



BENTON COUNTY PLANNING & ZONING DEPARTMENT  
 531 DEWEY STREET, PO BOX 129  
 FOLEY, MN 56329-0129  
 PHONE: (320) 968-5065 FAX: (320) 968-5351

## Floodproofing Conditional Use Permit Application

Application Fee: \$400

File No. \_\_\_\_\_

As set forth in the Flood Plain Management Ordinance #196 and Section 11.6 of Ordinance #477 the Benton County Development Code.

Property Owner _____	Phone _____
Mailing Address _____	
Property Address _____	
Parcel I.D. Number _____	
Township _____	Section _____ Range _____
Legal Description _____	

Any structure elevated on fill or via alternative elevation methods must receive conditional permit approval in accordance with Sections 5.2.1 and 5.4 of the Ordinance #196. An exception is available for accessory buildings that do not exceed 500 square feet in accordance with Section 5.2.2 of Ordinance #196. Alternative methods may include the use of stilts, pilings, parallel walls or above-grade enclosed areas such as crawl spaces or tuck under garages.

### The following information is required to process the Conditional Use Permit Application.

1. All structure, including accessory structures must be elevated on fill so that the lowest floor including the basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be at the base flood elevation or higher and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
2. Structure design certified by a registered professional engineer or architect as being in compliance with the general design standards of the Corps of Engineers Flood-Proofing Regulations and, specifically that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities are at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
3. Above-grade, fully enclosed areas such as crawl spaces or tuck- under garages must be designed to internally flood and the design plans must also stipulate:
  - (a) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

- (b) That the enclosed area will be designed of flood resistant materials in accordance with the Corps of Engineers Flood-Proofing Regulations and shall be used solely for building access, parking of vehicles or storage.
4. Basements shall be subject to the following:
    - (a) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.
    - (b) Non-residential basements may be allowed below the Regulatory Flood Protection Elevation provided the basement is structurally dry flood proofed in accordance with Section 5.4.3 (Corp of Engineers Flood-Proofing Regulations) of this Ordinance.
  5. Storage of Materials and Equipment:
    - (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
    - (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Planning Commission.
  6. In addition the application must meet the applicable requirements of Section 11.6 of the Development Code.
  7. The structure must be certified after it is constructed as evidenced by an “As-Built Plan” certified by a registered professional engineer or architect as being in compliance with the design approved by the Planning Commission and meeting the requirements of Corps of Engineers Flood-Proofing Regulations.

**Building and Setbacks (As shown on site plan)**

Structure Size _____	Dimensions _____
Lot Size _____	Lot Coverage _____
Height _____	Front Setback _____
Road type _____	OHWL Setback _____
ROW Setback _____	Rear Setback _____
Centerline Setback _____	Side Setback _____
Feedlot Setback _____	Side Setback _____

Note: In order to fully evaluate the proposed use, please supply a site plan map that shows all applicable distances, setbacks, buildings, roads, wetlands, etc.

I hereby swear and affirm that the information supplied to the Benton County Planning & Zoning Department is accurate and true. I acknowledge that this application is rendered invalid and void should the County determine that information supplied by me, the applicant, in applying for this conditional use permit, is inaccurate or untrue.

Applicant’s Signature \_\_\_\_\_ Date \_\_\_\_\_

Planning & Zoning Department Office Use only:

Zoning District: _____	Meeting Date: _____
Reviewed for Accuracy: _____	

## Floodproofing Conditional Use Permit Application Checklist

- 1) \_\_\_\_\_ A site visit with Planning & Zoning Department staff may be required.
- 2) \_\_\_\_\_ Provide applicant with a copy of Section 11.6 of the Development Code “Criteria for granting Conditional Use Permits” and Section 5 of Ordinance #196
- 3) \_\_\_\_\_ Application packet is completed and signed Applications are only accepted from property owners.
- 4) \_\_\_\_\_ Applicant must provide evidence of ownership. (A valid purchase agreement is acceptable.)
- 5) \_\_\_\_\_ Copy of the complete legal from the abstract is needed for recording.
- 6) \_\_\_\_\_ Structure Design certified by a registered professional meeting the requirements of Sections 5.2.1 & 5.4 of Ordinance # 196.
- 7) \_\_\_\_\_ A detailed sketch, to scale, with a north arrow, of property is attached (show buildings, distance to property lines, septic, well, roads (name & number), driveway, wetlands, physical features, etc.).\*
- 8) \_\_\_\_\_ A Compliance Inspection report must be provided for any existing sewage treatment system on the affected property at the time of application for a CUP.
- 9) \_\_\_\_\_ If the application is for a new building that will generate waste water/have plumbing, it must be able to support two “STANDARD” sewage treatment systems (proved by two soil borings: one for the primary site and one for the secondary site).
- 10) \_\_\_\_\_ Access approval from Township or County if new access is proposed.
- 11) \_\_\_\_\_ Completed description of the request and statement of justification is attached.
- 12) \_\_\_\_\_ Application Fee of \$400 (Including the \$46 recording fee) or as amended. (\$754 if it is an after the fact application) Fees are non-refundable
- 13) \_\_\_\_\_ Applicant (or their representative) must be present at the Planning Commission public hearing.
- 14) \_\_\_\_\_ If the CUP is denied, by the Planning Commission, it cannot be resubmitted for six months.
- 15) \_\_\_\_\_ Conditions may be included on granted CUP’s.
- 16) \_\_\_\_\_ Granted Conditional Use Permits become void if applicant does not proceed substantially (40% of the hours required to complete the project) within one year of the date the CUP is granted.
- 17) \_\_\_\_\_ The CUP deals only with the use of the property. A Land Use Permit is required prior to construction of any structures.
- 18) \_\_\_\_\_ As built (flood elevation certification) are required to be submitted by a certified professional after completion of the structure.

**NOTE:** A Public Hearing will be scheduled for the next available Planning Commission meeting only if the applicant provides all the required information prior to the application deadline. State of Minnesota Law requires public notification for at least 10 days prior to the hearing.

\*Applicant is responsible for utilizing accurate property boundaries in submitted documents.

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Applicant

## **REQUIREMENTS FOR THE SITE SKETCH**

- Drawn to Scale;
- North Directional Arrow;
- Dimensions of lot
- Location of existing or proposed septic system (if applicable);
- Road/street names;
- Location of existing and proposed structures, showing all setbacks (including road right of way, side, front and rear yard, shoreline, ordinary high water mark (OHWL), feedlots);
- Driveway location;
- Location of well (if applicable);
- Location of adjacent existing buildings;
- Location of Wetland areas, fill and grading/vegetation alteration limits, floodplain (if applicable);
- Other information as may be requested

# SITE PLAN (drawn to scale)

Please be as complete as possible. Include all of the following items listed where applicable:

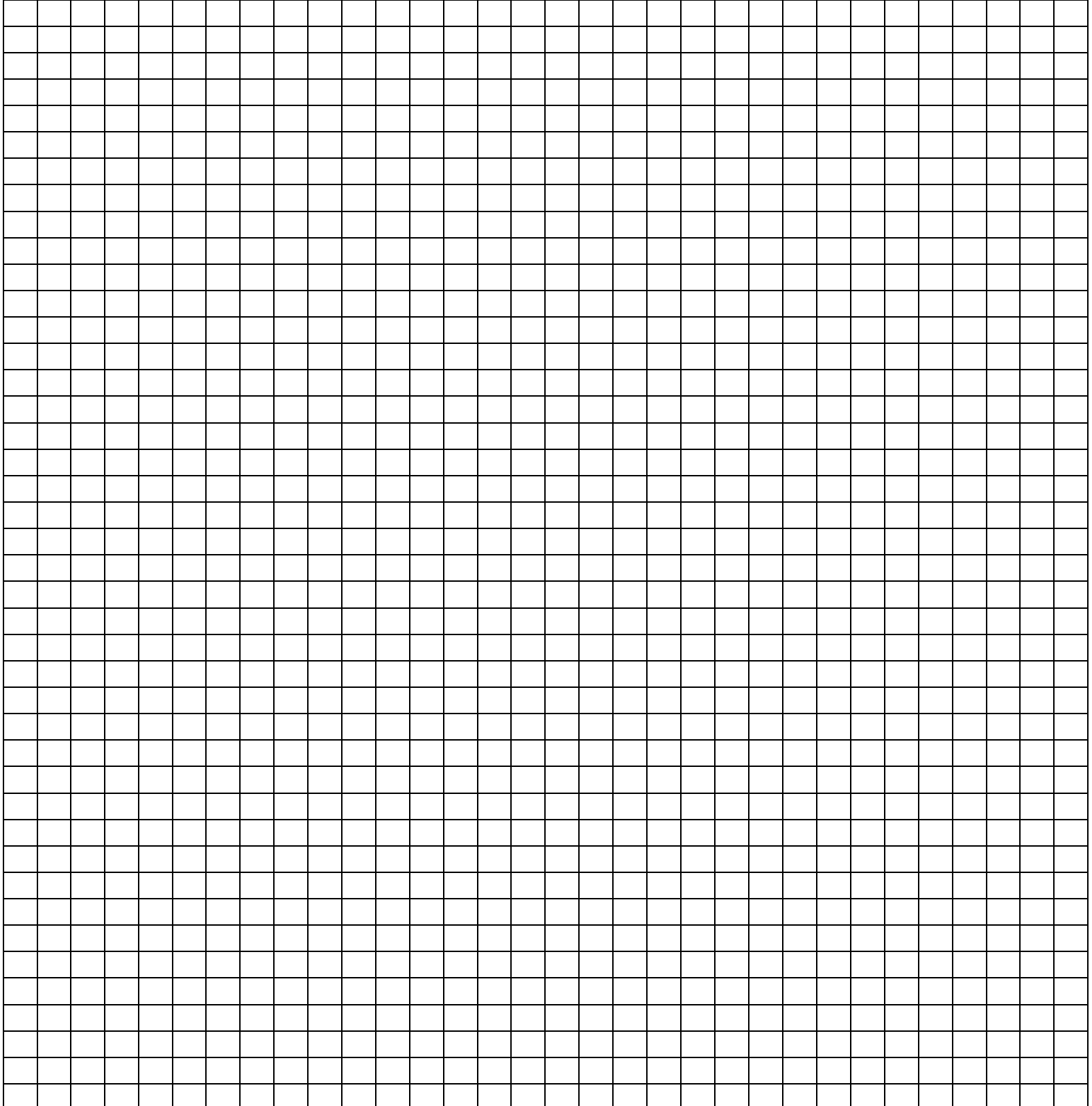
Scale: 1 inch = \_\_\_\_\_ feet  
Date of drawing \_\_\_\_\_

## General Checklist

- north arrow
- lot dimensions
- structure location(s)
- setback measurements
- septic system location
- existing local drainage
- feedlots within 1500 feet
- wetland areas
- fill & grading/vegetation alteration limits

## Water Resource Checklist

- location of floodway &/or flood fringe
- location & setback distance from ordinary high water level (OHWL)
- location of present & highest known water line
- location of floodway &/or flood fringe
- location & setback distance from ordinary high water level (OHWL)
- location of present & highest known water line



