1, 1982, which would restrict or regulate farms or farm operations may contain standards which are less restrictive for farms or farm operations inside an agricultural area than for farms or farm operations outside such an area. A rule containing such a discrimination shall not for the fact of such discrimination alone be found or held to be unreasonable, arbitrary, capricious, beyond the authority delegated to the agency, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

- Application for condemnation. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in Chapter 352, a statement disclosing whether any of that land is classified as Class I or Class II land under the United States Department of Agriculture Soil Conservation Service Land Capability Classification System contained in the Agriculture Handbook Number 210, 1961 edition and, if so classified, stating that the Class I or Class II land is reasonably necessary for the work of internal improvement for which condemnation is sought.

SECTION 3.

AUTHORITY

The Benton County, Iowa, Board of Supervisors shall have the authority to regulate for the orderly use and development of land and related natural resources in accordance with the provisions of Chapters 335 and 352, Code of Iowa, 1993.

SECTION 4. JURISDICTION

The authority to regulate for the orderly use and development of land and related natural resources shall be exercised to all land within Benton County, Iowa, lying outside of the corporate limits of any city.

SECTION 5. INTERPRETATION OF STANDARDS

In their interpretations and application, the provisions of this Ordinance shall be held to be minimum requirements. Where this Ordinance imposes a greater restriction than is imposed or required by other provisions of law or by other rules or regulations or ordinances, the provisions of this Ordinance shall control. Regardless of any other provision of this Ordinance, no land shall be used in violation of any state or federal pollution control or environmental protection law or regulation.

SECTION 6. SPECIAL EXEMPTIONS

6.1 Farms Exemption

Except to the extent required to implement this ordinance, no regulation or restriction adopted under the provisions of this Ordinance shall be construed to apply to land, farmstead, farm houses, farm barns, farm outbuildings or other buildings, structures or erections which are primarily adapted by reason of nature and area, for use for agricultural purposes, while so used:

6.11 Application. It shall be the responsibility of any person or group claiming that property is entitled to exemption on the basis of this section to demonstrate that the property is used for agricultural purposes.

6.12 Limitation. This exemption shall not apply to any structure, buildings, dam obstruction, deposits or excavation in or on the floodplain of any river or stream.

6.13 Voluntary Compliance. It shall be the policy to seek voluntary compliance of the provisions of this Ordinance.

6.14 Determination. Administrative Officer shall complete a review and make a determination whether the use and property qualifies for the exemption.

6.2 Utility Exemption

No regulation or restriction adopted under the provisions of this Ordinance shall be construed to control the type or location of distributing equipment and structures of utility companies, including but not

limited to poles, towers, wires, gas mains, cables, or any other similar distributing or operating equipment of a telephone, power, gas and railroad company. Said uses are regulated by the Iowa Commerce Commission.

SECTION 7. RELATIONSHIP TO LAND PRESERVATION AND USE PLAN
That the enactment, amendment and administration of this Ordinance be accomplished with due consideration of the purposes and objectives of the Benton County Land Preservation and Use Plan as adopted and amended from time-to-time by the Board of Supervisors. The Plan shall serve as a guide for the future development of Benton County and the basis for the enactment of this Ordinance.

SECTION 8. IOWA OPEN MEETINGS LAW
The Commissions and Boards, public bodies, are subject to the terms, regulations and restrictions of the Iowa Open Meetings Law, Chapter 21 of the Code of Iowa, 1993. Wherever in these ordinances a conflict appears between the Ordinance and the open meetings law, the open meetings law shall control.

ARTICLE II

DEFINITIONS

SECTION 1. DEFINITIONS, GENERAL
For the purpose of this Ordinance, certain terms and phrases shall be deemed to have the meaning ascribed to them in this section. Words in the singular number include the plural, those in the plural number include the singular. Words in the present tense include the past and future tenses, and the future, the present tense. The masculine gender shall include the feminine and neuter genders. The word "shall" is mandatory, while the word "may" is permissive. The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual. The words "used" or "occupied" include the words intended, designed, or arranged to be used or occupied.

