

**Ordinance #3**  
**Zoning**  
**Adopted as amended December 23, 1996**  
**Hard Copy in Marshall County Ordinances Book #1**  
**(Located in BOS vault)**

**Repeals Ordinance #2**  
**Zoning**  
**Adopted as Amended December 12, 1961**

# Front Page of Zoning Ordinance

**ADOPTED BY THE MARSHALL COUNTY BOARD OF SUPERVISORS  
EFFECTIVE JANUARY 1, 1997**

## **BOARD OF SUPERVISORS**

A.E. "Bill" Minner - Chairman

Eldon Schneider - Vice Chairman

Tom Speas - Member

## **PLANNING AND ZONING COMMISSION**

Kay Sinning - Chairwoman

Bill Hobson - Member

Jack Eflin - Member

## **BOARD OF ADJUSTMENT**

Roger Schoell - Chairman

Norval Mosher - Vice Chairman

Glen Freese - Member

Jack Pickard - Member

Harold Lanning - Member

## **PLANNING AND ZONING STAFF**

John M. Kunc - Administrator

Norma Willems - Administrative Asst.

# Planning and Zoning Commission Resolution

**No. 1-96**

**WHEREAS**, the Marshall County, Iowa County Comprehensive Land Use Plan was adopted by the Board of Supervisors on March 18, 1996;

**AND WHEREAS**, the County Comprehensive Land Use Plan provides a policy basis to manage and direct new growth in the unincorporated area of Marshall County in order to provide for orderly and efficient development patterns and to protect high value agricultural lands and environmentally sensitive areas;

**AND WHEREAS**, the proposed amended Zoning Ordinance for Marshall County, Iowa has been developed to implement the County Comprehensive land Use Plan, in accordance with the requirements of Chapter 335, Code of Iowa;

**AND WHEREAS**, the Marshall County Planning and Zoning Commission has developed and reviewed the proposed amended Zoning Ordinance for Marshall County, Iowa at public meetings over the past 2 months, and has held public hearings on October 1, and November 5, 1996 with all interested parties having been heard;

**NOW, THEREFORE, BE IT RESOLVED**, that the Marshall County Planning and Zoning Commission recommends to the Board of Supervisors that the amended Zoning Ordinance for Marshall County, Iowa be adopted.

Motion by: Bill Hobson Second by: Kay Sinning

Voting aye: Bill Hobson, Kay Sinning

Voting nay:

Not voting:

Absent: Jack Eflin

Dated this 5th day of November , 1996.

Attest:

Kay Sinning, Chairwoman

Marshall County Planning and Zoning Commission

# Marshall County Zoning Ordinance Number 3 Authorizing Resolution

An Ordinance establishing new zoning regulations for the unincorporated territory of Marshall County, Iowa, and providing for the administration, enforcement and amendment thereof, in accordance with the provisions of Chapter 335, Code of Iowa; for the repeal of the existing Zoning Ordinance; and for the establishment of an effective date.

**WHEREAS**, the Marshall County, Iowa County Comprehensive Land Use Plan was adopted by the Board of Supervisors on March 18, 1996.

**AND WHEREAS**, the County Comprehensive Development Plan provides a policy basis to manage and direct new growth in the unincorporated area of Marshall County in order to provide for orderly and efficient development patterns and to protect high value agricultural lands and environmentally sensitive areas;

**AND WHEREAS**, the proposed amended Zoning Ordinance for Marshall County, Iowa has been developed to implement the County Comprehensive Land Use Plan, in accordance with the requirements of Chapter 335, Code of Iowa;

**AND WHEREAS**, Chapter 335, Code of Iowa, empowers the Board of Supervisors to enact a Zoning Ordinance to regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, and may regulate, restrict and prohibit the use for residential purposes of tents, trailer and portable or potentially portable structures; all with reference to land and structures located within the County but lying outside of the corporate limits of any city;

**AND WHEREAS**, the Marshall County Planning and Zoning Commission has developed and reviewed the proposed amended Zoning Ordinance for Marshall County, Iowa at public meetings over the past 2 months, and has held public hearings on October 1 and November 5, 1996, and has unanimously recommended that it be adopted by the Board of Supervisors;

**AND WHEREAS**, public hearings before the Marshall County Board of Supervisors have been held on November 12, 1996; November 25, 1996 and December 9, 1996 all interested parties having been heard;

