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Signed: *MJ*  
MARILYN J NOVAK G V I  
BENTON COUNTY MINNESOTA  
MARILYN J NOVAK  
COUNTY RECORDER

## DOCUMENT COVER SHEET

This document is being re-recorded to change date on page 1, paragraph 4.

Document Name: **BENTON COUNTY ORDINANCE NO. 407**

NAMES **BENTON COUNTY**

**THE PUBLIC**

Document Date: **11/07/2006**

This cover sheet is being attached to this document to provide room for recording information and is considered part of this document

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Page 1 of 15

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Signed:   
MARILYN J NOVAK G V I  
BENTON COUNTY MINNESOTA  
MARILYN J NOVAK  
COUNTY RECORDER

**BENTON COUNTY ORDINANCE NO. 407**

WHEREAS, the Benton County Department of Development instituted proceedings to amend the Benton County Ordinance 185; and,

WHEREAS, on October 17, 2006 and October 18, 2006, Notice of Public Hearing and intent to amend Benton County Ordinance was published in the official newspapers of the county; and,

WHEREAS, on November 2, 2006, the Benton County Planning Commission held a public hearing and recommended approval of the proposed ordinance; and,

WHEREAS, on <sup>November 7</sup> ~~December 5~~, 2006, the Benton County Board of Commissioners held a public hearing and approved the proposed ordinance amendment; and,

NOW PURSUANT TO THE AUTHORITY VESTED BY MINNESOTA STATUTES SECTION 394.25, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS: that Sections of the Benton County Ordinance 185 be amended as follows:

Section 3 Definitions

Add Section 3.12A

Bed and Breakfast: Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation.

Amend Section 3.61

Fence: any partition, structure, wall or gate erected as a dividing marker, barrier, or enclosure.

Amend 3.72A

Home Extended Business: A Home Occupation carried out in an accessory structure.

Add 3.118A

Nonconforming Structure: A structure or building, the size, dimensions, or locations of which was lawful prior to the adoption, revision, or amendment of the

DOD.

Development Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the Development Code.

Add 3.118B

Nonconforming Use: a use or activity that was lawful prior to the adoption, revision, or amendment of the Development Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the Development Code.

Section 4 General Provisions

Amend Section 4.2 Nonconforming Uses and Structures as follows:

Add new language for 4.2.1 (1) and delete old language

A nonconformity may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless the nonconformity or occupancy is discontinued for a period of more than one year; or any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case reasonable conditions may be imposed upon a building permit in order to mitigate any newly created impact on adjacent property, except a nonconforming structure meeting the requirements of paragraph (3) or of Section 6.4.1(b), or a nonconforming feedlot meeting the requirements of Section 9.14.5B.

Add new language for 4.2.1 (2) and delete old language

The County shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in the floodplain areas in accordance with the Floodplain Management Ordinance #196. Notwithstanding Paragraph 1, the minimal improvement necessary to meet the floodproofing requirements of Ordinance #196 shall not be considered an expansion.

Delete subparagraph (3) & (4)

Modify subparagraph (5) to become (3) as follows:

Cement slabs, foundations and equipment shall not be used as part of the market value for the purposes of paragraph (1). Any figure of the County Assessor which takes into account these items shall, accordingly, be adjusted.

Delete subparagraph (6)

Renumber subparagraph (7) as (4)

Notwithstanding paragraph (1) of this section, any otherwise lawful structure which is rendered nonconforming solely by reason a change in the setback requirements from roads/road right-of-ways or the expansion of a public road right of way through eminent domain, purchase or other permanent governmental action may be extended, expanded, enlarged, or structurally altered; provided, that any extension,

expansion or alteration shall not encroach upon the public road right of way to any greater extent than the existing structure and must comply with all other applicable setback restrictions and requirements of this ordinance.

