

## **Section 11 - Flood Plain Overlay District**

### **A. Statutory Authorization, Findings of Fact and Purpose**

#### 1. Statutory Authorization

The Legislature of the State of Minnesota has, in Minnesota Statutes Chapter 103F and 394, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of County Commissioners of Watonwan County, Minnesota does ordain as follows:

#### 2. Statement of Purpose

The purpose of this ordinance is to maintain the county's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

#### 3. Warning of Disclaimer of Liability

This ordinance does not imply that areas outside of the flood plain district or land uses permitted within such districts will be free from flooding and flood damages. This ordinance shall not create liability on the part of Watonwan County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decisions lawfully made thereunder.

### **B. General Provisions**

#### 1. Lands to Which This Section Applies

This Section shall apply to all lands within the jurisdiction of Watonwan County, as shown on the Official Zoning Map and/or the attachments thereto as being located within the boundaries of the Flood Plain.

#### 2. Establishment of Official Zoning Map

The Official Zoning Map, together with all materials attached thereto, is hereby adopted by reference and declared to be a part of this Ordinance. The attached materials shall include the Flood Insurance Rate Map for the unincorporated areas in the County of Watonwan developed by the Federal Emergency Management Agency

dated July 3, 1985. The Official Zoning Map shall be on file in the Office of the Zoning Administrator and the County Auditor.

3. Interpretation

- a. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Watonwan County and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.
- b. The boundaries of the zoning districts shall be determined by scaling distances on the Official Zoning Map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the Official Zoning Map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the Zoning Administrator, the Board of Adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile and other available technical data. If 100-year flood elevations are not available, the county shall: (1) require a flood plain evaluation consistent with Section D, #3 of this chapter to determine a 100-year flood elevation for the site; or (2) base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the flood plain.

**C. Conflict with Preexisting Zoning Regulations and General Compliance**

1. The Flood Plain District as Overlay District. The flood plain zoning district shall be considered an overlay zoning district to all existing land use regulations of the community. The uses permitted in this Section shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this chapter shall apply in addition to other legally established regulations of the county and where this chapter imposes greater restrictions, the provisions of this chapter shall apply.
2. Compliance. No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe, all uses not listed as permitted uses or conditional uses in Section D that follow, shall be prohibited. In addition, a caution is provided here that:
  - a. Travel trailers and travel vehicles are subject to the general provisions of this chapter and specifically Section K;
  - b. Modifications, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this chapter and specifically Section H; and
  - c. As built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a

registered professional engineer or architect as specified in the general provisions of this chapter and specifically as stated in Section G of this Ordinance.

#### **D. Permitted Uses, Standards, and Flood Plain Evaluation Criteria**

##### 1. Permitted Uses

- a. Any use of land which does not involve a structure, an addition to the outside dimensions to an existing structure or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.
- b. Any use of land involving the construction of new structures, the replacement of existing structures, the addition to the outside dimensions of an existing structure or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the flood plain. These uses shall be subject to the development standards in #2 below and the flood plain evaluation criteria in #3 below for determining floodway and flood fringe boundaries.
- c. Travel trailers and travel vehicles are regulated by Section K of this chapter.

##### 2. Standards for Flood Plain Permitted Uses

- a. Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- b. Storage of Material and Equipment
  - 1) 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.
  - 2) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the Regulatory Flood Protection Elevation.
- c. No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.
- d. All structures, including accessory structures and additions to existing structures, shall be constructed on fill so that the basement floor, or first floor if there is no

basement, is at or above the Regulatory Flood Protection Elevation. The finished fill elevation must be no lower than one (1) foot below the Regulatory Flood Protection Elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon.

- e. All Uses. Uses that do not have vehicular access at or above an elevation not more than two (2) feet below the Regulatory Flood Protection Elevation to lands outside of the flood plain shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance, the Board shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.
- f. Commercial and Manufacturing Uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the Regulatory Flood Protection Elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two (2) feet or be subject to flood velocities greater than four (4) feet per second upon occurrence of the regional flood..
- g. On-site Sewage Treatment and Water Supply Systems. Where public utilities are not provided: (1) on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and (2) new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.
- h. 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 anchoring requirements for resisting wind forces.

### 3. Flood Plain Evaluation

- a. Upon receipt of an application for a permit regarding subdivision approval within the flood plain district, the Watonwan County Zoning Office shall require the applicant to furnish sufficient site development plans and a hydrologic/hydraulic analysis by a qualified engineer or hydrologist specifying the nature of the development and whether the proposed use is located in the floodway or flood fringe and the Regulatory Flood Protection Elevation for the site. Procedures

consistent with Minnesota Rules 1983 Parts 6120.5600 (Technical Standards and Requirements For Flood Plain Management Standards for Local Ordinances) shall be followed during the technical evaluation and review of the development proposal.

- b. The Zoning Administrator shall submit one (1) copy of all information required by Section (a) above to the Department of Natural Resources' Area Hydrologist for review and comment at least twenty (20) days prior to the granting of the permit by the county. The Zoning Administrator shall notify the Area Hydrologist within ten (10) days after a permit is granted.

#### **E. Utilities, Railroads, Roads and Bridges in the Flood Plain District**

All utilities and transportation facilities, including railroad tracks, roads and bridges, shall be constructed in accordance with State Flood Plain Management Standards contained in Minnesota rules 1983 Parts 6120.5000 - 6120.6200.