**NOW, THEREFORE, BE IT RESOLVED**, by the Marshall County Board of Supervisors that the amended Zoning Ordinance for Marshall County, Iowa is hereby adopted as follows:

**Section One: Repeal of Conflicting Ordinances.** That the existing Marshall County Zoning Ordinance, January 1, 1962, and as amended from time to time thereafter, is hereby repealed in its entirety. Furthermore, all other ordinances, rules and regulations or portions thereof, in conflict or inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**Section Two: Adoption of New Zoning Ordinance.** There is hereby approved and adopted a new Zoning Ordinance for the unincorporated territory of Marshall County, Iowa, to be known as the "Zoning Ordinance of Marshall County, Iowa, No. 3", the same of which is attached hereto, and which is by reference made a part hereof as though fully set forth herein.

**Section Three: Zoning Code and Map Amendments.** There are hereby approved and adopted amendments to the official zoning code and map for Marshall County, Iowa, as listed below and as shown on the official map.

Zoning Ordinance Amendment List for Unincorporated Marshall County, Iowa

## ALL AMENDMENTS ARE TO ORDINANCE #2

DATE	AMEND. #	TITLE - DESCRIPTION
7-2-62	1	Art. II, Sec. 52 & Art. XII, Sec. 1

10-4-63	1a	Rezoning of Lot 1 of the Subdivision of the SW 1/4 of the SE 1/4 10-83-18 & SE 1/4 of the SW 1/4 10-83-18 From R-2 (residential) to C-1 (general commercial)
10-4-63	2	Art. XV, Sec.4, Sub. 1; Art. XV, Sec.3, Sub.3; & Art. II, Sec. 52
11-18-63	3	Rezoning of Lots 4,5,6,7,8 & 9, Block 11, Van Cleve, Iowa, SW 1/4 of the NW 1/4 12-82-19 from C-2 (industrial commercial) to R-3 (multi-family residential)
4-16-64	3a	Rezoning of Lot 2/2 & Lot 3/2 NE 1/4 SE 1/4 23-84-18 from U-1 (unclassified) to C-1 (general commercial)
2-8-65	3b	Rezoning of Lot 09-11-100-004(Sidwell pin#) 11-83-20 from A-1 (agricultural) to C-1 (general commercial)
5-18-65	3c	Rezoning of E550' of SE 1/4 NW 1/4 11-83-18 from R-1 (single family residential) to C-1 (general commercial)
5-18-65	3d	Rezoning of SW1/4 NE 1/4 11-83-18 from R-1 (single family residential) to C-1 (general commercial)
11-21-66	3e	Rezoning of N 420' of W 1100' NW 1/4 NE 1/4 13-83-19 from A-1 (agricultural) to C-1 (general commercial)
12-15-67	3f	Rezoning of Lots 9,10 & 11, Block 4 & S 74' of Lots 6,7 & 8 & E 14' of S 74' Lot 5 all in Block 4 & W 275' of vac. 60' street S of Block 4 Minerva 5-84-19 from A-1 (agricultural) to C-1 (general commercial)
6-7-68	3g	Rezoning of NE 1/4 NE 1/4 16-83-18 from C-1 (general commercial) to C-2 (industrial commercial)
1-16-69	3h	Rezoning of NW cor. NE 1/4 16-84-17 N of RR from A-1 (agricultural) to C-2 (industrial commercial)
5-16-69	3I	Rezoning of W 60 acres SW 1/4 32-84-17 exc. strip (see rezone request) from C-2 (industrial commercial) to U-2 (should be U-1, unclassified)
5-16-69	3j	Rezoning of E 160' of N 1320' of W 60 Acres SW 1/4 32-84-17 from C-2(industrial commercial) to A-1 (agricultural)
3-3-70	3k	Rezoning of SE 1/4 SW 1/4 16-85-19 & Lots 1,4 & 5 NE 1/4 NW 1/4 21-85-19 (Bangor) from A-1 (agricultural) to C-1 (general commercial)
7-12-73	3l	Rezoning of N1/2 of NE 1/4 13-83-18 from R-2 (residential) and A-1 (agricultural) to C-1 (general commercial)
6-3-74	3m	Rezoning of Lots 2,3 & 5 SE 1/4 SE 1/4 11-84-18 from C-1 (general commercial) to A-1 (agricultural)
12-2-74	4	Article XII, Section 1, Sub. n
5-30-75	4a	Rezoning of the N 8 Acres of W 1/2 NW 1/4 6-84-18 E of RR R.O.W. from A-1 (agricultural) to C-2 (industrial commercial)
10-28-75	4b	Rezoning of Lot 4 & 5 SE 1/4 SW 1/4 & Lot 6 SW 1/4 SE 1/4 16-84-18 from R-2 (residential) to A-1 (agricultural)
1-13-76	4c	Rezoning of That part of NE 1/4 13-84-18 bounded & described as follows: Beg. at a point distant 721' N of E 1/4 corner of said section, said point also being distant 225' north-easterly as measured at right angles from center line of the CNW RR from U-1 (unclassified) to A-1 (agricultural)
3-17-76	4d	Rezoning of N300' of W800' of SW 1/4 SW 1/4 7-83-19 from A-1 (agricultural) to C-2 (industrial commercial)
9-29-76	4e	Rezoning of parcel described as follows: Beg. at a point 14.5' N of SE corner of 9-83-20 thence N 300'; thence W 230'; thence S 300'; thence E 230'; to

