

ORDINANCE NUMBER 131

BENTON COUNTY, MINNESOTA

WHEREAS, on November 5, 1980, a Notice of Hearing and Notice of Intent to Amend Ordinance 113 was published in the Benton County News, and written notice thereof was sent to the governing bodies of all towns and municipalities located within Benton County; and

WHEREAS, on November 20, 1980, the Planning Commission held a public hearing on the proposed amendment and on December 18, 1980, recommended approval thereof; and

WHEREAS, on December 2, 1980, the County Board held a public hearing on the proposed amendment,

NOW, THEREFORE, THE COUNTY BOARD OF BENTON COUNTY ORDAINS::

I.

That Sections 7.8 through 7.87 of Ordinance 113 be and hereby are repealed.

II.

That Section 7.8 through 7.89, which read as follows, are hereby adopted as the Flood Plain Zoning Ordinance of Benton County:

7.8 General Flood Plain District (FP)

7.81 Purpose

The Flood Plain District is created for the purpose of protecting the public health and safety and to minimize property damage and pollution from flood waters. The Flood Plain District is divided into a Floodway area, Flood Fringe area, and a General Flood Plain area.

The standards contained in this District have been incorporated from the model flood plain ordinance developed by the Department of Natural Resources (DNR) in conformance with the Flood Plain Act, MN Statutes Ch. 104.

Establishment of Official Maps and Documents

Attached hereto and adopted and incorporated herein by reference are the Flood Insurance Study for Benton County prepared by the Federal Insurance Administration dated January 2, 1981 (Exhibit A), the Flood Boundary and Floodway Maps (Exhibit B) and the Flood Insurance Rate Maps (Exhibit C). Said Exhibits A, B and C shall be supplements to and a part of the Official Zoning Map (Ordinance #114) as it now exists and as it may hereafter be amended. Reference may also be made to the Official Zoning Map and the zoning district ordinances of Benton County.

7.82 Permitted Uses

- A. General agricultural uses such as: farming, pasture, grazing, outdoor nurseries, horticulture, truck farming, forestry, sod farming, crop harvesting and such like uses.
- B. Industrial-commercial uses such as loading and parking areas and other open area uses.
- C. Public and private recreational uses such as: parks, swimming areas, golf courses, driving ranges, picnic grounds, wildlife and nature areas, game farms, fish hatcheries, target, trap and skeet ranges, provided that no permanent or temporary structure shall be required.
- D. Open space uses such as lawns, gardens, parking areas and play areas.
- E. Uses permitted in the underlying zoning districts provided that no permanent structures are constructed or moved or provided to house a use so permitted.

7.83 Conditional Use Permits

A. Procedure

Upon receiving an application for a conditional use permit involving the use of fill, construction of structures, or storage of materials, the County Planning Commission shall, prior to rendering a decision thereon:

1. Require the applicant to furnish such of the following information as is deemed necessary by the Commission for determining the regulatory flood protection elevation, whether the proposed use is located in the floodway or flood fringe, and other factors necessary to render a decision on the suitability of the particular site for the proposed use.
 - a. Plans drawn to scale showing the nature, location, dimensions and elevation of the lots, existing or proposed structures, fill, storage of materials, flood-proofing measures (consistent with the Corps of Engineers Flood-Proofing Standards), and the relationship of the above to the location of the channel.
 - b. 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 highwater information.
 - c. 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; locations and elevation of streets, water supply, sanitary facilities, photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
 - d. Profile showing the slope of the bottom of the channel or flow line of the stream for at least five hundred (500) feet in either direction from the proposed development.
 - e. Specifications for hauling construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
2. In addition to the normal application for conditional use permits, the Zoning Administrator shall submit a copy of the application to the Commissioner of Natural Resources for review at least ten (10) days prior to the hearing date set before the County Planning Commission.
3. Transmit one copy of the information above-described to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is located in the floodway or flood fringe areas of the Flood Plain, in determining the regulatory flood protection elevation, and 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.

B. Factors For Consideration

Structures accessory to the open space uses shall be permitted by Conditional Use only upon consideration by the Planning Commission of the following factors:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.