#### **F. Subdivisions**

1. No land shall be subdivided where the site is determined to be unsuitable by the Watonwan Planning Commission for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. The Planning Commission shall review the subdivision proposal to insure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.
2. In the Flood Plain District, applicants for subdivision approval shall provide the information required in Section D, #3 of this chapter. The Zoning Administrator shall evaluate the proposed subdivision in accordance with the standards established in Section D, #2 and #3 and Section E of this chapter.
3. For all subdivisions in the flood plain, the Floodway and Flood Fringe boundaries, the Regulatory Flood Protection Elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.
4. Removal of Special Flood Hazard Area Designation. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

#### **G. Administration**

1. Zoning Administrator. A Watonwan County Zoning Administrator or designee shall administer and enforce this Ordinance. If the Zoning Administrator finds a violation of the provisions of this Ordinance, the Zoning Administrator shall notify the person responsible for such violation in accordance with the procedures stated in Section J of this Ordinance.
2. Permit Requirements.
  - a. Permit Required. A Permit issued by the Zoning Administrator in conformity with the provisions of this Ordinance shall be secured prior to the erection, addition, or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a nonconforming use; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.
  - b. State and Federal Permits. Prior to granting a Permit or processing an application for a Conditional Use Permit or Variance, the Zoning Administrator shall determine that the applicant has obtained all necessary State and Federal Permits.
  - c. Certification. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. Flood proofing measures shall be certified by a registered professional engineer or registered architect.
  - d. Record of First Floor Elevation. The Zoning Administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The Zoning Administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood proofed.
3. Board of Adjustment.
  - a. Powers, duties, and hearing processes are specified in Section 18 of this Ordinance. In addition, all variance requests shall be forwarded to the Commissioner of Natural Resources at least ten (10) days prior to the hearing.
  - b. Variances from the provisions of this ordinance may be authorized where the Board of Adjustment has determined the variance will not be contrary to the public interest and the spirit and intent of this ordinance. No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the Regulatory Flood Protection Elevation. Variances may be used to modify permissible methods of flood protection.
  - c. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the variance applicant that: (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and (2) such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all

variance actions. The County shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

4. Conditional Uses. See section 14 for information regarding the application and hearing schedule for conditional use permits. Conditional use permit applications shall be forwarded to the Commissioner of Natural Resources at least ten (10) days prior to the hearing.

#### **H. Nonconforming Uses**

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:
  - a. No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.
  - b. An alteration within the inside dimensions of a nonconforming use or structure is permissible provided it will not result in increasing the flood damage potential of that use or structure.
  - c. The cost of any structural alterations or additions, both inside and outside, to any nonconforming structure over the life of the structure shall not exceed fifty percent (50%) of the market value of the structure unless the conditions of this chapter are satisfied. The cost of all structural alterations and additions constructed since the adoption of the Community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds fifty percent (50%) of the current market value of the structure, then the structure must meet the standards of Section D of this chapter or new structures.
  - d. If any nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this Section. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of twelve (12) months.
  - e. If any nonconforming use or structure is destroyed by any means, including floods, to an extent of fifty percent (50%) or more of its market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter. The Planning Commission may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this ordinance.

## **I. Penalties for Violation**

1. Violation of the provisions of this Section or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law.
2. Nothing herein contained shall prevent Watonwan County from taking such other lawful action as is necessary to prevent or remedy any violation. Such actions may include, but are not limited to:
  - a. In responding to a suspected ordinance violation, the Zoning Administrator and County Board may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance program for denial of flood insurance availability to the guilty party.
  - b. When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources and Federal Emergency Management Agency Regional Office along with the county's plan of action to correct the violation to the degree possible.
  - c. The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the county. If the construction or development is already completed, then the Zoning Administrator may either (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed thirty (30) days.
  - d. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also, upon the lapse of the specified response period, notify the landowner to restore the land to the condition which existed prior to the violation of this Section.



## **J. Amendments**

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

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

## **K. Travel Trailers and Travel Vehicles**

Travel trailers and travel vehicles that do not meet the exemption criteria specified in #1 below shall be subject to the provisions of this chapter and as specifically spelled out in #3 and #4 below.

1. Exemption. Travel trailers and travel vehicles are exempt from the provisions of this ordinance if they are placed in any of the areas listed in #2 below and further they meet the following criteria:
  - a. have current licenses required for highway use;
  - b. are highway ready, meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the travel trailer/travel vehicle has no permanent structural type additions attached to it; and
  - c. the travel trailer or travel vehicle and associated use must be permissible in any preexisting, underlying zoning use district.
2. Areas Exempted for Placement of Travel/Recreational Vehicles.
  - a. Individual lots or parcels of record
  - b. Existing commercial recreational vehicle parks or campgrounds
3. Travel trailers and travel vehicles exempted in #1 lose this exemption when development occurs on the parcel exceeding five hundred dollars (\$500) for a

structural addition to the travel trailer/travel vehicle or an accessory structure such as a garage or storage building. The travel trailer/travel vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in Section D of this chapter.

4. New commercial travel trailer or travel vehicle parks or campgrounds and new residential type subdivisions and the expansion of any existing similar use exceed five (5) units or dwelling sites shall be subject to the following:
  - a. Any new or replacement travel trailer or travel vehicle will be allowed in the Floodway or Flood Fringe Districts provided said trailer or vehicle and its contents are placed on fill above the Regulatory Flood Protection Elevation determined in accordance with the provisions of Section D, #3 of this chapter and properly elevated road access to the site exists in accordance with Section D of this chapter. No fill placed in the floodway to meet the requirements of this Section shall increase flood stages of the 100-year or regional flood.
  - b. All new or replacement travel trailers or travel vehicles not meeting the criteria of (a) above may, as an alternative, be allowed if in accordance with the following provisions. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel trailers or other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with Section D, #2 (g) of this Ordinance.