		the point of beginning from A-1 (agricultural) to C-1 (general commercial)
12-6-76	4f	Rezoning of S1/2 of Block 7 17-85-19 (Bangor) from R-2 (residential) to C-1 (general commercial)
8-3-78	4g	Rezoning of a 1-acre plot in the NE1/4 NE1/2 7-84-18 from A-1 (agricultural) to C-1 (general commercial)
12-6-78	4h	Rezoning of E 750' & N 750' making a 5-acre triangle in the NE1/4 NE1/4 15-83-20 from A-1 (agricultural) to C-1 (general commercial)
2-20-79	4I	Rezoning of W 32' of Lots 3&6, all of Lots 4&5, Block 2, & Lots 1,2,7 & 8 of Block 3 and the vacated streets and alleys within 17-85-19 (Bangor) from R-3 (multi-family residential) to A-1 (agricultural)
4-5-79	4j	Rezoning of S 400' N1/2 SW1/4 36-84-17 from A-1 (agricultural) to U-1 (unclassified)
9-20-79	4k	Rezoning of N1/2 of Lots 5,6,7,9 & all of Lot 10, Block 2, 27-83-17 (Dillon) from R-2 (residential) to C-1 (general commercial)
1-23-80	5	Article XII, Section 2 "Airport Tall Structure Zoning"
1-23-80	6	Article V, Section 1,2&3 "Agricultural Preservation Zoning"
11-2-81	6a	Rezoning of Lots 1,2,3,4 Block 13, 17-85-19 (Bangor) from R-3 (multi-family residential) to C-2 (industrial commercial)
4-5-82	7	Add Section 4 to Articles V, VI, VII, VIII, IX, X, and XI - "Prohibited Uses - titillation, gratification" clause.
8-2-82	7a	Rezoning of S 185' of E 270' of N 438' south of S line US Hwy 30, NE1/4 16-83-18 from C-1 (general commercial) to R-1 (single family residential)
10-17-83	8	Article V, Section 2(j) amended
2-19-86	9	Article II, Section 1, Subs. (2), (3), (9), (10), (15), (31), (47); Article V, Section 3; Article VII, Section 3; Article VIII, Section 3; Article VI, Section 3; Article IX, Section 3; Article X, Section 4, Article IX, Section 2, Sub.(6); Article XII, Section 2; and Article XIV
11-18-87	10	Article XIV, Sections 2-5
10-24-90	11	Rezoning of a parcel described as follows: Commencing @ center 12-83-20 thence N 89deg. 47' 45" W 797.00' along the N line of SW1/4 said section 12 to the point of beg. Thence continuing N 89deg. 47' 45" W 66.00'; thence Sodeg. 00' 00" 427.08'; thence S 56deg. 38' 00" E 642.98'; thence Sodeg 00' 00" 1121.63'; thence N 90deg. 00' 00" E 326.00' to a point on E line SW 1/4 Sec.12 130' south of SW cor. of West Marshall Golf Course. Thence Nodeg 00' 00" 1365.00' along said E line; thence N 90deg 00' 00" N 270.78'; thence S 33deg 22' 00" W 167.63; thence N 56deg 38' 00" W 519.69'; thence Nodeg 00' 00" 391.28' to point of beginning, containing 11.73 acres (also known as Lincoln Valley Estates I) from A-1 (agricultural) to R-1 (single family residential)
7-10-91	12	Rezoning of Lots 10, 11 & 12 Block 5, 10-83-17 (Quarry) from R-3 (multi-family residential) to C-1 (general commercial)
7-12-91	13	Rezoning of Lots 26&27, Block 1, 10-83-17 & that part of the S1/2 NE1/4 10-83-17 (both in Quarry) from R-3 (multi-family residential) to C-1 (general commercial) (See Minutes)
7-15-91	14	Corrective changes to the text of the Ordinance, see amendment for changes.
3-3-93	15	Rezoning of SE1/4 NW1/4 9-83-18 from A-1 (agricultural) to R-1 (single