Delete Section 4.2.2

### Section 6 Height, Bulk, and Area Restrictions and Calculation of Density

#### 6.1 Lot Size Requirements

Modify Section 6.1.1 to read as follows:

No land division or split shall be made which results in one or more substandard sized lots, parcels or tracts of land in the zoning district in which the land is situated. No use shall be established or maintained on a lot, parcel, or tract of land which is substandard in size for the zoning district in which it is located, except as hereinafter provided. In addition to other remedies under the law and this Ordinance, no permit shall be issued for any use or structure on any parcel of land which was illegally subdivided. Existing, lots, tracts or parcels of land that were illegally subdivided prior to January 2006 and have a permitted existing dwelling shall be allowed to have permits issued to said property subject to the landowner completing an Administrative Corrective Action on said lot, tract or parcel regardless of the lots size or dimension.

#### 6.2 Accessory Buildings and Structures

Amend Section 6.2.2 as follows:

Residential accessory buildings shall be based on the size of the residential lot, see chart below:

<u>Lot Size *</u> <u>(in Acres)</u>	<u>Maximum Accessory</u> <u>Building size</u>	<u>Height</u>
0-.49	864 Square feet	15 feet
.5-1	1,000 Square feet	20 feet
1.1-2.5	1,400 Square feet	25 feet
2.6-5	1,800 Square feet	35 feet
5.1-9.9	2,500 Square feet	40 feet
10 or greater	Unlimited	

\* Only land above the Ordinary High Water level shall be used to calculate lot size.

#### 7.0 Zoning Use Districts

##### 7.1 Agricultural District

Amend Section 7.1.21 (a) (1) and (2) as follows:

RE-RECORD  
Page 4 of 15  
Page 3 of 14

Temporary Housing for Supportive Care

1. The minimum size of a temporary structure shall be twelve feet wide.
2. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.

Amend Section 7.1.21A (a) (1) and (2) as follows:

Second Dwelling for Supportive Care

1. The minimum size of a temporary structure shall be twelve feet wide.
2. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.

Add to Section 7.1.23 Conditional Uses

Bed and Breakfast

Amend Section 7.1.30 (d) to read as follows:

Lot Access Requirements

Every lot, tract or plot of land, including outlots, shall abut or have direct vehicular access to a public road. Each lot shall have a minimum road frontage equal to the required lot width; however, the Board of Commissioners with approval of a final plat or the Director of Development with an Administrative Land Split may approve a flag lot that has ownership to a dedicated public right-of-way by a minimum thirty-three (33) foot wide access. The public right-of-way shall meet the minimum requirements stated in Section 10.11.2 of the Development Code; however, the construction design standards of the road shall be subject to the requirements of the Township for which the road is so located.

7.2 Rural Agricultural District "R-A"

Add to Section 7.2.22 Conditional Uses

Bed and Breakfast

Amend Section 7.2.25 (a) (1) and (2) as follows:

Temporary Housing for Supportive Care

1. The minimum size of a temporary structure shall be twelve feet wide.
2. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.

Amend Section 7.2.26 (a) (1) and (2) as follows:

Second Dwelling for Supportive Care

1. The minimum size of a temporary structure shall be twelve feet wide.
2. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.

4/

RE-RECORD

Page 5 of 15

Page 4 of 14

## Amend Section 7.2.30 (d)

Lot Access Requirements to read as follows:

Every lot, tract or plot of land, including outlots, shall abut or have direct vehicular access to a public road. Each lot shall have a minimum road frontage equal to the required lot width; however, the Board of Commissioners with approval of a final plat or the Director of Development with an Administrative Land Split may approve a flag lot that has ownership to a dedicated public right-of-way by a minimum thirty-three (33) foot wide access. The public right-of-way shall meet the minimum requirements stated in Section 10.11.2 of the Development Code; however, the construction design standards of the road shall be subject to the requirements of the Township for which the road is so located.

## 7.2A Rural Service District "R-S"

## Amend 7.2A.20 Conditional Uses

Fences located in a front yard with a height between 4 feet and 6 feet.  
Bed and Breakfast

## Amend Section 7.2A.21 (a) (1) and (2) as follows:

Temporary Housing for Supportive Care

1. The minimum size of a temporary structure shall be twelve feet wide.
2. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.

## Amend Section 7.2A.22 (a) (1) and (2) as follows:

Second Dwelling for Supportive Care

1. The minimum size of a temporary structure shall be twelve feet wide.
2. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.

