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Signed: CK  
MARILYN J NOVAK  
BENTON COUNTY MINNESOTA  
MARILYN J NOVAK  
COUNTY RECORDER

**BENTON COUNTY ORDINANCE NO. 440**

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

WHEREAS, on August 25th and 26th, 2009, Notice of Public Hearing and intent to amend Benton County Ordinance was published in the official newspapers of the county; and,

WHEREAS, on September 10, 2009, and October 8, 2009, the Benton County Planning Commission held a public hearing; and,

WHEREAS, on October 20, 2009, 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:

The following definitions in Section 3 shall be modified:

Lot Line, Rear: the boundary of a lot, other than a through lot, which is opposite the front lot line. If the rear lot line is less than 30 feet in length or if the lot forms a point in the rear, the rear lot line shall be a line 30 feet in length within the lot, parallel to the front lot line. For corner lots in the non-residential area the lot line opposite the front lot line shall be deemed a side yard for setbacks.

Yard, Rear: a yard extending across the rear of the lot between the side property lines and lying between the rear lot line and the nearest line of the building. For corner lots in the non-residential area the lot line opposite the front lot line shall be deemed a side yard for setbacks.

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no fee

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Section 4.2.1 is modified to read as follows:

- 4.2.1 Any use or structure existing on March 28, 1979, or legally permitted thereafter that because of a change in the ordinance became nonconforming, other than a use specified in Section 4.2.3, may continue until its normal expiration.
- (1) A nonconformity may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. If 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 estimated market value, as indicated in the records of the County Assessor at the time of the damage, and no land use permit has been applied for within 180 days of when the property is damaged, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. If a nonconforming building or structure is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the County Assessor at the time of the damage, the County may impose reasonable conditions upon a building land use permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the County Assessor at the time of the damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a land use permit to mitigate created impacts on the adjacent property or water body.
  - (2) 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.
  - (3) Existing nonconforming lots in shoreland areas. Paragraph (3) applies only to shoreland lots created prior to June 14, 1972, that do not meet the requirements for lot size or lot width. In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
    - (a) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

- (b) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules Chapter 7080 and Section 9.6 of the Development Code;
- (c) impervious surface coverage shall not exceed 25 percent of each lot;
- (d) development of the lot must be consistent with the comprehensive plan; and
- (e) The division of the lots will not create a noncompliant setback from the existing structures to the lot lines.

Any existing nonconforming shoreland lot created prior to June 14, 1972, not meeting the requirements of subpart a-e must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

Contiguous nonconforming lots in shoreland areas under a common ownership that were created on or after June 14, 1972, or not meeting the above standards shall be deemed to be a part of the abutting tract or parcel of land to the extent necessary to reduce or eliminate the substandard features of the lot for the zoning district in which it is situated

Notwithstanding paragraph (3), contiguous nonconforming lots in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of Section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

For lots subject to subpart a-e when evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

- (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.

- (5) A nonconforming lot, unless combined paragraph 3 of this section, may be allowed as a building site without variances from lot size requirements, provided that all structure and septic system setback distance requirements and impervious requirements can be met.
- (6) Notwithstanding paragraph 1 of this section, an expansion of a nonconforming structure shall not require a variance if it complies with the following:
  - a) The area of the expansion is on an existing permitted nonconforming structure and the expansion does not further encroach into the nonconforming setback as the existing structure;
  - b) The expansion does not cause the lot to exceed the permitted impervious area;
  - c) The expansion does not increase the size of the structure by more than 20%;
  - d) The lot is not within shoreland or floodplain; and
  - e) The site is served by a compliant septic system as evidenced by a valid certificate of compliance

Section 4.3 is modified to read as follows:

#### 4.3 Dwelling Units Prohibited:

No cellar, garage, camper, recreational vehicle, trailer, basement with unfinished structure above (excluding energy efficient subterranean dwellings), or accessory building, shall at any time be used as a dwelling unit or residence or parked within the county, except as hereinafter provided.

- 4.3.1 A recreational vehicle, camper or travel trailer of the type generally used temporarily as living quarters, may be parked on a property in the county provided, however, that such recreational vehicle, camper or travel trailer is duly licensed and registered under the laws of the State of Minnesota and shall not while so parked be used as a human dwelling place, living abode or living quarters.
- 4.3.2 A recreational vehicle, camper or travel trailer of the type described in paragraph 4.3.1 above and owned by a non-resident, guest, or visitor, may be parked or occupied by said guest or visitor on property on which a permanent dwelling unit is located for a period not to exceed thirty (30) days in the same calendar year while visiting the resident of said property.
- 4.3.3 The Department of Development Director may, upon application, grant a temporary permit for the use of a temporary residential structure or permit an existing

dwelling unit to remain in conjunction with a home construction project that a duly authorized and valid land use permit has been issued prior to the application for said temporary permit.