2. The danger that materials may be swept onto other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
5. The requirements of the facility for a waterfront location.
6. The availability of alternative locations not subject to flooding for the proposed use.
7. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
8. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.
11. The importance of the services provided by the proposed facility to the community.
12. Such other factors which are relevant to the purposes of this ordinance.

C. Conditions attached to Conditional Use Permits

Upon consideration of the factors listed above and the purposes of §7.8, the Planning Commission may 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:

1. Modification of waste disposal and water supply facilities.
2. Limitations on period of use, occupancy and operation.
3. Imposition of operational controls, sureties, and deed restrictions.
4. Requirements for construction of channel modifications, dikes, levees, and other protective measures.
5. Flood-proofing measures, in accordance with the Corps of Engineers Floodproofing Standards. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular areas, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. 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, and may be required without limitation because of specific enumeration:

- a. To resist flotation and lateral movement, either anchor or add mass or weight to structures.
- b. Installation of watertight doors, bulkheads, and shutters, or similar methods of construction to resist rupture or collapse caused by water pressure or floating debris.
- c. Reinforcement of walls to resist water pressures.
- d. Use of paints, membranes or mortars to reduce seepage of water through walls.
- e. Construction of water supply and waste treatment systems to prevent the entrance of flood waters.
- f. Install pumping facilities or comparable practices for subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures as well as lower water levels in structures.
- g. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent back-up of sewage and storm waters into the building or structures. Gravity draining of basements may be eliminated by mechanical devices.
- h. Location of all electrical equipment, circuits and installed electrical appliances in a manner which will assure they are not subject to flooding and provide protection from inundation by the regional flood.
- i. Location of any structure storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials which could be hazardous to public health, safety, and welfare above the flood protection elevation of provision of adequate flood proofing to prevent flotation of storage containers, or damage to storage containers which could result in the escape of toxic materials into flood waters.

7.84 Establishment of Zoning Districts

The Flood Plain area within the jurisdiction of §7.8 are hereby divided into three Districts: Floodway District (FW), Flood Fringe District (FF), and General Flood Plain District (GFP).

The boundaries of these districts shall be shown on the Flood Boundary and Floodway Maps (Exhibit B). Within these districts all uses not allowed as Permitted Uses or permissible as Conditional Uses shall be prohibited.

A. Floodway District. The Floodway District shall include those areas designated as floodway in the Flood Insurance Study. (Exhibit A).

1. Other uses are allowed only as Conditional Uses within the flood-

way provided they comply with the provisions of this section, other standards established in §7.8, and any conditions attached by the Planning Commission to the issuance of the Conditional Use Permit. No structure (temporary or permanent), fill (including fill for roads and levees), deposit, obstruction, storage of materials or equipment, or other use shall be permitted which acting alone or in combination with existing or reasonably anticipated uses affects the efficiency or the capacity of the floodway or increases flood heights. Consideration of the effects of a proposed use shall be based on a reasonable assumption that there will be an equal degree of encroachment extending for a significant reach on both sides of the stream. Conditional Uses include:

- a. Uses or structures accessory to open space or Conditional Uses.
- b. Roadside stands, signs and billboards.
- c. Marinas, boat rentals, docks, piers, wharves, and water control structures.
- d. Railroads, streets, bridges, utility transmission lines and pipelines.
- e. Storage yards for equipment, machinery and materials.
- f. Kennels and stables.
- g. Other uses similar in nature to uses described in Section 7.82 of this section which are consistent with the provisions set forth in §7.8.

2. Fill

- a. Any fill or materials proposed to be deposited in the floodway will be allowed only upon issuance of a Conditional Use Permit. The fill or materials must be shown to have some beneficial purpose and the amount thereof not greater than is necessary to achieve that purpose, as demonstrated by a plan submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill or other materials.
- b. Such fill or other materials shall be protected against erosion by rip-rap, vegetative cover, or bulkheading.

3. Structures (temporary or permanent) Accessory to Conditional Uses Listed in Section 7.84-A(1)

- a. Structures shall not be designed for human habitation.
- b. Structures shall have a low flood damage potential.
- c. The structure or 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.
 1. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and

2. So far as practicable, structures shall be placed approximately on the same flood flow lines as those adjoining structures.
 - d. Structures shall be firmly anchored to prevent flotation which may result in damage to other structures, restriction of bridge openings and other narrow sections of the stream or river.
 - e. Service facilities such as electrical and heating equipment shall be placed at or above the regulatory flood protection elevation for the particular area or adequately floodproofed.