## Amend 7.2A.30 (H)

Lot Access Requirements to read as follows:

Every lot, tract or plot of land, including outlots, shall abut or have direct vehicular access to a public road. Each lot shall have a minimum road frontage equal to the required lot width; however, the Board of Commissioners with approval of a final plat or the Director of Development with an Administrative Land Split may approve a flag lot that has ownership to a dedicated public right-of-way by a minimum thirty-three (33) foot wide access. The public right-of-way shall meet the minimum requirements stated in Section 10.11.2 of the Development Code; however, the construction design standards of the road shall be subject to the requirements of the Township for which the road is so located.

RE-RECORD

Page 6 of 15

Page 5 of 14

7.3 R-1 Single Family Residence District

Amend Section 7.3.2 Conditional Uses

Fences located in a front yard with a height between 4 and 6 feet;  
Bed and Breakfast

Amend Section 7.3.3 Yard Regulations to read as follows:

(e) RESIDENTIAL STRUCTURES:

-Side Yard or Rear Yard Abutting Land zoned A or R-A....50 feet minimum

-Side Yard Abutting Land zoned R-1, R-2, R-3 or R-S.....  
15 feet minimum

-Rear Yard Abutting Land zoned R-1, R-2, R-3 or R-S .....  
30 feet minimum

- Side Yard Abutting Land zoned R-1, R-2, R-2, R-3 or R-S, where Residential Fire Protection Water is available with a subdivision .....10 feet minimum

-Setback from feedlots.....See Section 9.14

7.4 R-2 Single Family Residence District

Amend Section 7.4.2 Conditional Uses

Fences located in a front yard with a height between 4 feet and 6 feet;  
Bed and Breakfast

Amend Section 7.4.3 Yard Regulations to read as follows:

(e) RESIDENTIAL STRUCTURES:

-Side Yard or Rear Yard Abutting Land zoned A or R-A....50 feet minimum

-Side Yard Abutting Land zoned R-1, R-2, R-3 or R-S.....  
15 feet minimum

-Rear Yard Abutting Land zoned R-1, R-2, R-3 or R-S .....  
30 feet minimum

- Side Yard Abutting Land zoned R-1, R-2, R-2, R-3 or R-S, where Residential Fire Protection Water is available with a subdivision .....10 feet minimum

-Setback from feedlots.....See Section 9.14

7.5 R-3 Single Family and Multiple Dwelling Residence District

Amend Section 7.5.2 Conditional Uses

Fences located in a front yard with a height between 4 feet and 6 feet;  
Bed and Breakfast

RE-RECORD

Page 7 of 15

Page 6 of 14

Amend Section 7.5.3 Yard Regulations to read as follows:

- (e) RESIDENTIAL STRUCTURES:
  - Side Yard or Rear Yard Abutting Land zoned A or R....50 feet minimum
  - Side Yard Abutting Land zoned R-1, R-2, R-3 or R-S.....  
15 feet minimum
  - Rear Yard Abutting Land zoned R-1, R-2, R-3 or R-S .....  
30 feet minimum
  - Side Yard Abutting Land zoned R-1, R-2, R-2, R-3 or R-S, where  
Residential Fire Protection Water is available with a subdivision  
.....10 feet minimum
  - Setback from feedlots.....See Section 9.14

7.8 Heavy Industrial District I-2

Amend Section 7.8.3 Yard Regulations

- Rear Yard.....40 feet minimum
- OR.....120 feet if abutting residentially zoned property

7S Shoreland District Mangement

Amend Section 7S5.21 A to read as follows:

Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level\*.

Classes of Public Waters	Setbacks*		
	Structures Unsewered	Structures Sewered	Sewage Treatment System
<u>Lakes</u>			
Natural Environment	150	150	150 (For Septic/Lift Tank and System)
Recreational Development	100	75	100 (Septic System) 75 (Septic/Lift Tank)
<u>Rivers</u>			
Forested and Transition	150	150	150(Septic System) 100 (Septic/Lift Tank)
Agriculture, Urban, and Tributary	100	50	75 (For Septic/Lift Tank and System)

Amend Section 7S5.24 Fences to read as follows:

Fences erected from the building to the ordinary high water level shall not exceed a height of 4 feet and have at least 90 percent of the surface uniformly open and unobstructed unless the lot abuts a public park or public access.