4.3.4 The applicant for said temporary permit shall file an application with the Department of Development Director setting forth the area in which said trailer or dwelling is to be located, together with a copy of the land use permit for the home to be constructed on said property.

4.3.5 The term of said temporary permit shall not exceed six months or upon completion of construction of the residential home in question, whichever comes first. An agreement shall be signed by the land owner prior to issuance of the land use permit acknowledging the requirement for removal of the structure, dwelling or trailer.

Section 5.4 is modified to read as follows:

5.4 No landowner shall erect, construct, structurally alter, extend, convert, move or use--nor allow or permit another person, including a lessee, tenant, agent, employee or contractor, to erect, construct, structurally alter, extend, convert, move or use on the landowner's land--any building or structure in any zoning district without first obtaining a land use permit therefore. In the event that a building or structure is erected or altered without the required permit the current owner shall obtain the required permits within 90 days of discovery by the County. If the current owner allowed the erection or alteration of the structure they shall be subject to after the fact fees as set-up by the County Board. If a previous owner allowed the erection or construction of the structure without the knowledge of the current landowner the current landowner shall not be subject to the after the fact fees.

Sections 6.1.2 and 6.1.3 are modified to read as follows:

6.1.2 A substandard sized Lot of Record or parcel of land, now owned by, or hereafter acquired by, the owner of an abutting tract or parcel of land, shall be deemed to be a part of the abutting tract or parcel of land to the extent necessary to reduce or eliminate the substandard features of the lot for the zoning district in which it is situated except as provided under Section 4.2 and 7S5.20 for shoreland lots. Tracts or parcels of land separated by a public road shall be deemed to be separate and individual lots of record or parcels.

6.1.3 Any substandard sized Lot of Record or parcel may be allowed as a building site, provided such use is permitted in the zoning district in which the lot is located, the lot is in separate ownership from abutting lands, except as permitted for nonconforming shoreland lots in Section 4.2 and 7S5.20 for shoreland lots, and all sanitary sewer requirements of this Ordinance are complied with.

Section 6.3.3 Paragraph J below is hereby deleted

- j. In no event shall the combination of off-street parking space, structures of any type, or other features cover more than seventy-five (75) percent of the lot area, resulting in less than twenty-five (25) percent landscaped area in Residential Districts.

Section 6.4.1 is modified to read as follows:

- 6.4.1 Except as otherwise provided, in Residential and Rural Service Districts each single family dwelling shall be at least 20 feet in width at its narrowest point, and shall have a ground floor space of at least eight-hundred square feet.

Section 6.4.2 below is hereby deleted:

- 6.4.2 In the Agricultural, Business and Industrial Districts, single family dwellings shall be at least twelve (12) feet in width at its narrowest point.

“Historic sites and areas” is added to Sections 7.1.10 and 7.2.10 and deleted from Sections 7.1.23 and 7.2.22.

Section 7.1.21 and 7.1.21A are modified as follows:

7.1.21 Temporary Housing

- (a) A dwelling, which may be a manufactured home, in addition to the permitted dwelling, may be provided if used to provide shelter for a person needing supportive care or person giving supportive care and subject to the following conditions:
  - 1. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.
  - 2. The dwelling must be removable.
  - 3. One of the occupants of the temporary dwelling must be related to the occupant of principal dwelling on the property by blood, marriage, or adoption.
  - 4. The person needing supportive care must be unable to live independently due to physical or mental disabilities.
  - 5. A letter shall be submitted from a physician, nurse practitioner or physician assistant to verify the need for supportive care and extent of care to be provided and the permanency of the situation.

6. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that either the principal unit or the temporary unit is still occupied by the eligible resident(s) named in the original application.
  7. The structure shall be removed within ninety days of discontinuance of providing or receiving supportive care.
- (b) A dwelling or dwellings, which may be a manufactured home, in addition to the permitted dwelling, if used to house help employed full-time on the farm, and if the need for additional help and additional housing to support and carry on the principal use has been established and subject to the following conditions:
1. Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.
  2. The temporary structure(s) shall be removed within ninety days of full-time help is no longer being required.
- (c) A dwelling, which may be a manufactured home, for a farm operator; provided the property owner is retired from the operation of the farm and continues to reside in the farmstead residence.
1. The structure shall be removed within ninety days of when a farm operator is no longer being required or the original property owner no longer resides in the original structure.