4. Storage of Materials and Equipment

- a. The storage of materials that in time of flooding are buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited.
- b. Storage of other materials or equipment may be allowed upon issuance of Conditional Use Permits if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.

5. Garbage and Solid Waste Disposal

- a. No Conditional Use Permits for garbage and waste disposal sites or feedlots shall be issued for floodway areas.

6. Structural Works for Flood Control

Structural works for flood control such as dams, levees, dikes, and floodwalls shall not be allowed within the floodway except upon issuance of a Conditional Use Permit. In addition, any proposed structural work in the beds of public waters as defined in Minnesota Statutes 1969, c. 105, which will change the course, current or cross-section of the waters shall be subject to the provisions of Minnesota Statutes 1969, c. 105, and other applicable statutes.

7. Any use listed in Section 7.84-A requiring a Conditional Use Permit may be allowed only upon application to the Zoning Administrator and the issuance of a conditional use permit by the Planning Commission.

B. Flood Fringe District. The Flood Fringe District shall include those areas designated as floodway fringe in the Flood Insurance Study. (Exhibit A).

1. Structural or other uses shall be permitted within the flood fringe to the extent they are not prohibited by other standards found in other sections of the Benton County Development Code and they meet the following applicable standards:
 - a. Residential Uses. Residences shall be constructed on fill with the first floor or basement floor at or above the regulatory flood protection elevation. The finished fill elevation shall be no more than one foot below the regulatory flood protection elevation for the particular area and shall extend at such elevation at least

fifteen (15) feet beyond the limits of any structure or building erected thereon. Where existing streets or utilities are at elevation which make compliance with this provision impractical or in other special circumstances the planning commission may authorize other techniques for protection.

- b. Commercial Uses. Commercial structures generally must be constructed on fill with no first floor or basement floor below the flood protection elevation. Accessory land uses, such as yards, railroad tracks and parking lots, may be at lower elevation. However, a permit for such facilities to be used by the general public shall not be granted, in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the regional flood.
- c. Manufacturing and Industrial Uses. Manufacturing and industrial buildings, structures and appurtenant works shall be protected to the flood protection elevation. Measures shall be taken to minimize interference with normal plant operations especially for streams having protracted flood durations.
- d. Utilities, Railroad Tracks, Streets and Bridges. Public utility facilities, roads, railroad tracks and bridges within the flood plain shall be designed to minimize increases in flood elevations and shall be compatible with local comprehensive flood plain development plans. Protection to the regulatory flood protection elevation shall be provided where failure or interruption of these public facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Where failure or interruption of service would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads or utilities.
- e. Waste Treatment and Waste Disposal
 1. No new construction, addition, or modification to existing waste treatment facilities shall be permitted within the flood plain unless emergency plans and procedures for action to be taken in the event of flooding are prepared, filed with and approved by the Minnesota Pollution Control Agency. The emergency plans and procedures must provide for measures to prevent introduction of any pollutant or toxic material into the flood waters.
 2. There shall be no disposal of garbage or solid waste materials within the flood fringe areas.
- C. General Flood Plain District. The General Flood Plain District shall include those areas designated as unnumbered A Zones on the Flood Insurance Rate Map. (Exhibit C).

1. Permitted Uses. Permitted Uses shall include those uses permitted by Section 7.82 of this Ordinance.
2. Conditional Uses. All other uses are Conditional Uses and are permitted only upon the issuance of a special permit as provided in Section 11.6. The General Flood Plain District includes the entire flood plain and does not differentiate between those areas that are floodway and those areas that are flood fringe. Because of this, the Benton County Planning Commission shall determine whether the proposed use is in the floodway or flood fringe using procedures established in Section 7.83. If it is determined that the use lies in the floodway, the provisions of Section 7.84-A of this Ordinance shall apply. If it is determined that the proposed use lies in the flood fringe, the provisions of Section 7.84-B of this Ordinance shall apply.