### 8.0 Performance Standards

Amend Section 8.3.2 Residential Fences to read as follows:

Fences located in a residential district, rural service district or cluster lot may be located on any lot line to a height of 4 feet and a fence up to 6 feet in height may be erected behind the nearest front corner of the principal building.

Fences between 4 feet and 6 feet in height may be allowed as a conditional use in front yards in a residential district, rural service district or cluster lot.

Should the rear lot line be common with the side lot line of an abutting lot, that portion of the rear lot line equal to the required front yard of the abutting lot shall not be fenced to a height of more than 4 feet.

Fences erected from the building line to the ordinary high water level shall not exceed a height of 4 feet and have at least 90 percent of the surface uniformly open and unobstructed unless the lot abuts a public park or public access.

Amend Section 8.3.3 Business and Industrial District Fences to read as follows:

Fences may be located on a lot line to a height of 6 feet. Fences over 6 feet in height may be permitted subject to the provision of engineered plans in accordance with the State Building Code.

Amend Section 8.3.4 Access Driveways to read as follows:

- (a) The distance from a driveway to the intersection of two streets shall not be less than 20 feet measured along the street curb line; provided, however, that if in the opinion of the Engineer, present or future traffic conditions warrant greater distances, such greater distances shall be required subject to approval by the Road Authority. The distance from a driveway to the intersection of two thoroughfares shall be no less than 100 feet.
- (b) The minimum distance between driveways shall be 25 feet; provided, however, that if in the opinion of the Engineer, present or future traffic conditions warrant greater distances, such greater distances shall be required subject to approval by the Road Authority.

RE-RECORD

Page 9 of 15

Page 8 of 14

- (c) The driveway angle to the street shall be 90 degrees unless otherwise recommended by the Engineer and approved by the Road Authority.
- (d) Access driveways for other than single family dwellings, shall be 30 feet wide measured along the property line between the curb faces of the driveway, unless otherwise recommended by the Engineer and approved by the Road Authority.
- (e) Access driveways for single family dwellings shall be not less than 12 feet, nor more than 24 feet, wide measured along the property line, except as provided for in the lot access requirement provisions of Sections 7.1 and 7.2, unless otherwise recommended by the Engineer and approved by the Road Authority.

Amend Section 8.7.1 Residential Districts to read as follows:

In areas zoned R-1, R-2, R-3 or R-S, no unlicensed motor vehicles may be stored unless completely enclosed within a structure.

Amend Section 8.7.2 Agricultural Districts to read as follows:

- (a) In areas zoned A, R-A the storage of up to three (3) unlicensed motor vehicles shall be a permitted use.

Replace Section 8.9 Right to Farm to read as follows:

- A. Farmers have a right to farm even if development is taking place around them. If the farm was in operation before the complaining person moved to the area, the complaining person shall be deemed to have "come to the nuisance." An agricultural operation is not and shall not be considered a private or public nuisance by Benton County if the operation:
  - a. Is located in an agriculturally zoned area;
  - b. Complies with the provisions of all applicable federal, state, or county laws, regulations, rules, and ordinances and any permits issued for the agricultural operation; and
  - c. Operates according to generally accepted agricultural practices.
- B. Farmers shall have the right to farm without unreasonable restrictions, regulations, or harassment. Complaints against the operations of farms shall be considered to be unwarranted and frivolous as long as the farming activities are being conducted according to generally accepted agricultural standards.

These farming activities shall include, but not be limited to:

- a. The right to operate equipment in the fields, on the roads, or on any farm or homestead property, at any time and on any day of the week.
- b. Farming activities that generate noise and dust. This can be caused in a variety of ways including fieldwork, caring for livestock, harvest, or care and maintenance of the farm.
- c. The generation of odor from livestock, manure, fertilizer, feed, and farm-related other sources.