		family residential)						
9-1-93	16	Rezoning of Lincoln Valley Estates II Subdivision 12-83-20 from A-1 (agricultural) to R-1 (single family residential)						
10-17-93	17	Rezoning of Lot 1 NE 1/4 NW 1/4 13-83-18 from A-1 (agriculture) to C-1 (general commercial)						
11-13-93	18	Rezoning of the real estate legally described as N66.05' of E 672' of Lot 6 in the NE1/4 NW1/4 and Parcel "A" in NW1/4 NE1/4 all in S15-83-18 from A-1 (agricultural) to C-1 (general commercial)						
1-5-94	19	R-2 (residential) Special Use Livestock Permits amendments.						
4-13-94	20	1. Rezoning of LVE Subdivision 12-83-20 from A-1 to R-1 2. Rezoning of W 30 acres of SW1/4 NE1/4 9-83-18 from A-1 to R-1 3. Rezoning of W858' SE1/4 SE1/4 9-83-18 from A-1 to R-2						
5-15-95	21	Rezoning of LVE IV12-83-20 from A-1 to R-1						
7-25-95	22	Rezoning of Lot 3 NW1/4 NE1/4 & Lot 3/1 NE1/4 NE1/4 exc. Hwy 14-83-19&Lot 1 SW1/4 NE1/4 Exc.Hwy 14-83-19 from A-1 to C-1						
8-2-95	23	Rezoning of Minerva Valley Fertilizer Bangor 17-85-18 from R-3 to C-2						
11-11-95	24	Rezoning of Lots 2/1 & 3/2 of Subdivision of NE1/4 SE1/4 31-83-19 from A-1 to C-1						
11-11-95	25	Rezoning of Lot 1/1, 3/1, 2/2 NE1/4 SE1/4 & Lot 1 SE1/4 SE1/4 31-83-19 from A-1 to C-1						
2-20-96	26	To repeal Article XIII, Section 3, and adopt in lieu thereof: Section 3. There shall be a fee for a building permit as follows:						
		<table><tr><th>Value of Building</th><th>Fee</th></tr><tr><td>\$1.00 to and including \$10,000.00</td><td>\$35.00</td></tr><tr><td>For each additional \$1,000.00 of valuation or fraction thereof</td><td>\$ .50</td></tr></table>	Value of Building	Fee	\$1.00 to and including \$10,000.00	\$35.00	For each additional \$1,000.00 of valuation or fraction thereof	\$ .50
Value of Building	Fee							
\$1.00 to and including \$10,000.00	\$35.00							
For each additional \$1,000.00 of valuation or fraction thereof	\$ .50							
4-01-96	27	Rezoning of NE SE of 11-83-19 and Lot 2 NW SE 11-83-19 from A-1 (Agricultural) to R-1 (Single Family Residential).						
5-28-96	28	Rezoning of NW Cor. of NW 1/4 5-82-19 from A-1 (Agricultural) to C-1 (General Commercial)						
6-10-96	29	Article V, Section 3 The 25-acre Amendment.						
7-23-97	30(97-01)	Text Amendments.						
6-22-98	98-01	Text Amendments. Article VI, Section 2., Subsection B. - Livestock elimination.						
6-22-98	98-02	Text Amendments. Article XXI, Section 1, Subsection A. – County Infraction fines update.						
8-17-98	98-03	Rezoning of Grn Mtn. Lots 16-18 & N 22' of E 7.3' of Lot 15, Blk 7 & Grn. Mtn. Lots 4-6, Blk 14, from C-1 (Commercial) to R-2 (Residential).						
9-14-98	98-04	Ferguson Quarry expansion rezoning.						
9-14-98	98-05	Ferguson Quarry expansion rezoning.						
9-14-98	98-06	Ferguson Quarry expansion rezoning.						