#### 7.1.22 Second Dwelling

- (a) A dwelling, which may be a stick built home, in addition to the permitted dwelling, maybe provided if used to provide shelter for a person needing supportive care or person giving supportive care and subject to the following conditions:
1. The dwelling should be located within 100 feet of the principal residential structure and meet all other setbacks.
  2. One of the occupants of the dwelling must be related to the owner of principal dwelling on the property by blood, marriage, or adoption.
  3. The person needing supportive care must be unable to live independently due to physical or mental disabilities.
  4. A letter shall be submitted from a physician, nurse practitioner or physician assistant to verify the need for supportive care and extent of care to be provided and the permanency of the situation.

5. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that either the principal unit or the second unit is still occupied by the eligible resident(s) named in the original application.
  - (b) A dwelling, which may be a stick built home, in addition to the permitted farmstead dwelling, if used to house help employed full-time on the farm, and if the need for additional help and additional housing to support and carry on the principal use has been established and subject to the following conditions:
    1. Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.
    2. One of the dwellings shall be removed within ninety days of full-time help is no longer being required.
  - (c) A dwelling, which may be a stick built home home, for a farm operator; provided the property owner is retired from the operation of the farm and continues to reside in the farmstead residence.
    1. One of the dwellings shall be removed within ninety days of when a farm operator is no longer being required or the original property owner no longer resides in the original structure.

Section 7.1.22 below is hereby deleted:

7.1.22 Temporary Farm Dwellings

- (a) A dwelling or dwellings, which may be a manufactured home, in addition to the permitted farmstead dwelling, if used to house help employed full-time on the farm, and if the need for additional help and additional housing to support and carry on the principal use has been established.
- (b) A dwelling, which may be a manufactured home, for a farm operator; provided the property owner is retired from the operation of the farm and continues to reside in the farmstead residence.
- (c) The minimum size of a temporary structure shall be 800 square feet.
- (d) Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.

Section 7.1.30 (a) ALL STRUCTURES, SETBACKS FROM ROADS:  
is modified as follows:

ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
Major Collector	125 feet	92 feet
Minor Collector	125 feet	92 feet
LOCAL COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
County Road	125 feet	92
Township Road	98 feet	65 feet
Township Road completely within a cluster subdivision	63 feet	30 feet

\* Where right-of-way information is available the more restrictive standard will apply.

And below is hereby deleted:

STRUCTURES HOUSING LIVESTOCK:

-Side Yard or Rear Yard.....80 feet minimum

Section 7.2.23 below is hereby deleted:

7.2.23 Temporary Farm Dwellings

- (a) A dwelling or dwellings, which may be a manufactured home, in addition to the permitted farmstead dwelling, if used to house help employed full-time on the farm, and if the need for additional help and additional housing to support and carry on the principal use has been established.
- (b) A dwelling, which may be a manufactured home, for a farm operator; provided the property owner is retired from the operation of the farm and continues to reside in the farmstead residence.
- (c) The minimum size of a temporary structure shall be 800 square feet.
- (d) Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.

Sections 7.2.25 and 7.2.26 are modified as follows:

7.2.25 Temporary Housing

- (a) A dwelling, which may be a manufactured home, in addition to the permitted dwelling, may be provided if used to provide shelter for a person needing supportive care or person giving supportive care and subject to the following conditions:
1. The temporary structure should be located within 100 feet of the principal residential structure and meet all other setbacks.
  2. The dwelling must be removable.
  3. One of the occupants of the temporary dwelling must be related to the occupant of principal dwelling on the property by blood, marriage, or adoption.
  4. The person needing supportive care must be unable to live independently due to physical or mental disabilities.
  5. A letter shall be submitted from a physician, nurse practitioner or physician assistant to verify the need for supportive care and extent of care to be provided and the permanency of the situation.
  6. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that either the principal unit or the temporary unit is still occupied by the eligible resident(s) named in the original application.
  7. The structure shall be removed within ninety days of discontinuance of providing or receiving supportive care.
- (b) A dwelling or dwellings, which may be a manufactured home, in addition to the permitted farmstead dwelling, if used to house help employed full-time on the farm, and if the need for additional help and additional housing to support and carry on the principal use has been established and subject to the following conditions:
1. Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.
  2. The temporary structure(s) shall be removed within ninety days of full-time help is no longer being required.

- (c) A dwelling, which may be a manufactured home, for a farm operator; provided the property owner is retired from the operation of the farm and continues to reside in the farmstead residence.
  - 1. The structure shall be removed within ninety days of when a farm operator is no longer being required.