C. All farming operations that lawfully exist in Benton County shall be protected by this Ordinance

Renumber Section 8.9.3 as 8.9.1

Nuisance. An agricultural operation conducted or maintained on agricultural land shall not be or become a nuisance, public or private, if the operation was not a nuisance when it began. This provision shall not apply:

- a. To a condition or injury that results from the negligent or improper operation of an agricultural operation or from operations conducted and maintained in a manner that is contrary to commonly accepted agricultural practices;
- b. When an agricultural operation causes injury or direct threat of injury to health or safety of any person;
- c. When an agricultural operation causes the pollution of, or change in the condition of, waters of the State or the water flow of water on the lands of any person; or
- d. When an agricultural operation causes the obstruction of free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, street or highway.

Add Section 8.9.2 The provisions of this section do not apply:

- 1. To an animal feedlot facility with a swine capacity of 1,000 or more animal units as defined in the rules of the pollution Control Agency for control of pollution from animal feedlots, or a cattle capacity of 2,500 animals or more,
- 2. To any prosecution for the crime of public nuisance as provided in Minnesota Statutes Sect. 609.74 or to an action by a public authority to abate a particular condition which is a public nuisance, or

RE-RECORD  
Page 11 of 15

Page 10 of 14

- 3. To any enforcement action brought by Benton County related to other sections of the Development Code.

Delete Sections 8.9.4 through 8.9.9

9.0 Special Provisions

Amend Section 9.18 Cluster Subdivision as follows:

- C. Conditional Uses within Cluster Subdivision to read as follows:  
Fences located in a front yard or side yard with a height between 4 feet and 6 feet.

Amend Section 9.14 Large Scale Feedlots (Intensive Livestock/Poultry Farming) as follows:

Section 9.14.2 Permitted Uses to read as follows:

Tier I feedlots shall be a permitted use in areas zoned A or R-A, subject to the restrictions set forth in Section 9.14.4.

Section 9.14.3 Conditional Uses to read as follows:

- A. Tier II feedlots shall be conditional uses in areas zoned A. Conditional use permits for feedlots may only be granted if the following requirements are met:...
- B. Livestock waste storage facilities shall be conditional uses in areas zoned A. Conditional use permits for waste storage facilities may only be granted if the following requirements are met:...

Section 9.15.1 Home Occupations to read as follows:

- (e) Any home occupation in existence prior to the adoption of (Ord. #308 adopted 11/4/99) will be allowed to continue as a legal Non-conforming Use subject to Section 4 of this Ordinance.
- (f) Home occupations include, but are not necessarily limited to, the following:
  - 1. Antique shops, not including refurbishing
  - 2. Artists and sculptors.
  - 3. Authors and composers.
  - 4. Beauty Shop/Barber Shop
  - 5. Dressmakers, seamstresses and tailors.
  - 6. Home crafts, such as model making, rug weaving, lapidary work, and ceramics.
  - 7. Office facilities, other than home professional offices.
  - 8. Schools of special education whose class size does not exceed

more than four (4) pupils at any given time and not more than eight (8) pupils in any one day.

- (g) Home Occupations Not Permitted include the following:
  1. Antique repair and refurbishing shops
  2. Auto Repair
  3. Eating establishments
  4. Gift shops
  5. Veterinary hospitals
  6. Other uses specifically listed as a conditional use for the zoning district
  
- (h) A permit for a home occupation is valid for only the original applicant and is not transferable to any resident, address or any other occupation. Upon termination of the applicant's residency, the home occupation permit shall become null and void.

Amend Section 9.15.2 to read as follows:

9.15.2 Home Extended Business where allowed as a conditional use in this Ordinance, shall be subject to the following conditions:

- (g) A sign shall meet the requirements of Section 9.1.2.
  
- (i) The home extended business shall not generate hazardous waste unless a plan for off-site disposal of the waste is approved by the Planning Commission.