SECTION 2. DEFINITIONS

- 2.1 Administrative Officer: The individual designated by this Ordinance to administer the Ordinance and who is responsible for the enforcement of the regulations imposed by said Ordinance. This person may also be referred to as the "Administrator".
- 2.2 Agricultural Area: An area meeting the qualifications of Section 352.6 and designated under Section 352.7, Code of Iowa, 1993.
- 2.3 Agricultural Land Use District: All of Benton County that is not within the corporate limits of cities and towns.
- 2.4 Agricultural Use: The land, structure, or use, while so used, are primarily adapted by reason of nature and area for farmland, farms, farm operations, and farm dwellings; and the necessary accessory uses for treating or storing the farm products; provided that the operation of such accessory uses shall be secondary to that of the regular agricultural

activity. For purposes of this Ordinance and its implementation, this definition includes private open space, including but not limited to, woodlands, wetlands, native and open prairies, surface waters and wildlife habitats.

- 2.5 Amendment: The act or process to change or modify the provisions found in this Ordinance.
- 2.6 Building: Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals or property, but not including signs or billboards.
- 2.7 Compliance Certification: Written statement issued by the Administrator verifying that the use is consistent with the terms of this Ordinance and is in accordance with the approval granted by the County Board.
- 2.8 County Board: The County Board of Supervisors of Benton County, Iowa.
- 2.9 County Board of Adjustment: The County Board of Adjustment of Benton County, Iowa.
- 2.10 County Technical Committee: The County Technical Committee of Benton County, Iowa.
- 2.11 Development: Any man made change to alter the existing land use of a parcel of land including but not limited to buildings, structures or site improvements.
- 2.12 Dwelling: Any building which is designed or used exclusively for residential purposes, but not including a tent, cabin or trailer.
- 2.13 Farm: An area comprising twenty-one (21) or more contiguous acres which is used in the commercial production of farm products. Division of said area by road does not render property non-contiguous.
- 2.14 Farmland: Those parcels of land suitable for the production of farm products.
- 2.15 Farm Operation: A condition or activity which occurs on a farm in connection with the production of farm products and includes but is not limited to the marketing of products at roadside stands or farm markets, the creation of noise, odor, dust, fumes, the operation of machinery and irrigation pumps, ground and aerial seeding and spraying, the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides, and the employment and use of labor.
- 2.16 Farm Products: Those plants and animals and their products which are useful to people and includes but is not limited to forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey, and other similar products, or any other plant, animal or plant or animal product which supplies the people with food, feed, fiber, or fur.
- 2.17 Livestock: Cattle, horses, sheep, swine, poultry or any other animal or fowl which are

being produced primarily for commercial purposes.

- 2.18 New Construction: Those structures or development for which the start of construction commenced on or after the effective date of this Ordinance.
- 2.19 Non-Agricultural Use: The land, structure or use, while so used, for residential, commercial, transportation, public facilities, industrial, utilities, communications, services, cultural, entertainment, recreational, non-agricultural resource production and extraction, and institutional. For purposes of this Ordinance and its implementation, this definition includes agricultural related commercial retail stores, industries and service firms, including but not limited to, grain elevators, and usual accessory structures, veterinary clinics, agricultural retail/service outlets, dairy retail stores, fish markets, alcohol processing plants, locker plant and storage, farm implement sales and service establishments, farm equipment manufacture and assembly, creameries, bulk storage and pumping of agricultural chemicals and fertilizers, hide tanning, livestock sale and auction barns, the manufacture and wholesale of fertilizers, rendering or its products, refining and wholesale storage, slaughter houses, meat packing and processing plants, stock yards, agricultural seed processing and storage, and saw mills, planing mill, including manufacture of wood products.
- 2.20 Nonconforming Use: The lawful use of any building or land that was established prior to or at the time of passage of this Ordinance or amendments thereto which does not conform after the passage of this Ordinance or amendments thereto with the use regulations of the district in which it is situated.
- 2.21 Ordinance Map: The map or maps incorporated into this Ordinance and made a part thereof which designate various land use and required information.
- 2.22 Principal Permitted Use: Those uses of land which do not require a land use charge.
- 2.23 Principal Use: The main use of land or structures as distinguished from an accessory use.
- 2.24 Structure: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures includes buildings, mobile homes, billboards, and poster panels.
- 2.25 Use: Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

2.26 Variance: A divergence from the Ordinance where such a change will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

2.27 Zoning Commission: The County Zoning Commission of Benton County, Iowa.

ARTICLE III

ESTABLISHMENT OF THE OFFICIAL AGRICULTURAL LAND USE DISTRICT MAPS

SECTION 1. INTENT

For the purpose of this Ordinance, and in accordance with Sections 335.4 and 335.27, Code of Iowa, 1993, the unincorporated area of Benton County, Iowa, is hereby designated as an Agricultural Land Use District. This district is established to better guide and plan for non-agricultural land use changes.