7.85 Floodproofing

The Corps of Engineers Flood-Proofing Standards are hereby adopted and incorporated herein by reference as Exhibit D and is declared and established as a part of these regulations.

7.86 State and Federal Permits

Prior to granting a Land Use 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.

Variances

Any variance granted to the provisions of this section must be consistent with the general purpose of these standards and the intent of applicable state and national laws and programs. Variances may be used to modify permissible methods of flood protection, but no variance shall provide for a lesser degree of flood protection than stated in this section.

In addition to the normal application for a variance, the Zoning Administrator shall submit a copy of the application to the Commissioner of Natural Resources for review at least ten (10) days prior to the public hearing date set before the Benton County Board of Adjustment. The decision of the Board of Adjustment shall be submitted to the Commissioner of Natural Resources within ten (10) days following the action taken by the Board of Adjustment.

7.87 Subdivisions

No land shall be subdivided which is held unsuitable by the Planning Commission for 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 disposal facilities that comply with the provisions of the Benton County Development Code 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.

In the General Flood Plain District, applicants shall provide the information required in Section 7.83-A of this ordinance. The Planning Commission shall evaluate the subdivision in accordance with procedures established in Section 7.83-A and standards contained in Section 7.83-B of this Ordinance.

7.88 Mobile Homes and Mobile Home Parks

- A. New mobile home parks and expansions to existing mobile home parks shall be subject to the provisions placed on subdivisions by Section 7.87 of this Ordinance.
- B. Mobile homes in existing mobile home parks that are located in flood plain districts are nonconforming uses and may be replaced only if in compliance with the following conditions:
 1. The mobile home lies in the Flood Fringe District.
 2. The mobile home is anchored with tiedowns that comply with requirements of Minnesota Regulation MoH 450 (12 M.C.A.R. 1. 90450).
 3. The mobile home owner or renter is notified that the mobile home site lies in the flood plain and may be subject to flooding.
 4. The mobile home park owner develops a flood emergency plan consistent with the time available after a flood warning. The plan shall be filed with and approved by the Benton County Planning Commission.
- C. Individual mobile homes not located in mobile home parks may be permitted if allowed by other applicable sections of the Benton County Development Code and if they comply with the provisions of Section 7.84-B(1a) of this Ordinance.

7.89 Zoning Administrator

The Zoning Administrator is hereby authorized and directed to enforce the provisions of these regulations as part of the Benton County Development Code.

The Zoning Administrator shall obtain and maintain records of the elevation and floodproofing levels and issue a certificate of compliance for all new construction and/or substantial improvements to structures in the flood plain areas.

The Zoning Administrator shall send a notice of all proposed amendments to the flood plain ordinance to the Commissioner of Natural Resources at least ten (10) days prior to the public hearing date set before the Benton County Planning Commission.

III.

That Ordinance 113 be amended to add §§3.40(1) and 3.50(1) to read as follows:

3.40(1) 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.

3.50(1) Flood Plain: The areas adjoining a watercourse which have been or hereafter may be covered by the regional flood.

IV.

That §§3.48, 3.50, 3.100, 3.119 and 3.121 of Ordinance 113 be amended to read as follows:

3.48 Flood: A temporary increase in the flow or stage of a stream or in the stage of a lake that results in the inundation of normally dry areas.

3.50 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, Minnesota.

3.100 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.

3.119 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.

3.121 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.

V.

That Section 7.89(1) to read as follows be adopted:

7.89(1) Warning and Disclaimer of Liability: Sections 7.8 through 7.89 do not imply that areas outside the flood plain districts or land uses permitted within such district will be free from flooding or flood damages. Sections 7.8 through 7.89 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.

VI.

That this Ordinance shall take effect upon passage and publication.

APPROVED AND ADOPTED by the Board of County Commissioners of Benton County this 6th day of January, 1981.

Ray Herbst
Chairman

ATTEST:

Ray Carriveau
Ray Carriveau, Clerk

VOTE OF THE MEMBERS:

	<u>Yes</u>	<u>No</u>
Kelm	X	
Seppelt		X
Herbst	X	
VanDiest	X	
Lewandowski	X	