## **SECTION 5.0 FLOOD FRINGE DISTRICT (FF)**

- 5.1 Permitted Uses: Permitted Uses shall be those uses of land or structures listed as permitted uses in the underlying zoning use district(s). If no pre-existing, underlying zoning use districts exist, then any residential or non-residential structure or use of a structure or land shall be a permitted use in the Flood Fringe District provided such use does not constitute a public nuisance. All Permitted Uses shall comply with the standards for Flood Fringe District "Permitted Uses" listed in Section 5.2 and the "Standards for all Flood Fringe Uses" listed in Section 5.5.
- 5.2 Standards for Flood Fringe Permitted Uses:
- 5.2.1 Elevating on fill is a Conditional/Interim Use regulated under Section 5.3.
- 5.2.2 As an alternative to elevation on fill, accessory/storage structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with Section 4.4.5 (c).
- 5.2.3 The cumulative placement of fill where at any one time in excess of one-thousand (1,000) cubic yards of fill is located on the parcel shall be allowable only as a Conditional Use.
- 5.2.4 The storage of any materials or equipment shall be elevated on fill to the Regulatory Flood Protection Elevation.
- 5.2.5 The provisions of Section 5.5 of this Ordinance shall apply to permitted uses.
- 5.3 Conditional/Interim Uses:
- 5.3.1 Any structure that is not elevated on fill or flood proofed in accordance with Section 5.2.2 or any use of land that does not comply with the standards in Section 5.2.3-5.2.4 shall only be allowable as a Conditional/Interim Use. An application for a Conditional /Interim Use shall be subject to the standards and criteria and evaluation procedures specified in Sections 5.4-5.5 and 10.4 of this Ordinance.
- 5.3.2 All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be at the base flood elevation or higher and the fill shall extend at such elevation at least fifteen (15) feet beyond the outside limits of the structure erected thereon.
- 5.4 Standards for Flood Fringe Conditional/Interim Uses:
- 5.4.1 Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the Regulatory Flood Protection Elevation. These alternative methods may include the use of stilts, pilings, parallel walls, or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or

floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) is designed to internally flood and is constructed with flood resistant materials; and 3) is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

- (a) Design and Certification - The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the Corps of Engineers Flood-Proofing Regulations and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
- (b) Specific Standards for Above-grade, Enclosed Areas.  
Above-grade, fully enclosed areas such as crawl spaces or tuck- under garages must be designed to internally flood and the design plans must stipulate:
  - (1) A minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
  - (2) That the enclosed area will be designed of flood resistant materials in accordance FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

5.4.2 Basements, as defined by Section 2.8.3 of this Ordinance, shall be subject to the following:

- (a) Residential basement construction shall not be allowed below the Regulatory Flood Protection Elevation.
- (b) This section reserved for future use.

5.4.3 All areas of non-residential structures including basements to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code.

Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted.

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

5.4.5 Storage of Materials and Equipment:

- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the County Board or delegated party.

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

5.5 Standards for All Flood Fringe Uses:

5.5.1 All new principal structures must have vehicular access at or above an elevation not more than 6 inches below the base flood elevation. If a variance to this requirement is granted, the Board of Adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

5.5.2 Commercial Uses - accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation.

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



- 5.5.4 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards shall be certified by a qualified engineer at the expense of the landowner prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- 5.5.5 Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.
- 5.5.6 Standards for recreational vehicles are contained in Section 9.3.
- 5.5.7 All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

## **11.6**            **Conditional Use Permits**

### 11.6.1            Criteria for Granting Conditional Use Permits

- (A)    In granting a conditional use permit, the Planning Commission shall consider the effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding lands and water bodies.
- (B)    Among other things, the Planning Commission shall make the following findings where applicable:
  - (1)    Will the use create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area?
  - (2)    Is the use sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land?
  - (3)    Does the structure and site have an appearance that will not have an adverse effect upon adjacent properties?
  - (4)    Is the use, in the opinion of the Planning Commission, reasonably related to the existing land use?
  - (5)    Is the use consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use?
  - (6)    Is the use in conflict with the Land Use Plan of the county?
  - (7)    Will the use cause traffic hazards or congestion?
  - (8)    Will the use violate the wetland provisions of Minn. Stat. Ch. 103G, as may be amended?

### 11.6.2            Conditions

- (A)    In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose, in addition to these standards and requirements expressly specified by this Ordinance, additional conditions which the Planning Commission considers necessary to protect the best interest of the surrounding area or the community as a whole.
- (B)    These conditions may include, but are not limited to, the following:
  - (1)    Increasing the required lot size or yard dimension.
  - (2)    Limiting the height, size or location of buildings.
  - (3)    Controlling the location and number of vehicle access points.
  - (4)    Increasing the street width.
  - (5)    Increasing the number of required off-street parking spaces.
  - (6)    Limiting the number, size, location or lighting of signs.

- (7) Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- (8) Designating sites for open space.
- (C) Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued, shall require an amended conditional use permit and all procedures shall apply as if a new permit were being issued. The Department of Development Director shall maintain a record of all conditional use permits issued including information on the use, location, and conditions imposed by the Planning Commission, time limits, review dates, and such other information as may be appropriate.