SECTION 2. OFFICIAL AGRICULTURAL LAND USE DISTRICT MAPS

2.1 Adoption of Maps. To implement the intent of this Ordinance, the OFFICIAL AGRICULTURAL LAND USE DISTRICT MAPS OF BENTON COUNTY, IOWA, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

2.2 Certification. Each of the Official Maps of Benton County shall be certified by the signature of the Chairman of the County Board and attested by the Benton County Auditor. The Official Maps shall be on file and available for public inspection in the office of the Administrative Officer of this Ordinance.

2.3 Description of the Official Maps. The aerial photographs utilized for the official tax maps of Benton County, Iowa, permanent parcel numbering system, the Sidwell Company, West Chicago, Illinois, Fall, 1980, shall be certified as the Official Maps and will be scribed or attached with the following required information:

2.31 The Map's Title

2.32 Certification

2.33 Location

2.34 Scale

2.35 Map Key Reference

2.36 Adoption Date of Subsequent Approval and Amendments

2.37 The Classification of Land Use Per Appropriate Symbols

2.38 Any Explanatory Notations or Other Matter Deemed Necessary for the Understanding of the Maps and

2.39 The Official Nonconforming Use File.

2.4 Interpretation of Maps. The information and notations shown on the Official Maps shall be officially determined by the Administrative Officer. Any person contesting the official interpretation of the maps shall be given an opportunity to appeal to the County Board of Adjustment.

2.5 Approvals and Amendments. If by permission

approval, or amendment to this Ordinance, or any other matter shown thereon, is changed by action of the County Board, such change shall be promptly indicated on the Official Maps by the Administrative Officer, together with the date of passage of the approval or amendment and sufficient written description to give a precise understanding of the change.

- 2.6 Damaged or Destroyed District Maps. The County Board may from time-to-time adopt new Official Maps which may supersede the prior Official Maps, in the event that the Official Maps become damaged or destroyed; or for purposes of clarity due to a number of approval or amendment changes, or to correct drafting errors or omissions; provided, however, that any such adoption shall not have the effect of amending the original ordinance or any subsequent approval or amendment thereof.

ARTICLE IV

USE REGULATION OF THE AGRICULTURAL LAND USE DISTRICT

SECTION 1.

INTENT

The Agricultural Land Use District is intended and designed to serve the agricultural community and protect agricultural land and operations from encroachment of non-agricultural uses. Furthermore, in accordance with the objectives and purposes of Chapters 335 and 352, Code of Iowa, 1993, it is the intent of the Ordinance and this Article to preserve the availability of agricultural land for continued agricultural production. This district is not intended for non-agricultural uses, unless identified as a property or use of a governmental unit or utility, a preexisting residential dwelling, a non-conforming use, a principal permitted use, or an accessory permitted use as set forth below.

SECTION 2.

PRINCIPAL PERMITTED USES

Use of structures or land listed in this section shall be permitted as a principal permitted use in the Agricultural Land Use District, including:

- 2.1 Farm operations, farms and farmland.
- 2.2 Dwellings constructed for occupation by a person engaged in farming or in a family farm operation.
- 2.3 Preexisting residential dwellings.
- 2.4 Property of a telephone company, city or public utility or pipeline company.
- 2.5 The County Board may permit any non-agricultural use not listed in this Article, Sections 2.1, 2.2, 2.3, and 2.4, in the Agricultural Land Use District. A review shall be conducted in accordance with Article V, Section 3, "Permission Approval Request Procedures", and the requested non-agricultural use may be permitted only upon the County Board finding all of the following:
 - 2.51 The use is not inconsistent with the purposes set forth in Section 352.1, Code of Iowa, 1993;
 - 2.52 The use does not interfere seriously with

farm operations within the area;

2.53 The use does not materially alter the stability of the overall land use pattern in the area; and

2.54 The proposed use is consistent with the specific policies of the Benton County Land Preservation and Use Plan for the existing and requested land uses.

ARTICLE V

AMENDMENT PROVISION AND PERMISSION APPROVAL PROCEDURES

SECTION 1.

