

ORDINANCE NUMBER #196

BENTON COUNTY
Flood Plain Management Ordinance of 1990

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BENTON COUNTY FLOOD PLAIN MANAGEMENT ORDINANCE

BE IT ORDAINED BY THE BENTON COUNTY
BOARD OF COMMISSIONERS AS FOLLOWS:

SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

1.1 Statutory Authorization: The legislature of the State of Minnesota has, in Minnesota Statutes Chapter 104 and 394.21, delegated the responsibility to local government units to adopt regulations designed to minimize flood losses. Therefore, the Board of Commissioners of Benton County, Minnesota does ordain as follows:

1.2 Findings of Fact:

1.21 The flood hazard areas of Benton County, Minnesota, are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

1.22 Methods Used to Analyze Flood Hazards. This Ordinance is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota Department of Natural Resources.

1.3 Statement of Purpose: It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize those losses described in Section 1.21 by provisions contained herein.

SECTION 2.0 GENERAL PROVISIONS

2.1 Lands to Which Ordinance Applies: This ordinance shall apply to all lands within the jurisdiction of Benton County shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Floodway, Flood Fringe, or General Flood Plain Districts.

2.2 Establishment of Official Maps and Floodproofing Regulations. The Flood Insurance Study for Benton County, the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps and the June 1972 Army Corps of Engineers Floodproofing Regulations (EP11652314) were adopted by reference by Ordinances #131 and #185 (Sections 7.9.1 and 7.9.5 of the Development Code) shall continue in force and effect.

2.3 Regulatory Flood Protection Elevation: The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

2.4 Interpretation:

2.41 In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.

2.42 The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the Board and to submit technical evidence.

2.5 Abrogation and Greater Restrictions: It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only. Sections 7.9.1 and 7.95 of Ordinance #185 shall continue to be effective. Sections 3.44, 3.46, 3.55, 3.57, 3.58, 3.59, 3.60, 3.61, 3.98, 3.112, 3.134, 3.137, 3.138, and Sections 7.92 through 7.94 and 7.96 through 7.99 of Ordinance #185 are hereby repealed.

2.6 Warning and Disclaimer of Liability: This Ordinance does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This Ordinance shall not create liability on the part of Benton County or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

2.7 Severability: If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

2.8 Definitions: Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application.

2.811 Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

2.812 Basement - means any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all sides, regardless of the depth of excavation below ground level.

2.813 Conditional Use - means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or

restrictions as provided in the official zoning controls or building codes and upon a finding that: (a) certain conditions as detailed in the zoning ordinance exist and (b) the structure and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

2.814 Equal Degree of Encroachment - a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

2.815 Flood - a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

2.816 Flood Frequency - the frequency for which it is expected that a specific flood stage or discharge may be equalled or exceeded.

2.817 Flood Fringe - that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study for Benton County.

2.818 Flood Plain - the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

2.819 Flood-Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

2.820 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

2.821 Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

2.822 Principal Use or Structure - means all uses or structures that are not accessory uses or structures.

2.823 Reach - a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

2.824 Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

2.825 Regulatory Flood Protection Elevation - The Regulatory Flood Protection Elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

2.826 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified in Section 9.31 of the ordinance and other similar items.

2.827 Variance - means a modification of a specific permitted development standard required in an official control including this ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

SECTION 3.0 ESTABLISHMENT OF ZONING DISTRICTS

3.1 Districts:

3.11 Floodway District. The Floodway District shall include those areas designated as floodway on the Flood Boundary and Floodway Map referred to in Section 2.2.

3.12 Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe on the Flood Boundary and Floodway Map referred to in Section 2.2.

3.13 General Flood Plain District. The General Flood Plain District shall include those areas designated as unnumbered A Zones on the Flood Insurance Rate Map referred to in Section 2.2.

3.2 Compliance: No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway, Flood Fringe and General Flood Plain Districts, all uses not listed as permitted uses or conditional uses in Sections 4.0, 5.0 and 6.0 that follow, respectively, shall be prohibited. In addition, a caution is provided here that: a) New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this Ordinance and specifically Section 9.0; b) Modifications, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 11.0; and c) As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this Ordinance and specifically as stated in Section 10.0 of this Ordinance.