7.2.26 Second Dwelling

- (a) A dwelling, which may be a stick built home, in addition to the permitted dwelling, maybe provided if used to provide shelter for a person needing supportive care or person giving supportive care and subject to the following conditions:
  - 1. The structure should be located within 100 feet of the principal residential structure and meet all other setbacks.
  - 2. One of the occupants of the dwelling must be related to the owner of principal dwelling on the property by blood, marriage, or adoption.
  - 3. The person needing supportive care must be unable to live independently due to physical or mental disabilities.
  - 4. A letter shall be submitted from a physician, nurse practitioner or physician assistant to verify the need for supportive care and extent of care to be provided and the permanency of the situation.
  - 5. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that either the principal unit or the second unit is still occupied by the eligible resident(s) named in the original application.
- (b) A dwelling, which may be a stick built home, in addition to the permitted farmstead dwelling, if used to house help employed full-time on the farm, and if the need for additional help and additional housing to support and carry on the principal use has been established and subject to the following conditions:
  - 1. Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.
  - 2. One of the structures shall be removed within ninety days of full-time help is no longer being required.
- (c) A dwelling, which may be a stick built home home, for a farm operator; provided the property owner is retired from the operation of the farm and continues to reside in the farmstead residence.

1. One of the structures shall be removed within ninety days of when a farm operator is no longer being required or the property owner no longer resides in the original structure.

Section 7.2.30 (a) is modified as follows:

- (a) Setbacks:

ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
Major Collector	125 feet	92 feet
Minor Collector	125 feet	92 feet
LOCAL COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
County Road	125 feet	92
Township Road	98 feet	65 feet

\* Where right-of-way information is available the more restrictive standard will apply.

And below is hereby deleted:

STRUCTURES HOUSING LIVESTOCK:

-Side Yard or Rear Yard.....80 feet minimum

“Pre-existing single family dwelling moved from one site onto a lot” is deleted from Section 72A.20

Section 7.2A.21 and 7.2A.22 shall be modified as follows:

7.2A.21 Temporary Housing for Supportive Care

- (a) A dwelling, which may be a manufactured home, in addition to the permitted dwelling, maybe provided if used to provide shelter for a person needing supportive care or person giving supportive care and subject to the following conditions:

1. The temporary structure shall be located within 100 feet of the principal residential structure and meet all other setbacks.
2. The dwelling must be removable.
3. One of the occupants of the temporary dwelling must be related to the occupant of principal dwelling on the property by blood, marriage, or adoption.
4. The person needing supportive care must be unable to live independently due to physical or mental disabilities.
5. A letter shall be submitted from a physician, nurse practitioner or physician assistant to verify the need for supportive care and extent of care to be provided and the permanency of the situation.
6. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that either the principal unit or the temporary unit is still occupied by the eligible resident(s) named in the original application.
7. The structure shall be removed within ninety (90) days of discontinuance of providing or receiving supportive care.

7.2.22 Second Dwelling for Supportive Care

- (a) A dwelling, which may be a stick built home, in addition to the permitted dwelling, maybe provided if used to provide shelter for a person needing supportive care or person giving supportive care and subject to the following conditions:
1. The temporary structure shall be located within 100 feet of the principal residential structure and meet all other setbacks.
  2. One of the occupants of the temporary dwelling must be related to the owner of principal dwelling on the property by blood, marriage, or adoption.
  3. The person needing supportive care must be unable to live independently due to physical or mental disabilities.
  4. A letter shall be submitted from a physician, nurse practitioner or physician assistant to verify the need for supportive care and extent of care to be provided and the permanency of the situation.
  5. The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that either the principal

unit or the second unit is still occupied by the eligible resident(s) named in the original application.

- 6. The structure shall be removed within ninety days of discontinuance of providing or receiving supportive care.
- 7. The property owner shall sign an agreement acknowledging that when supportive care is no longer required one of the structures will need to be removed within ninety days, unless a land split is approved.
- 8. A bond, escrow or letter of credit shall be submitted prior to approval of a land use permit for the second dwelling to ensure that funds are available for the removal of one of the structures within ninety days of discontinuance.

Section 7.2A.30 (B) is modified as follows:

B. Setbacks:

ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
County Road	98 feet	65 feet
Township Road	63 feet	30 feet

\* Where right-of-way information is available the more restrictive standard will apply.

Section 7.2A.30 D below is deleted and Paragraphs E-H are re-lettered accordingly.

D. STRUCTURES HOUSING LIVESTOCK:

-Side Yard or Rear Yard.....80 feet minimum

“Convenience grocery stores” and “Pre-existing single family dwelling moved from one site onto a lot” are hereby deleted from Section 7.3.2.

Section 7.3.3 (d) is modified as follows:

(d) ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
Major Collector	125 feet	92 feet
Minor Collector	125 feet	92 feet
LOCAL COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY
County Road	125 feet	92
Township Road	98 feet	65 feet

\* Where right-of-way information is available the more restrictive standard will apply.