### 11.6.3 Procedure

- (A) Applications for conditional use permits will not be accepted from anyone who is not an owner of land for which the application is made.
- (B) The person applying for a conditional use permit shall fill out and submit to the Benton County Department of Development a conditional use application form and filing fee.
- (C) The Department of Development Director shall refer the application to the Planning Commission for review.
- (D) The Planning Commission shall hold a public hearing on the proposal within 90 days of the submission of an application to the Planning and Zoning Office. Notice of the public hearing shall be as provided by Minn. Stat. §394.26, as may be amended. (Ord. #247, adopted 12/20/94)
- (E) The petitioner or his representative shall appear before the Planning Commission in order to present evidence concerning the proposed conditional use.
- (F) If the Planning Commission grants the conditional use permit, it may impose conditions it considers necessary to protect the public health, safety and welfare. Such conditions may include a time limit for the use to exist or operate.
- (G) An amended conditional use permit application shall be administered in a manner similar to that required for a new conditional use permit. The fee shall be as set by separate action of the County Board. Amended conditional use permits shall include requests for changes in conditions and as otherwise described in this Ordinance.
- (H) No application for a conditional use permit shall be resubmitted for a period of 6 months from the date of said order of denial.
- (I) If a time limit or period review is included as a condition by which a conditional use permit is granted, the conditional use permit may be reviewed at a public hearing with notice of said hearing published at least 10 days prior to review; it shall be the responsibility of the Department of Development Director to schedule such public hearings and the owner of

land having a conditional use permit shall not be required to pay a fee for said review. A public hearing for annual review of conditional use permits may be granted at the discretion of the Benton County Planning Commission.

- (J) Granted conditional use permits shall become void if applicant does not proceed substantially on the work within 1 year of the date the permit is granted. To proceed substantially means to make visible improvement to the property and to have had applied to the property at least 40 percent of the man hours which it is reasonably estimated will be necessary for completion of the project. 1 extension of not more than 1 year may be granted by the Planning Commission at their discretion.
- (K) If the land use does not conform to the conditions of the permit, the conditional use permit may be revoked.

## WETLAND ADVISORY

Minnesota Law prohibits the draining or filling of any wetlands, unless specifically approved by the appropriate authorities.

“Wetlands” means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- 1) A predominance of hydric soils;
- 2) Are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and,
- 3) Under normal circumstances, support prevalence of such vegetation.

If you fill or drain a wetland in violation of Minnesota Law, you are subject to criminal penalties of up to **90 days in jail and/or a \$700 fine**. In addition, you could be ordered to restore any altered wetlands to their original condition at your own cost.

The placement of fill or dredged material in any wetland, lake, stream, river, pond, or prairie pothole may constitute a violation of Federal laws that are enforced by the U.S. Army Corps of Engineers. You are advised to contact that agency before commencing any such work.

There are eight types of wetland:

Type 1 – Seasonally flooded basins or flats. Soil is covered with water or waterlogged during seasonal periods but is usually well drained during the growing season.

Type 2 – Wet meadows. Soil is usually without standing water most of the growing season but is waterlogged within a few inches of the surface.

Type 3 – Soils which are usually waterlogged during the growing season and often covered with up to 6 inches of water. Many Type 3 wetlands have cattails and bulrushes and small open water area.

Type 4 – Soils which are usually covered with 6 inches to 3 feet of water during the growing season. Many Type 4 wetlands have cattails and bulrushes and much open water.

Type 5 – Shallow water ponds and reservoirs water 3 feet to 10 feet deep.

Type 6 – Shrub swamps. Soil is usually waterlogged during the growing season and are often covered with as much as 6 inches of water.

Type 7 – Wooded swamps. Soil is waterlogged at least to within a few inches of the surface during the growing season with as much as one foot of water. Occur mostly along sluggish streams or flood plains.

Type 8 – Bogs. Soil is usually waterlogged and supports a spongy covering of mosses.

**As the applicant for this permit, you are responsible for determining whether any wetlands will be affected by this proposed project. By signing this document, the applicant affirms that no wetlands will be drained or filled during the course of the project.**

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Signature of Applicant

Date