SECTION 4.0 FLOODWAY DISTRICT (FW)

4.1 Permitted Uses:

4.11 General farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

4.12 Industrial-commercial loading areas, parking areas, and airport landing strips.

4.13 Private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails.

4.14 Residential lawns, gardens, parking areas, and play areas.

4.2 Standards for Floodway Permitted Uses:

4.21 The use shall have a low flood damage potential.

4.22 The use shall be permissible in the underlying zoning district if one exists.

4.23 The use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

4.3 Conditional Uses:

4.31 Structures accessory to the uses listed in 4.1 above and the uses listed in 4.32-4.38 below.

4.32 Extraction and storage of sand, gravel, and other materials.

4.33 Marinas, boat rentals, docks, piers, wharves, and water control structures.

4.34 Railroads, streets, bridges, utility transmission lines, and pipelines.

4.35 Storage yards for equipment, machinery, or materials.

4.36 Placement of fill.

4.37 Travel trailers and travel vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Section 9.3 of this Ordinance.

4.38 Structural works for flood control such as levees, dikes and floodwalls constructed to any height where the intent is to protect individual structures and levees or dikes where the intent is to protect agricultural crops for a frequency flood event equal to or less than the 10-year frequency

flood event.

4.4 Standards for Floodway Conditional Uses:

4.41 All Uses. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a Conditional Use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected.

4.42 All floodway Conditional Uses shall be subject to the procedures and standards contained in Section 10.4 of this Ordinance.

4.43 The Conditional Use shall be permissible in the underlying zoning district.

4.44 Fill:

(a) Fill, dredge spoil and all other similar materials deposited or stored in the flood plain shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.

(b) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

(c) As an alternative, and consistent with Subsection (b) immediately above, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the Planning Commission has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The Conditional Use Permit must be recorded with the property in the Office of the County Recorder.

4.45 Accessory Structures:

(a) Accessory structures shall not be designed or used for human habitation.

(b) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow. So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

(c) Accessory structures shall be elevated on fill or structurally dry flood proofed in accordance with the Corps of Engineers Flood-Proofing Regulations provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate: (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and

shall be designed to equalize hydrostatic flood forces on exterior walls; and (2) Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.

4.46 Storage of Materials and Equipment:

(a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Planning Commission.

4.47 Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statute, Chapter 105. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

4.48 A levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

SECTION 5.0 FLOOD FRINGE DISTRICT (FF)

5.1 Permitted Uses: Permitted Uses shall be those uses of land or structures listed as Permitted Uses in the underlying zoning use district(s). All Permitted Uses shall comply with the standards for Flood Fringe "Permitted Uses" listed in Section 5.2 and the standards for all Flood Fringe "Permitted and Conditional Uses" listed in Section 5.5.

5.2 Standards for Flood Fringe Permitted Uses:

5.21 All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the Regulatory Flood Protection Elevation. The finished fill elevation for structures shall be no lower than one (1) foot below the Regulatory Flood Protection Elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.

5.22 As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with Section 4.45 (c).

5.23 The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a Conditional Use, unless said fill is specifically intended to elevate a structure in accordance with Section 5.21 of this ordinance.

5.24 The storage of any materials or equipment shall be elevated on fill to the Regulatory Flood

Protection Elevation.

5.25 The provisions of Section 5.5 of this Ordinance shall apply to permitted uses.

5.3 Conditional Uses: Any structure that is not elevated on fill or flood proofed in accordance with Section 5.21-5.22 or any use of land that does not comply with the standards in Section 5.23-5.24 shall only be allowable as a Conditional Use. An application for a Conditional Use shall be subject to the standards and criteria and evaluation procedures specified in Sections 5.4-5.5 and 10.4 of this Ordinance.