INTENT

This Article shall be utilized whenever the public necessity, general welfare or good land use practice requires that the regulations contained herewith be amended, supplemented, changed, modified or repealed. This Article shall provide for the form of application, procedure, public hearing, public notifications, protests and fees for such amendments. This Article shall prescribe the procedures for permission approval for new non-agricultural uses in the Agricultural Land Use District.

SECTION 2.

ORDINANCE TEXT OR MAP AMENDMENTS

2.1 Intent. The County Board may from time-to-time on its own action or upon the recommendation from the Zoning Commission, or upon the request of an individual, amend this Ordinance. The County Board, after following proper prescribed procedures, public hearing(s), public notifications, consideration of protests, and the receipt of the recommendation of the Zoning Commission may amend, supplement or change the map notations and regulations contained herein or subsequently established.

2.2 Form of Application. Said amendment shall be in written or map form specifying the existing and proposed provisions and shall be available for public inspection in the office of the Administrative Officer.

2.3 General Provisions. The following procedure shall suffice as the manner in which the amendments shall proceed:

2.31 The request of amendment is submitted by or to and filed with the Administrative Officer.

2.32 A public notification stating the purpose, time and place of the Zoning Commission's public hearing is published as provided in Section 331.305, Code of Iowa, 1993.

2.33 The Zoning Commission conducts public hearing to consider the Administrative Officer's report, public opinion, comments and the consideration of protests upon the amendment.

2.34 The Zoning Commission makes appropriate amendments, supplements, changes or modifications of the amendment and offers its recommendation.

- 2.35 The County Board receives and places on file the Zoning Commission's recommendation and authorizes the County Auditor to submit public notification for a public hearing upon the amendment.
- 2.36 A public notification stating the purpose, time and place of the County Board's public hearing(s) is published as provided in Section 331.305, Code of Iowa, 1993.
- 2.37 The County Board conducts public hearings to consider the Zoning Commission's recommendation, the Administrative Officer's report, public opinion, comments and the consideration of protests upon the amendment.
- 2.38 The County Board renders its decision to approve, deny, amend, supplement, change or modify the amendment.
- 2.39 The County Auditor submits amendment to a paper of general circulation in the county for official public notification. The date of publication is to be considered the effective date of the amendment.
- 2.310 The Administrative Officer files and makes the appropriate notation or amendments to the Benton County, Iowa, Agricultural Land Preservation Ordinance.

SECTION 3.

PERMISSION APPROVAL REQUEST PROCEDURES

- 3.1 Intent. The County Board may upon the request of an individual, after proper prescribed application of forms, procedures, public hearing(s), public and property notifications, consideration of protests, and receipt of the report of the Administrative Officer and County Technical Committee grant permission for approval for establishing any new non-agricultural use to be located in the Agricultural Land Use District in accordance with the provisions of Article IV, Section 2.5 of this Ordinance.
- 3.2 Form of Application
- 3.21 The request of permission approval shall be in a written form and filed with and available for public inspection at the office of the Administrative Officer.
- 3.22 The request is required to be signed and verified by all the owners of all the land included within the boundaries of said tract to be occupied by requested use.
- 3.23 The request application shall contain the following information:
- (1) Legal description of the real estate upon which the use will be located;
 - (2) Name of owner and developer of the land and the intended use;
 - (3) A statement of intended use;

- (4) "Sketch" map of proposed site development;
- (5) The disruption expected to be incurred on the area's present setting;
- (6) Methods to be implemented to lessen the severity of said disruption; and
- (7) Signature and date.

3.3 General Provisions. The following procedure shall suffice as the manner in which permission approval requests shall proceed:

- 3.31 The application for permission approval is submitted to and filed with the Administrative Officer.
- 3.32 The Administrative Officer, upon receipt of all required information, shall meet with the County Technical Committee and formulate their report.
- 3.33 The County Board receives and places on file the request and the County Technical Committee's report and authorizes the Administrative Officer or any authorized representative to advertise the public notification of the public hearing(s) to consider the request. The public hearing shall be held after fifteen (15) days and not more than thirty (30) days of the date the notice is published.
- 3.34 The Administrative Officer shall provide proper notification of the request by mail to landowners of record within five hundred (500) feet of said requested property boundary lines. Said notice shall state the purpose, time and place of the County Board's hearing.
- 3.35 The public notification stating the purpose, time and place of the County Board's public hearing(s) shall be published in all official Benton County newspapers and public notice posted in a public place at least fifteen (15) days prior to the hearing.
- 3.36 The County Board conducts the public hearing to consider the request, the County Technical Committee's Report, public opinion, comments and the consideration of protests upon the request.
- 3.37 In case, however, a protest be presented, duly signed by the owners of twenty (20) percent or more, either of the area included for the proposed change, or of the area immediately adjacent thereto and within five hundred (500) feet of the boundaries thereof, such request shall not become effective except by the favorable vote of at least sixty (60) percent of all members of the County Board.
- 3.38 The County Board shall render their