**Section Four: Severability.** If any of the provisions of this Ordinance or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application, and to this end, the provisions of the Ordinance are declared to be severable.

**Section Five: Effective Date.** This Ordinance shall be in full force and effect on January 1, 1997 after its passage and publication as required by law.

Motion by: Tom Speas Second by: Eldon Schneider

Voting aye: Speas, Schneider, Minner

Voting nay:

Not voting:

Absent:

Dated this 23 day of December, 1996.

Attest: Jeff Heil

Attest: A. E. "Bill" Minner, Chairman

Marshall County Auditor Marshall County Board of Supervisors



# ARTICLE I

## Zoning Ordinance Of Marshall County, Iowa

**SECTION 1. SHORT TITLE.** This Ordinance shall be known and may be cited and referred to as the Zoning Ordinance of Marshall County, Iowa.

**SECTION 2. SCOPE AND PURPOSE.** Except as may be hereinafter specified, no land, building, structure or premises hereafter shall be used and no structure may be located, constructed, extended, converted, structurally altered or otherwise developed without full compliance with the terms of this Article.

**Subsection A.** This Ordinance is adopted in accordance with the Marshall County, Iowa *County Comprehensive Land Use Plan, 1996*, and as permitted and specifically authorized in Chapter 335, County Zoning and Chapter 352, County Land Preservation and Use, Code of Iowa, 1995, as amended.

**Subsection B.** This Ordinance is intended and designed to meet the specific objectives of Section 335.5, Code of Iowa, 1995 as amended, to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion on the streets and highways; to secure safety from fire, flood, panic and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.

**Subsection C.** Furthermore, this Ordinance is also intended and designed to meet the specific purpose of Section 352.1, Code of Iowa, 1995, as amended, to provide for the orderly use and development of land and related natural resources for residential, commercial, industrial and recreational purposes; to preserve private property rights; to protect natural and historic resources and fragile ecosystems including forests, wetlands, rivers, streams, lakes and their shorelines, aquifers, prairies and recreational areas; to promote the efficient use and conservation of energy resources; to promote the creation and maintenance of wildlife habitat; to consider the protection of soil from wind and water erosion and preserve the availability and use of agricultural land for agricultural production , through processes that emphasize the participation of citizens and local governments.

## SECTION 3. SPECIAL EXEMPTIONS

**Subsection A.** No requirement contained in this Ordinance shall be construed to apply to land, farm houses, farm barns, farm outbuildings, or other buildings, structures, or erections which are adapted by reason of nature and area, for use for agricultural purposes as a primary means of livelihood, while so used.

(1) Agricultural buildings and land uses are not exempt from complying with any Federal, State or local regulations concerning developing, depositing or excavating in or on the designated Marshall County Critical Resource Areas as shown on the Marshall County Comprehensive Land Use Plan Map, or in or on the flood plain of any river or stream as shown on the Federal Emergency Management Agency - Flood Insurance Rate Maps, (January 2, 2003).

(2) It shall be the responsibility of any person or group claiming that certain property is entitled to exemption on the basis of this section to demonstrate that the property and buildings are primarily adapted and used for agricultural purposes.

**Subsection B.** A special exemption applies to all matters regulated by the Iowa Department of Commerce - Utilities Division. The exemption generally includes the location of franchised electric transmission lines and gas pipelines. However this exemption shall not apply to any building, structure or erection adapted and used for a storage, housing, commercial, office or business purpose.

**Subsection C.** An exemption shall also apply to the use, sale, distribution, storage, transportation, disposal, formulation, registration, or manufacture of a fertilizer pursuant to Chapter 200.22, Code of Iowa.

#### **SECTION 4. INTERPRETATION OF STANDARDS**

In the interpretation and application, the provisions of this Article shall be held to be the minimum requirements. Where this Article imposes a greater restriction than is imposed or required by other provisions of law or by other rules, regulations or restrictive covenants, the provisions of this Article shall supersede.

However, wherever this Article conflicts with the terms, regulations and restrictions of the Code of Iowa, the Code of Iowa shall supersede.