5.4 Standards for Flood Fringe Conditional Uses:

5.41 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: a) the enclosed area is above-grade on at least one side of the structure; b) is designed to internally flood and is constructed with flood resistant materials; and c) is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

(1) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the Corps of Engineers Flood-Proofing Regulations and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.

(2) Specific Standards for Above-grade, Enclosed Areas.

Above-grade, fully enclosed areas such as crawl spaces or tuck- under garages must be designed to internally flood and the design plans must stipulate:

(a) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(b) That the enclosed area will be designed of flood resistant materials in accordance with the Corps of Engineers Flood-Proofing Regulations and shall be used solely for building access, parking of vehicles or storage.

5.42 Basements, as defined by Section 2.812 of this Ordinance, shall be subject to the following:

(a) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.

(b) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Section 5.43 of this Ordinance.

5.43 All areas of non residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the Corps of Engineers Flood-Proofing Regulations.

5.44 When at any one time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100-year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the Governing Body. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

5.45 Storage of Materials and Equipment:

(a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.

(b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Planning Commission.

5.46 The provisions of Section 5.5 of this Ordinance shall also apply.

5.5 Standards for All Flood Fringe Uses:

5.51 All new principal structures must have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

5.52 Commercial Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood.

5.53 Manufacturing and Industrial Uses. Measures shall be taken to minimize interference with normal plant operations especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations subject to requirements set out in Section 5.52 above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.

5.54 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

5.55 Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

5.56 Standards for travel trailers and travel vehicles are contained in Section 9.3.

5.57 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

SECTION 6.0 GENERAL FLOOD PLAIN DISTRICT

6.1 Permissible Uses:

6.11 The uses listed in Section 4.1 of this Ordinance shall be permitted uses.

6.12 All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to Section 6.2 below. Section 4.0 shall apply if the proposed use is in the Floodway District and Section 5.0 shall apply if the proposed use is in the Flood Fringe District.

6.2 Procedures for Floodway and Flood Fringe Determinations Within the General Flood Plain District.

6.21 Upon receipt of an application for a Conditional Use Permit for a use within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is within the Floodway or Flood Fringe District.

(a) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.

(b) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets; photographs showing existing land uses and vegetation upstream and downstream; and soil type.

(c) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.

6.22 The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the Regulatory Flood Protection Elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

(a) Estimate the peak discharge of the regional flood.

(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than 0.5 foot shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.

6.23 The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Planning Commission. The Planning Commission must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application. The Planning Commission, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency or the Department of Natural Resources for review and comment. Once the Floodway and Flood Fringe Boundaries have been determined, the Planning Commission shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of Section 4.0 and 5.0 of this Ordinance.

SECTION 7.0 SUBDIVISIONS

7.1 Review Criteria: No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the Regulatory Flood Protection Elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Ordinance and have road access both to the subdivision and to the individual building sites no lower

than two feet below the Regulatory Flood Protection Elevation. For all subdivisions in the flood plain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labelled on all required subdivision drawings and platting documents.

7.2 Floodway/Flood Fringe Determinations in the General Flood Plain District: In the General Flood Plain District, applicants shall provide the information required in Section 6.2 of this Ordinance to determine the 100-year flood elevation, the Floodway and Flood Fringe District boundaries and the Regulatory Flood Protection Elevation for the subdivision site.

7.3 Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

SECTION 8.0 PUBLIC UTILITIES, RAILROADS, ROADS, AND BRIDGES

8.1 Public Utilities. All public utilities and facilities such as gas, electrical, sewer, and water supply systems to be located in the flood plain shall be flood-proofed in accordance with the Corps of Engineers Flood-Proofing Regulations or elevated to above the Regulatory Flood Protection Elevation.

8.2 Public Transportation Facilities. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with Sections 4.0 and 5.0 of this Ordinance. Elevation to the Regulatory Flood Protection Elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

8.3 On-site Sewage Treatment and Water Supply Systems: Where public utilities are not provided: a) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and b) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with Section 9.6 of the Benton County Development Code shall be determined to be in compliance with this Section. **(Ord. #257 adopted 11/7/95)**

SECTION 9.0 MANUFACTURED HOMES AND MANUFACTURED HOME PARKS AND PLACEMENT OF TRAVEL TRAILERS AND TRAVEL VEHICLES.