decision to approve or deny the request based upon information presented and reviewed, the standards of Article IV, Section 2.5 of this Ordinance, and in compliance with the specific policies of the Benton County Land Preservation and Use Plan for the existing and requested uses.

3.39 The Administrative Officer shall file and make the appropriate notation for approved requests to the Official Agricultural Land Use District Maps of Benton County, Iowa.

3.4 Fee. There shall be a fee for all permission approval requests. Said fee shall be determined by the County Board. The amount of the fee shall be reviewed annually and set at a level to defray necessary costs of processing. The fee shall be paid by the individual to Benton County, Iowa, and is non-refundable.

ARTICLE VI

NONCONFORMING USE PROVISIONS

SECTION 1.

INTENT

Within the Agricultural Land Use District, established by this Ordinance, there exist structures and use of land which were established and lawful prior to the adoption of this Ordinance. Such uses are now subject to the provisions of this Ordinance. This Ordinance recognizes these non-conformities and will permit them to continue until they are removed or abandoned. This section will prescribe when permission approval procedures and compliance permit approvals are required. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which construction was lawfully begun prior to the effective date of adoption of this Ordinance.

SECTION 2.

PERMISSION APPROVAL PROCEDURES REQUIRED

The following instances require that the County Board review the development in accordance with Article V, Section 3, "Permission Approval Request Procedures", of this Ordinance:

2.1 The enlargement or extending of a nonconforming use of land to occupy additional lot or parcel area beyond the lot or parcel occupied by the use at the time of adoption of this Ordinance must be approved.

2.2 If any such nonconforming use of land ceases or is discontinued for a period of more than three (3) years, any re-establishment of the previous use or any new use must be approved.

2.3 The change in use of land must be approved, unless such use is a principal permitted use of the Agricultural Land Use District.

SECTION 3.

COMPLIANCE CERTIFICATION REQUIRED

Upon completion of the above-stated permission procedure and approval instances, and in the instance set forth in Subsection 3.1, below, the Administrative Officer shall review the development in accordance with Article VIII, Section 5, "Compliance Certification", of this Ordinance.

3.1 The enlargement or extending of a nonconforming use of land to occupy additional lot or parcel area within the lot or parcel occupied by the use at the time of adoption of this Ordinance.

SECTION 4. CERTIFICATION OF NONCONFORMING USES

All nonconforming land uses shall be recorded and identified in the official nonconforming use file maintained by the Administrative Officer. The file shall include, but not be limited to, the property location and identification and the current use of the land. Nonconforming uses not included may be subsequently added to the file when accompanied by an affidavit of proof that such nonconforming use was legally established prior to the effective date of this Ordinance.

ARTICLE VII

BOARD OF ADJUSTMENT

SECTION 1. INTENT

The County Board shall provide for the appointment of a County Board of Adjustment. Pursuant to the authority of this Article the County Board of Adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions and grant variances to the specific terms of this Ordinance. The special exception or variance shall be in harmony with the Ordinance's general purpose and intent and in accordance with general rules herein contained, and provide that any property owner aggrieved by the action of the County Board in the adoption of such regulations and restrictions may petition said County Board of Adjustment direct to modify regulations as applied to such property owners.

SECTION 2. MEMBERSHIP

The County Board of Adjustment shall consist of five (5) members, who shall reside within the county, a majority shall reside outside the corporate limits of any city, appointed by the County Board. When the County Board of Adjustment shall first be created, one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Thenceforth, terms shall be for five (5) years, and vacancies shall be filled for the unexpired term of any member whose position becomes vacant. The County Board shall have the power to remove any member of the County Board of Adjustment for cause upon written charges and after public hearing.