“Convenience grocery stores”, “.triplex and quad residential housing units on properties served by a public, community or central sewage treatment system” and “Pre-existing single family dwelling moved from one site onto a lot” are hereby deleted from Section 7.4.2.

Section 7.4.3 (d) is modified as follows:

(d) ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
Major Collector	125 feet	92 feet
Minor Collector	125 feet	92 feet
Local Collector	98 feet	65 feet
LOCAL COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
County Road	125 feet	92
Township Road	63 feet	30 feet

\* Where right-of-way information is available the more restrictive standard will apply.

Section 7.5 is modified to read as follows:

7.5 R-3 Single Family Residence District

“Pre-existing single family dwelling moved from one site onto a lot” is hereby deleted from Section 7.5.2.

Section 7.5.3 (d) is modified as follows:

(d) ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
Major Collector	125 feet	92 feet
Minor Collector	125 feet	92 feet
LOCAL COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
County Road	125 feet	92
Township Road	63 feet	30 feet

\* Where right-of-way information is available the more restrictive standard will apply.

Sections 7.6.3, 7.6.A.4, 7.7.3 and 7.8.3 ALL STRUCTURES, SETBACKS FROM ROADS shall be modified as follows:

ALL STRUCTURES, SETBACKS FROM ROADS:

CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
Principal Arterial	150 feet	116 feet
Minor Arterial	150 feet	116 feet
Major Collector	125 feet	92 feet
Minor Collector	125 feet	92 feet
LOCAL COLLECTORS AND UN-CLASSIFIED ROADS	SETBACK FROM CENTERLINE	SETBACK FROM RIGHT-OF-WAY*
County Road	125 feet	92
Township Road	98 feet	65 feet

\* Where right-of-way information is available the more restrictive standard will apply.

Section 7S5.20 is added to read as follows:

7S5.20 Existing nonconforming lots in shoreland areas. This paragraph applies only to shoreland lots created prior to June 14, 1972, that do not meet the requirements for lot size or lot width. In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

- (a) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;
- (b) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules Chapter 7080 and Section 9.6 of the Development Code.
- (c) impervious surface coverage shall not exceed 25 percent of each lot; and
- (d) development of the lot must be consistent with the comprehensive plan.
- (e) The division of the lots will not create a noncompliant setback from the existing structures to the lot lines.

Any existing nonconforming shoreland lot created prior to June 14, 1972, not meeting the requirements of subpart a-e must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

Contiguous nonconforming lots in shoreland areas under a common ownership that were created on or after June 14, 1972, or not meeting the above standards shall be deemed to be a part of the abutting tract or parcel of land to the extent necessary to reduce or eliminate the substandard features of the lot for the zoning district in which it is situated

Notwithstanding this paragraph contiguous nonconforming lots in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of Section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

For lots subject to subpart a-e when evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority

shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

Section 8.10.1 shall be modified as follows

8.10.1 Fencing for outdoor pools regardless of size shall be provided as required by the Minnesota State Building Code.

Section 8.10.4 below shall be deleted:

8.10.4 The pool itself or the yard around the pool shall be enclosed by a wall, fence, or combination thereof, which is at least six (6) feet in height, with a self-closing gate capable of being secured with a lock so as to prevent uncontrolled access. All points of access shall be made lockable. For in-ground pools, required fencing shall be of durable material and shall be so designed as to discourage climbing. Building walls may be used to meet this requirement. For above-ground pools, pool sides that are vertical or slanted outward may contribute to the required fencing, providing all points of access are controlled, including the removal of ladders or stairs when the pool is not in use.

Section 9.1.2 B shall be revised as follows:

B. The light from any illuminated sign or from any light source, including interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways or parking areas.

Section 9.1.3 Par. E and F shall be revised as follows:

E. No sign in excess of three square feet shall be closer than 300 feet from the intersection of two or more public roads, or closer than 300 feet from the intersection of a public road and a railroad, provided that a sign may be affixed to or located adjacent to a building at such intersection in such a manner as not to cause any greater obstruction of vision than that caused by the building itself.

F. No sign shall be closer than two feet from a public right-of-way line.

Section 10.4 is modified as follows:

10.4 Compliance

The subdivision of all land within Benton County shall be subject to the provisions of this Ordinance.

No permit shall be issued for any use or structure on any parcel of land which was illegally subdivided after August 1, 1978, until the appropriate corrective action has been completed.