9.1 New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by Section 7.0 of this Ordinance.

9.2 The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record as defined in Section 3.91 of Ordinance #185 that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with Section 5.0 of this Ordinance. If vehicular road access for pre-existing manufactured home parks is not provided in accordance with Section 5.51, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the Planning Commission.

9.21 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

9.3 Travel trailers and travel vehicles that do not meet the exemption criteria specified in Section 9.31 below shall be subject to the provisions of this Ordinance and as specifically spelled out in Sections 9.33-9.34 below.

9.31 Exemption - Travel trailers and travel vehicles are exempt from the provisions of this Ordinance if they are placed in any of the areas listed in Section 9.32 below and further they meet the following criteria:

- (a) Have current licenses required for highway use.
- (b) Are highway ready, meaning on wheels, or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the travel trailer/travel vehicle has no permanent structural type additions attached to it.
- (c) The travel trailer or travel vehicle and associated use must be permissible in any pre-existing, underlying zoning use district.

9.32 Areas Exempted For Placement of Travel/Recreational Vehicles:

- (a) Individual lots or parcels of record (see Ordinance #185, Section 3.91)
- (b) Existing commercial recreational vehicle parks or campgrounds.
- (c) Existing condominium type associations.

9.33 Travel trailers and travel vehicles exempted in Section 9.31 lose this exemption when development occurs on the parcel exceeding \$500.00 for a structural addition to the travel trailer/travel vehicle or an accessory structure such as a garage or storage building. The travel trailer/travel vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in Sections 4.0 and 5.0 of this Ordinance.

9.34 New commercial travel trailer or travel vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five (5) units or dwelling sites shall be subject to the following:

(a) Any new or replacement travel trailer or travel vehicle will be allowed in the Floodway or Flood Fringe Districts provided said trailer or vehicle and its contents are placed on fill above the Regulatory Flood Protection Elevation and proper elevated road access to the site exists in accordance with Section 5.51 of this Ordinance. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.

(b) All new or replacement travel trailers or travel vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a Conditional Use if in accordance with the following provisions and the provisions of 10.4 of the Ordinance. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100 year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel trailers or other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section 8.3 of this Ordinance.

SECTION 10.0 ADMINISTRATION

10.1 Zoning Administrator: A Zoning Administrator designated by the County Board shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section 12.0 of the Ordinance.

10.2 Permit Requirements:

10.21 Permit Required. A Permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

10.22 Application for Permit. Application for a Permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

10.23 State and Federal Permits. Prior to granting a Permit or processing an application for a Conditional Use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal Permits.

10.24 Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. It shall be

unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.

10.25 Construction and Use to be as Provided on Applications, Plans, Permits, Variances and Certificates of Zoning Compliance. Permits, Conditional Use Permits, or Certificates of Zoning Compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 12.0 of this Ordinance.

10.26 Certification. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.

10.27 Record of First Floor Elevation. The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or and alterations additions to structures are flood-proofed.

10.3 Board of Adjustment:

10.31 Rules. The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by Minnesota Statutes, Chapter 394.

10.32 Administrative Review. The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Ordinance.

10.33 Variances. The Board may authorize upon application in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in Minnesota Statutes 394.27. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in Minnesota Statutes 394.27 which justified the granting of the variance. No Variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State law.

10.34 Hearings. Upon filing with the Board of Adjustment of an appeal from a decision of the Zoning Administrator, or an application for a variance, the Board shall fix a reasonable time for a hearing and give due notice to the parties in interest as specified by law. The Board shall submit by

mail to the Commissioner of Natural Resources a copy of the application for proposed Variances sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

10.35 Decisions. Except for good cause, the Board shall arrive at a decision on such appeal or Variance within 60 days. In passing upon an appeal, the Board may, so long as such action is in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination of the Zoning Administrator or other public official. It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting a Variance the Board may prescribe appropriate conditions and safeguards such as those specified in Section 10.46, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Variance is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting Variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.36 Appeals. Appeals from any decision of the Board may be made as specified in Minnesota Statutes 394.27, Subd. 9.