SECTION 3. RULES - MEETINGS

The County Board of Adjustment shall adopt rules of procedure in accordance with the provisions of this Ordinance. The County Board of Adjustment shall elect its own chairperson at the first meeting of the calendar year, who shall serve for one year. Meetings will be established by the rules and shall be open to the public. The chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. Three (3) members present shall constitute a quorum. The County Board of Adjustment shall keep minutes of the proceedings showing the vote of each member upon each question, and all such material and related documents shall be immediately filed in the office of the Administrative Officer and shall be a public record.

SECTION 4.

POWERS, DUTIES, AND CONSIDERATIONS

The County Board of Adjustment shall have the following powers and it shall be its duty:

- 4.1 To hear and decide appeals of interpretation where it is alleged there is an error in any order, requirement, decision, or determination made by the Administrative Officer in the enforcement of this Ordinance.
- 4.2 To hear and decide special exceptions to the terms of the ordinance upon which such County Board of Adjustment is required to pass under such ordinance.
- 4.3 To authorize, upon appeal, such variance(s) from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance be observed and substantial justice be done.
 - 4.31 Appeals for a variance may be made by the landowner, potential buyer or developer, or operator/manager of land, who has applied for a permit and been denied because the proposed development does not comply with the specific regulations of this Ordinance. Said appeal should state the specific variance requested and the reasons for which the appeal should be granted.
 - 4.32 Before deciding on the variance appeal, the County Board of Adjustment will hold a public hearing and shall determine if one of the two following instances has occurred:
 - (1) When because of an exceptional situation, topographic condition, surroundings, size, shape or other condition of a specific piece of property of record, the strict application of any provision of this Ordinance would result in peculiar and exceptional practical difficulties or particular hardship upon the owner of such property and amount to a practical confiscation, the County Board of Adjustment may vary the application of the regulations imposed by this Ordinance subject to the restrictions in this Article.
 - (2) When the applicant for a variance can demonstrate that the hardship is a compelling force and not a perceived one, the hardship was created by this Ordinance and not the applicant, and the strict application of the Ordinance precludes its use for the purpose to which the land is reasonably adapted.
- 4.4 Appeals or requests to the County Board of Adjustment pursuant to Subsections 4.1, 4.2, and/or 4.3 of this Section may be taken by any person, or by any officer, department, board or

commission of the county aggrieved by an administrative official's interpretation. Said appeal shall be taken within a reasonable time, as provided by the County Board of Adjustment's rules and shall specify the grounds for appeal. The Administrative Officer shall forward the appeal and all related papers which constitute the record upon which the appeal was taken to the County Board of Adjustment.

SECTION 5.

CONDITIONS FOR GRANTING VARIANCES

No variation in the application of the provisions of this Ordinance shall be made in the instances specified above unless and until the County Board of Adjustment shall be satisfied that granting the variance will not:

- 5.1 Merely serve as a convenience to the applicant and is not necessary to alleviate demonstrable hardship or difficulty so great as to warrant the variance.
- 5.2 Impair the general purpose, spirit, and intent of the County Comprehensive Land Preservation and Use Plan and this Ordinance.
- 5.3 Impair an adequate supply of light, water, and air to adjacent property.
- 5.4 Unduly increase the hazard from fire, flood, and other danger to said property.
- 5.5 Diminish the value of land and buildings in the vicinity or elsewhere in the county.
- 5.6 Unduly increase the congestion and traffic hazards on public roads.
- 5.7 Otherwise impair the public health, safety, and general welfare of the inhabitants of the county.
- 5.8 Afford relief that would be substantially more than the minimum necessary in the determination for granting a variance.

SECTION 6.

GENERAL PROCEDURES

Upon receipt of an appeals/application form, the Administrative Officer will schedule the case for the next County Board of Adjustment meeting, with time being of the essence.

- 6.1 Notification. The Administrative Officer shall publicize the public hearing in a newspaper of general circulation in the county stating the location of the property and a brief description of the nature of the variance/appeal application, and the time and place of the public hearing in the following manner:
 - 6.11 Notify all owners of property located within five hundred (500) feet in all directions from the property in question by ordinary mail.
 - 6.12 Notify the County Engineer, County Soil Conservationist, and County Sanitarian and allow them time to reply, if applicable.
- 6.2 Public Hearing. At the public hearing, any

person may appear and testify either in person or by duly authorized person or attorney, or in writing. For all appeals and applications, the burden of proof rests with the applicant.