Section 10.5.1 is modified as follows:

10.5.1 BLA Procedures

The following information shall be provided as a part of the BLA procedure:

- A. BLA Application
- B. Three paper copies and one digital copy of a certificate of survey for all affected lots, tracts or parcels (lots) showing the following:
  1. The proposed lines for all affected lots, indicated by heavy solid lines;
  2. The existing lot lines for all affected lots proposed to be changed, indicated by heavy broken lines;
  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 100 feet of the proposed property line;
  4. The original legal description of the entire property together with the new separated legal descriptions for each parcel;
  5. All parcel numbers of affected lots;
  6. The location and dimension of any drain field, easements, or right-of-ways existing within or adjacent to any affected lots;
  7. The area and dimensions of each lot following the proposed adjustment.
- C. The boundary line adjustment shall not:
  1. Create any additional lot, tract, parcel or division;
  2. Result in a lot, parcel, site or division which does not meet the minimum requirements of the Development Code for setbacks, lot size requirements and access;
  3. Increase the non-conforming aspects of an existing nonconforming lot;
  4. Replat, amend, alter or vacate a plat.
  5. Result in a lot being less than 20 acres in size, unless the original lot or lots were 20 acres or less and the proposed lots are equal in size or within 10% of the pre-adjustment size. However, if the lots are less than 20 acres and were not created by an administrative land split a boundary line adjustment may be permitted in excess of 10% of the pre-adjustment size if the proposed lots meet the requirements of Sect. 10.5.1 (C) parts 1-4 above.

Section 10.6 Par. B and C are modified as follows:

B. Agricultural or recreational splits

Land that is being split and sold for agricultural or recreational purposes 20 acres or greater and the residual tract is at least 20 acres or greater may be

allowed if the intended purpose of the conveyance is stated in a deed restriction and that the conveyance is not intended as a building site. State Law requires that with the creation of any new or residual lot, said lot is capable of supporting two Type 1 sewage treatment systems. If the intent of the land split is not for the creation of a building site then sewerability would not be required. If the tract contains less than 40 acres but is 35 acres or greater and is described by the rectangular survey system as a quarter, quarter section, in common ownership, the tract shall be considered eligible for an equal split of the parcel.

C. Parcels 20 Acres or greater

Creation of a parcel 20 acres or greater for building site development may only be allowed if there are soil borings identifying the location for two Type 1 sewage treatment sites, that the building site is at least 2 acres of contiguous upland and can meet the provisions of the wetland conservation act and the residual tract is at least 20 acres or greater and either has a septic system or soil borings identifying the location for two Type 1 systems. If the tract contains less than 40 acres but is 35 acres or greater and is described by the rectangular survey system as a quarter, quarter section, in common ownership, the tract shall be considered eligible for an equal split of the parcel.

Section 10.6.1 Par. B is modified 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.
1. A certificate of survey for all affected lots, tracts or parcels (lots) that shall include a legal description of each parcel;
  2. The parcel area;
  3. Any existing site improvements within 100 feet of the property lines; and
  4. Distances from buildings to property lines.

Section 10.6.2 par. B is modified as follows:

- 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 100 feet of the property lines; and
  4. Distances from buildings to property lines.

Par. D as follows is added to Section 10.7

D. Requirement

Any subdivision not meeting the requirements of Section 10.6 shall meet the requirements for platting under Sections 10.7-10.15.

The following definitions are added to Section 3

**Public Conservation Lands:** Land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, State Scientific and Natural Areas, Federal Wildlife Refuges and Waterfowl Production Areas. For the purposes of this section public conservation lands will also include lands owned in fee title by non-profit conservation organizations. Public conservation lands do not include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

**Transmission Line:** Those electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**WECS, Commercial:** A WECS 1) 40 kW or greater in total name plate generating capacity, or 2) consist of more than one WECS on a parcel, or 3) a WECS that exceeds 150 feet in height.

**WECS, Large:** Any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more.

**WECS, Nameplate Capacity:** The nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that: (1) is located within five miles of the wind energy conversion system; (2) is constructed within the same 12-month period as the wind energy conversion system; and (3) exhibits characteristics of being a single development, including, but not limited to, ownership structure, an umbrella sales arrangement, shared interconnection, revenue sharing arrangements, and common debt or equity financing.

**WECS, Non-Commercial:** A WECS 1) less than 40 kW in total name plate generating capacity, and 2) consists of only one WECS on a parcel, and 3) 150 feet in total height or less.

**WECS, Feeder Line:** Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

**WECS, Meteorological Tower:** Towers which are erected primarily to measure wind speed and directions plus other data relevant to siting WECS. Meteorological towers do not include communication towers; towers and equipment used by airports, the Minnesota Department of Transportation, or other similar applications to monitor weather conditions.

**WECS, Micro-WECS:** Micro-WECS are WECS of 1 kW nameplate generating capacity or less and utilizing supporting towers of 40 feet or less.

**WECS, Rotor Diameter:** The diameter of the circle described by the moving rotor blades.

WECS, Small (SWECS): Any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts.