10.37 Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that: a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and b) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. The Zoning Administrator shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the county's annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

10.4 Conditional Uses. The Benton County Planning Commission shall hear and decide applications for Conditional Uses permissible under this Ordinance. Applications shall be submitted to the Zoning Administrator who shall forward the application to the Planning Commission for consideration.

10.41 Hearings. Upon filing with the Zoning Administrator an application for a Conditional Use Permit, the Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

10.42 Decisions. In granting a Conditional Use Permit the Planning Commission shall prescribe appropriate conditions and safeguards, in addition to those specified in Section 10.46, which are in conformity with the purposes of this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a violation of this Ordinance punishable under Section 12.0. A copy of all decisions granting Conditional Use Permits shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

10.43 Procedures to be followed by the Planning Commission in Passing on Conditional Use Permit Applications Within all Flood Plain Districts.

- (a) Require the applicant to furnish such of the following information and additional information as deemed necessary by the Zoning Administrator for determining the suitability of the particular site for the proposed use:
 - (1) Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel.
 - (2) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
- (b) Transmit one copy of the information described in subsection (a) to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
- (c) Based upon the technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

10.44 Factors Upon Which the Decision of the Planning Commission Shall Be Based. In passing upon Conditional Use applications, the Planning Commission shall consider all relevant factors specified in other sections of this Ordinance, and:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (e) The importance of the services provided by the proposed facility to the community.
- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

- (i) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) Such other factors which are relevant to the purposes of this Ordinance.

10.45 Time for Acting on Application. The Planning Commission shall act on an application in the manner described above within 60 days from receiving the application, except that where additional information is required pursuant to 10.44 of this Ordinance. The Planning Commission shall render a written decision within 60 days from the receipt of such additional information.

10.46 Conditions Attached to Conditional Use Permits. Upon consideration of the factors listed above and the purpose of this Ordinance, the Planning Commission shall attach such conditions to the granting of Conditional Use Permits as it deems necessary to fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

- (a) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy, and operation.
- (c) Imposition of operational controls, sureties, and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- (e) Flood-proofing measures, in accordance with the Corps of Engineers Flood-Proofing Regulations and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

SECTION 11.0 NONCONFORMING USES

11.1 A structure or the use of a structure or premises which was lawful before the passage of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

11.11 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

11.12 Any alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the

Regulatory Flood Protection Elevation or floodproofed in accordance with the Corps of Engineers Flood-Proofing Regulations, except as further restricted in 11.13 below.

11.13 The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since January 6, 1981 (Ordinance #131) must be calculated in today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of Section 4.0 or 5.0 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.

11.14 If any nonconforming use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this Ordinance. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of 12 months.

11.15 If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Sections 4.0, 5.0 or 6.0 will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or General Flood Plain District, respectively.

SECTION 12.0 PENALTIES FOR VIOLATION

12.1 Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of Variances or Conditional Uses) shall constitute a misdemeanor and shall be punishable as defined by law.

12.2 Nothing herein contained shall prevent Benton County from taking such other lawful action as is necessary to prevent or to remedy any violation. Such actions may include but are not limited to:

12.21 In responding to a suspected ordinance violation, the Zoning Administrator and the county may utilize the full array of enforcement actions available to it including but not limited to criminal prosecution, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The county will endeavor to act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

12.22 When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall investigate the situation and document the nature and

extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Agency Regional Office along with the county's plan of action to correct the violation to the degree possible.

12.23 The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the county. If the construction or development is already completed, then the Zoning Administrator may either (a) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or (b) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.

12.24 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and may be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this Ordinance.

SECTION 13.0 AMENDMENTS

The flood plain designation on the Official Zoning Map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.

All amendments to this Ordinance, including amendments to the Official Zoning Map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.