- 6.3 Voting. In exercising the powers of the County Board of Adjustment, the concurring vote of three (3) members of the County Board of Adjustment shall be necessary to reverse or affirm, wholly or partly, or modify or amend any appeal, or variance and impose such conditions that are deemed necessary to protect the public good. Every decision of a County Board of Adjustment case will result in a written findings of fact which specifies the reasons for granting or denying an appeal or variance.
- 6.4 Notification of County Board of Adjustment's Decision. The Administrative Officer shall notify the applicant by forwarding a copy of the written findings of fact of the decision of the County Board of Adjustment within fifteen (15) days of the decision.
- 6.5 Right to Appeal Decision. Any person or persons jointly or separately aggrieved by any decision of the County Board of Adjustment under the provisions of this Ordinance, or any taxpayer, or any officer, department, board, commission or commission member of the county may present to District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the court within thirty (30) days after the decision of the County Board of Adjustment.

SECTION 7.

FILING FEE

There shall be a filing fee for all appeals made to the County Board of Adjustment. Said fee shall be determined by the County Board. The amount of the fee shall be reviewed annually and set at a level to defray necessary costs of processing. The fee shall be paid by the individual to Benton County, Iowa, and is non-refundable.

ARTICLE VIII

ADMINISTRATION AND ENFORCEMENT

SECTION 1.

INTENT

It is the purpose of this Article to identify certain officers, commissions, boards or committees which will be required to administer and enforce this Ordinance; to define the duties and responsibilities of said individuals or agencies; and to set forth a procedural system for application of this Ordinance and its enforcement.

SECTION 2.

COUNTY ADMINISTRATIVE OFFICER

The office of Administrative Officer is hereby established. The County Board shall appoint an Administrative Officer. Said Officer shall do, or cause to be done the following:

- 2.1 Process and issue all required permits and maintain records thereof;

- 2.2 Process all applications for requests for amendments, permission approvals, special exceptions, variances, and appeals to ensure compliance with this Ordinance and maintain records thereof;
- 2.3 Maintain permanent and current records of this Ordinance including, but not limited to, requests for amendments, permission approvals, special exceptions, variances and appeals, permits, official maps, and ordinance text;
- 2.4 Together with the County Technical Committee formulate its report for requests for Ordinance amendments and for permission approvals;
- 2.5 Ensure the proper procedures are followed for public and property notifications, public hearings and that official decisions and minutes are kept of County Board of Adjustment and Zoning Commission meetings;
- 2.6 Conduct inspections, examinations and research of the use of structures and land to determine compliance with the terms of this Ordinance;
- 2.7 Determine and initiate action to correct violations of this Ordinance;
- 2.8 Charge and receive such reasonable fees, as set forth in this Ordinance;
- 2.9 Provide and maintain a public information service relative to all matters arising under his jurisdiction; and
- 2.10 Perform such other duties as are assigned by this Ordinance.

SECTION 3.

COUNTY TECHNICAL COMMITTEE

The County Technical Committee is hereby established. The County Technical Committee shall consist of the following: The Administrative Officer of this Ordinance, the County Engineer, the County District Soil Conservationist, the County Sanitarian, and the Executive Director of the County Conservation Board. Said Committee shall do or cause to be done the following:

- 3.1 Assist the Administrative Officer in formulating a report to be submitted to the County Board of its findings upon permission approval requests, in accordance with Article V of this Ordinance.

SECTION 4.

COUNTY BOARD OF ADJUSTMENT

See Article VII of this Ordinance.

SECTION 5.

COMPLIANCE CERTIFICATION

- 5.1 Compliance Certification Required.
Certification shall be required in accordance with the following, except that none shall be required for farm or utility uses in accordance with Article I, Section 6 of this Ordinance.
 - 5.11 No land shall be occupied or used until a certification is issued by the Administrative Officer stating that the use complies with the provisions of this Ordinance.

5.12 Nothing in this section shall prevent the continuance of a nonconforming use as hereinbefore authorized, unless a discontinuance is necessary for the safety or life or property.

5.13 A permit shall become null and void one (1) year after the date on which it is issued unless within such one (1) year period the approved use is commenced.