WECS, Total Height: The highest point, above ground level, reached by a rotor tip or any other part of the WECS.

WECS, Tower: Towers include vertical structures that support the electrical generator, rotor blades, or meteorological equipment.

WECS, Wind Turbine: A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

The following definition in Section 3 is modified as follows:

WECS - Wind Energy Conversion System: Any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy

“Wind energy conversion systems in accordance with Section 9.16” and “WECS Meteorological Tower for a period of 4 years or less and subject to Section 9.16” are added to Sections 7.1.10, 7.2.10, 7.6.1, 7.6A.2, 7.7.1, 7.8.1.

“Micro-WECS subject to Section 9.16” is added to Sections 7.1.11, 7.2.11, 7.2A.11, 7.3.1A, 7.4.1A, 7.5.1A, 7.6.1, 7.6A.2, 7.7.1, 7.8.1.

“Wind energy conversion systems in accordance with Section 9.16” is deleted from Sections 7.2A.20, 7.3.2, 7.4.3, 7.5.2

“WECS Meteorological Tower for a period of more than 4 years and subject to Section 9.16” is added to Sections 7.1.23, 7.2.22, 7.6.2, 7.6A.3, 7.7.2, 7.8.2.

In Section 7.1.23, 7.2.22, 7.6.2, 7.6A.3, 7.7.2, 7.8.2 “Wind energy conversion systems in accordance with Section 9.16” is modified to “Commercial wind energy conversion systems in accordance with Section 9.16”

Section 9.16 deleted in its entirety and modified to read as follows:

9.16 Wind Energy Conversion Systems (WECS)

9.16.1 Purpose

The purpose of this section is established to regulate the installation and operation of Wind Energy Conversion Systems (WECS) not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act (MS 116C.51-116C.697.)

In order to ensure adequate wind access, the County does encourage the use of private easements and restrictive covenants as a means to protect wind access.

## 9.16.1 Applications

Land use and building permits shall be required for all WECS. Micro-WECS shall require a building permit and possible land use permit. Conditional use, land use and building permits shall be required for commercial WECS.

A. The land use permit application for all WECS shall include the following information:

1. A completed land use permit in accordance with Section 11.7.
2. A description of the project including: number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
3. Engineer's certification per Section 9.16.5.
4. Letter of approval from the Benton County Sheriff stating that the proposed WECS would not interfere with the public communication systems.
5. Decommissioning plan in accordance with Section 9.16.6.
6. Completed building permit.
7. Additional information as required by the Building Inspector or Department of Development.

B. The application for Commercial WECS shall include:

1. A completed conditional use permit in accordance with Section 11.6.
2. The latitude and longitude of individual wind turbines.
3. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other WECS within 10 rotor diameters of the proposed WECS.
4. Location of wetlands, scenic, and natural areas, including bluffs, within 1,320 feet of the proposed WECS.
5. An acoustical analysis
6. FAA permit application if 200 feet or taller
7. Location of all known communications towers within 5 miles of the proposed WECS.
8. Decommissioning plan in accordance with Section 9.16.6.
9. Letter of approval from the Benton County Sheriff stating that the proposed WECS would not interfere with public communication systems
10. Completed land use and building permit.
11. Additional information as required by the Building Inspector or Department of Development.

- C. Applications for a micro-WECS shall include:
1. Engineer's certification and additional information as required by the building inspector.
  2. Completed land use permit if not located on an existing structure.
- D. Application for WECS meteorological tower shall include:
1. A USGS topographical map, or map with similar data, of the property and surrounding area
  2. Location of all known communications towers within 5 miles of the proposed tower.
  3. Decommissioning plan. The WECS tower shall be limited to four years as a permitted use. If additional time is required the meteorological tower shall be a conditional use.
  4. Letter of approval from the Benton County Sheriff stating that the proposed tower would not interfere with public communication systems
  5. Completed land use and building permit.
  6. Additional information as required by the Building Inspector or Department of Development.

9.16.2 Exception

WECS that are by nature ornamental, rather than functional, shall be exempt from this Ordinance if the total height is less than twenty- five feet and not located within a required setback for an accessory building.

9.16.3 Setbacks and Lot Size

- A. Non-Commercial WECS shall be setback a minimum of 1.1 times the height of the WECS to the property line and right-of-way or road setback if greater and be located on a minimum lot size of 2 acres.
- B. Meteorological towers shall be setback 1.1 times the times the height of the tower to the property lines and right-of-way or road setback if greater and be located on a minimum lot size of 20 acres.
- C. Mirco-WECS may be placed on any existing structure but shall not be located within a required setback. Micro-WECS that are not placed on an existing structure shall be placed 1.1 times the total height of the Micro-WECS to the property line and right-of-way road setback if greater but shall not be located within a front yard setback or the required setback for an accessory building.