10.0 Subdivision Regulations

Amend Section 10.5.1 BLA Procedures as follows:

- B. Three paper copies and one digital copy of a certificate of survey for all affected lots, tracts or parcels (lots) showing the following:
  3. The location and dimension of all structures/improvements existing upon the affected lots and the distances between structures/improvements and the proposed boundary lines if within 660 feet of the proposed property lines;

Amend Section 10.6 Administrative Land Splits to read as follows:

The conveyance of certain parcels of land within any zoning district with the Director's approval. An administrative land split for items A-C below shall only be approved if the conveyance does not require creation or altering of any public road right-of-way and any parcel created by the land split is in compliance with the minimum standards and residential density of the district in which it is located. An administrative corrective action shall be approved in accordance with item d below and Section 6.1.2.

Add Section 10.6 D. Corrective Action

Existing, lots, tracts or parcels of land that were illegally subdivided prior to January 1, 2006 and have a existing dwelling constructed prior to August 1, 1978 or permitted by the Department of Development may be permitted to continue as a dwelling site regardless of the lots size and dimensions subject to meeting the requirements of Section 10.6.2. Illegally subdivided lots prior to January 1, 2006, without an existing dwelling constructed prior to August 1, 1978 or permitted by the Department of Development shall be permitted to be created as a building site subject to meeting the applicable standards of the Zoning District and Sect. 10.6 (b), (c), or 10.7.

Amend Section 10.6.1 Administrative Land Split Procedures as follows:

- B. Three paper copies and one digital copy of a certificate of survey signed by a registered land surveyor for the land being conveyed.
  - 3. Any existing site improvements within 660 feet of the property lines; and

Add Section 10.6.2 Administrative Corrective Action

The following documents (A-D) shall be submitted as a part of the Administrative Corrective Action procedure. Failure to provide the necessary documents will result in the inability to create a legal subdivision according to this Ordinance.

- A. Administrative Corrective Action Application.
- B. Three paper copies and one digital copy, if available, of a certificate of survey signed by a registered land surveyor for the land being conveyed.
  - 1. A certificate of survey for all affected lots, tracts or parcels that shall include a legal description of each parcel;
  - 2. The parcel area;
  - 3. Any existing site improvements within 660 feet of the property lines; and
  - 4. Distances from buildings to property lines.
- C. Evidence of ownership or a legal interest in the property. That may include the deed of ownership or a title opinion by a practicing attorney at law.

Upon submittal of all required documents, the Director of Development shall review the proposed application and if the Administrative Corrective Action is compliant it shall be recorded in the Office of the Recorder. If the Administrative Corrective Action is not compliant all documents shall be returned and the reasons for non-compliance shall be stated in writing to the applicant.

Amend Section 10.10.2 Existing Conditions as follows:

- (20) Indicate location of wetlands (Excluding outlots).

Amend Section 10.10.4 Other Information as follows:

- (8) Soil boring tests shall be required if on-site sewage treatment systems are to be used. See Section 9.6.0.

13

RE-RECORD  
Page 14 of 15  
Page 13 of 14

Amend Section 10.12.2 Park Land Dedication to read as follows:

- E. The County Board may in its discretion, upon recommendation of the Benton County Park Commission accept a per lot cash fee in lieu of land, or accept a combination of cash and land contributions. The fee may be up to 10% of the median undeveloped lot value, as of the date of final plat approval, as determined by the Benton County Assessor.

At the time of final plat approval, the developer shall remit all dedication fees required by the Board of Commissioners and the Director.

At least 75% of the funds obtained by the County pursuant to this section must be used for the acquisition or development of parks and trails in the Township or city where collected, unless the township board or city council agrees to allow the County to use the funds outside their township or city in a manner consistent with the County Master Plan for Parks, Trails and Open Space and the Comprehensive Plan. The remaining funds may only be used by the County for trail connectivity and accessibility purposes. The County will report annually to cities and townships where funds were collected and expended in the past year.

This ordinance shall be effective upon publication.

Approved and adopted by the Benton County Board of Commissioners this 7<sup>th</sup> day of November in the year of 2006.

*Duane Grandy*

Duane Grandy, Chair  
Benton County Board of Commissioners

ATTEST:

*Montgomery Headley*  
Montgomery Headley  
Benton County Administrator

*Duane Grandy*  
Duane Grandy, Chair                      Date  
Benton County Board of Commissioners

*Montgomery Headley*  
Montgomery Headley                      Date  
Benton County Administrator