5.2 Compliance Certification Application Information. Applicants for a Compliance Certification shall be required to provide the following:

5.21 Legal Description of the real estate upon which the use will be located;

5.22 Name of owner of the land and the intended use;

5.23 Statement of intended use;

5.24 "Sketch" map of proposed site development;

5.25 Signature and date affixed of owner and developer; and

5.26 Such information as may be deemed necessary to provide for the enforcement of this Ordinance.

5.3 Certification of Compliance. The Administrative Officer shall affix his/her signature, date and determination of approval or denial directly onto the Compliance Certification Application Form. Such determination shall be governed by the following:

5.31 The Administrative Officer shall interpret this Ordinance strictly and according to standards set forth herein.

5.32 In the interpretation and application of this Ordinance, the provisions shall be held to be minimum requirements.

5.33 Any decision of the Administrative Officer may be subject to appeal to the County Board of Adjustment, in accordance with Article VII of this Ordinance.

SECTION 6. ENFORCEMENT

It shall be the duty of the Administrative Officer to enforce the provisions of this Ordinance, and to investigate any alleged violations of this Ordinance.

SECTION 7. REFUSAL OF ADMITTANCE

In the event the Administrative Officer, in proceeding to enter any premises for the purpose of making an investigation to carry out the provisions of this Ordinance, shall be refused entry, an application may be made to the Court for an administrative search warrant. During entry onto the property pursuant to an administrative search warrant, only those activities necessary to carry

out the provisions of this Ordinance shall be allowed.

SECTION 8.

PENALTY

A violation of any of the provisions of this Ordinance are subject to the following penalties:

- 8.1. A violation of any provision of this Ordinance shall constitute a County infraction. Any person committing a County infraction shall, upon conviction, be subject to a civil penalty of not more than One Hundred Dollars (\$100.00) for each offense, not to exceed Two Hundred Dollars (\$200.00) for each repeat offense. Each day that a violation occurs or is permitted to exist by the violator shall constitute a separate offense. A person found guilty of a county infraction is liable for the court costs and fees.
- 8.2. The Administrative Officer may issue a civil citation to a person who commits a county infraction. The citation may be served by personal service or by certified mail, return receipt requested. A copy of the citation shall be sent to the clerk of district court, and one copy shall be retained by the office of the Administrative Officer. The citation shall serve as notification that a civil offense has been committed and shall contain the name and address of the respondent; the name or description of the infraction; the location and time of the infraction; the amount of civil penalty to be assessed, or the alternate relief sought, or both; the manner, location and time in which the penalty may be paid; the time and place of court appearance; and the penalty for failure to appear in court.
- 8.3. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.
- 8.4. In addition to any civil penalty imposed for violation of this Ordinance, the court may grant appropriate relief to abate or halt the violation. The court shall have available to it all of the options set forth in Section 331.307(9), CODE OF IOWA.
- 8.5. If a violator willfully fails to pay the civil penalty or violates the terms of any other order imposed by the court, such failure shall constitute contempt.
- 8.6. Nothing in this section precludes the prosecution of any violations of this Ordinance as a simple misdemeanor, pursuant to Section 331.307(11), CODE OF IOWA.

ARTICLE IX

MISCELLANEOUS PROVISIONS

SECTION 1.

SEVERABILITY

This Ordinance and any amendment hereto and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the Ordinance or amendment hereto shall not be affected thereby. If any part, sentence, paragraph, subsection, section or clause is adjudged unconstitutional or invalid as applied to a particular property, building or other structure, it is hereby provided that the application of such portion of the Ordinance to other property, buildings or structures shall not be affected hereby.

SECTION 2.

RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this Ordinance are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulations, the regulations, rules or restrictions which are more restrictive or which impose higher standards or requirements shall govern.

SECTION 3.

EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its final passage, approval, and publication as provided by law.

Passed and adopted this 22nd day of November, 1994.

BENTON COUNTY BOARD OF SUPERVISORS

AYE: Three

Norman Sackett
Supervisor Norman Sackett

NAY: None

Dell Hanson
Supervisor Dell Hanson

ABSTAIN: None

Edwin J. Brecht
Supervisor Edwin Brecht

ATTEST:

Jill Marlow
Jill Marlow, Benton County Auditor

- November 16, 1994 - Published summary of Ordinance #24 and Notice of Hearing
- November 22, 1994 - First Consideration, Suspension of ALL further considerations, and ADOPTION of Ordinance #24
- November 30, 1994 - Published Ordinance #24

I, Jill Marlow, do hereby certify the above to be a true and correct copy of Ordinance #24, and the dates of consideration and publication are correct.

Jill Marlow
Jill Marlow, Benton County Auditor