## D. Commercial WECS setbacks

1. Right-of-way and property line: 1.25 times the height of the WECS or road setback if greater.
2. Type III, IV and V wetlands: 600 feet
3. Public conservation land managed as grassland: 600 feet
4. County Park: 1,000 feet
5. Protected River or Stream: 300 feet
6. Lake: 1,000 feet
7. Commercial WECS: 1,320 feet (excludes WECS that are part of the same application)
8. Located on a minimum lot size of 20 acres

## 9.16.4 Standards

## A. Total height:

1. Non-Commercial WECS total height shall be 150 feet.
2. Total height of a meteorological tower shall be 200 feet.
3. Commercial WECS total height shall be subject to the Planning Commission approval with the conditional use permit.

B. Color and Finish: All WECS shall be white, grey or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

C. Lighting: Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

D. Design: All wind turbines, which are part of a commercial WECS, shall be installed with a tubular, monopole type tower.

E. Signage: All signage on site shall comply with Section 9.1 of the Development Code. Only the manufacturers or owner's company name and/or logo may be placed upon the compartment containing the electrical generator of the WECS.

- F. Feeder Lines: All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried where reasonably feasible. Feeder lines installed as part of a WECS shall not be considered an essential service.
- G. Orderly Development: Upon issuance of a conditional use permit, all Commercial WECS shall notify the Environmental Quality Board Power Plant Siting Act program staff of the project location and details on the survey form specified by the Environmental Quality Board.
- H. Noise: All WECS shall comply with Minnesota Rules 7030 governing noise.
- I. Electrical codes and standards: All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
- J. Federal Aviation Administration: All WECS shall comply with FAA standards and permits.
- K. Uniform Building Code: All WECS shall comply with the Uniform Building Code adopted by the State of Minnesota as amended and the National Electric Code as amended.
- L. Interference: All WECS shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals cause by any WECS. Non-Commercial WECS shall notify all communication tower operators within one mile of the proposed WECS location upon application to the County for permits. Commercial WECS shall notify all communication tower operators within five miles of the proposed WECS location upon application to the county for permits. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions.
- M. Maintenance: All WECS shall have routine maintenance as recommended by the manufacturer and at a minimum of once every three years. A copy of the maintenance report shall be provided to the Department of Development upon written request.

#### 9.16.5 Safety Design Standards

##### A. Engineering Certification

All WECS, Equipment shall conform to applicable industry standards for wind turbines design and related standards adopted by the American Standards Institute (ANSI) and a copy of an engineer's certification shall accompany the application. A professional engineer registered in the State

of Minnesota shall certify that the design, construction and operation of the tower and foundation are compatible with and appropriate for the turbine to be installed, given the local soil and climate conditions.

B. Clearance

Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

C. Warnings

1. All WECS to be installed shall be equipped with redundant braking systems, including aerodynamic, variable pitch over speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in case of a loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over speed protection.
2. The WECS shall be guarded against unauthorized climbing. The first twelve feet of the tower shall be unclimbable by design or be enclosed by a six foot high, unclimbable fence with a secured access.
3. A WECS shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other state or federal authority for a WECS. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
4. For all commercial WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage. Signs with emergency contact information shall also be posted on the turbine or at another suitable location.
5. For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of 8 feet above the ground. Visible fencing shall be installed around anchor points of guy wires.

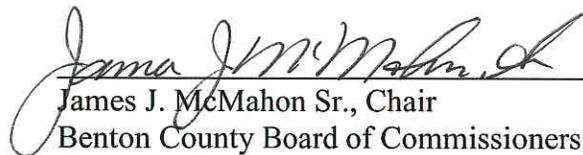
9.16.6 Decommissioning

The owner of the WECS that is to be dismantled must accomplish such act within forty five days after one year of discontinued use/operation or the County is empowered to dismantle such WECS and assess the costs against the property. Each commercial WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a

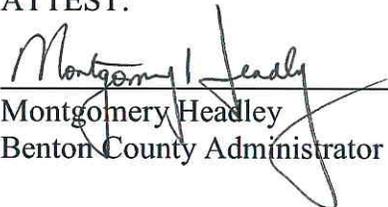
competent party; such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities. The decommissioning plan shall include: removal of the structure and debris to a depth of four feet and restoration of the vegetation consistent with the surrounding vegetation.

Approved and adopted by the Benton County Board of Commissioners this 20th day of October in the year of 2009.

Upon enactment, this ordinance shall be effective upon publication as provided by law.

  
James J. McMahon Sr., Chair  
Benton County Board of Commissioners

ATTEST:

  
Montgomery Headley  
Benton County Administrator