# ARTICLE II

## DEFINITIONS

### SECTION 1. DEFINITIONS

**Subsection A.** For the purpose of this Ordinance certain terms and words are hereby defined; words used in the present tense shall include the future; words in the singular shall include the plural and words in the plural shall include the singular; the word "shall" is mandatory and not discretionary.

1. **Accessory use or structure.** A use or structure subordinate to the principal use of a building on the lot and serving a purpose customarily incidental to the use of the principal building.
2. **Adult.** As used in this Article, refers to persons who have attained the age of at least eighteen (18) years.
3. **Adult bookstore.** An establishment which has a substantial or significant portion of its stock in books, magazines or other periodicals, and paraphernalia and which excludes minors by virtue of age.
4. **Adult motels.** An establishment which has a substantial or significant portion of trade or business that excludes minors by virtue of age.
5. **Adult movie arcades/theaters.** An enclosed building used predominantly for presenting motion pictures, slides or photographic reproductions distinguished by an emphasis on matters depicting sexually explicit activities or anatomical areas for observation by persons compensating the business therein.
6. **Advertising sign.** Any structure, regardless of the material used in construction of the structure, that is erected, maintained or used for public display of a poster, painted sign, wall or roof sign, whether the structure is placed on the wall or roof itself; a picture or other pictorial reading matter which advertises.
7. **Agriculture.** The use of land for an agricultural purpose including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal or poultry husbandry, and the necessary accessory uses for packing, treating and storing the produce; provided however, that the operation of any such accessory use shall be secondary to that of normal agricultural activity carried on upon the premises and provided further that the above use shall not include commercial animal or poultry slaughtering or packing nor the commercial feeding of garbage or offal to any animal.
8. **Aliquot part.** A fractional part of a section within the United States public land survey system. Only the fractional parts one-half, one-quarter, one-half of one-quarter or one-quarter of one-quarter shall be considered an aliquot part of a section.
9. **Alley.** A public or private way affording secondary means of access to abutting property.
10. **Amusement place.** The use of land or a structure arranged, intended or designed for recreational use, which is not noxious or offensive due to the emission of odors, gas, light or noise; and which is not a menace to public health and safety which will not substantially injure the appropriate use of neighborhood property.
11. **Anchor.** Any device at the mobile home stand designed for the purpose of securing a mobile home to the ground.
12. **Animal feeding operation/lot.** A lot, yard, corral, building or other area where animals are confined, fed and maintained for forty-five (45) days or more in any twelve (12) month period. These include:
  - a. **Open feedlot:** An unroofed or partially roofed animal feeding operation in which no crop, vegetation or forage growth or residue is maintained during the period that animals are confined in the operation.
  - b. **Confinement feeding operation:** A totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.
13. **Announcement sign.** A sign or bulletin board erected on the premises of a charitable, religious, philanthropic or public institution.
14. **Antenna (antenna mounts).** Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave

dishes and omni-directional antennas, such as whips, but not including satellite earth stations.

15. **Antenna height.** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
16. **Apartment.** A room or suite of rooms used or designed for use as a single family residence, located in a building containing two or more such rooms or suites, or located in a building devoted to non-residential uses in part.
17. **Basement/Cellar.** That portion of a building between the floor and ceiling which is partly below, and partly above grade on at least two sides, but so located that the vertical distance from the grade to the floor below is more than the vertical distance from the grade to the ceiling. A basement is counted as a story for the purposes of height regulation.
18. **Bed and Breakfast Home/Hotel.** A private residence which provides lodging and meals for transient guests, in which the host or hostess resides and which has no more than four (4) guest bedrooms. While it may advertise and accept reservations, it does not present itself to the public as a restaurant, hotel or motel, does not require reservations and serves food only to overnight guests.
19. **Billboard.** Any structure or portion of a building used for the display of advertising of a business or attraction which is not carried on or manufactured in or upon the premises upon which said billboard is located. This includes painted exterior walls with pictures, words or logos.
20. **Board.** The Board of Supervisors of Marshall County, Iowa.
21. **Boarding or Lodging House.** A structure other than a hotel, tourist home or motel where lodging and meals are provided for four (4) or more persons but not exceeding eight (8) persons for compensation, but not for public or transient use.
22. **Buffer Area.** A strip of land established to protect one type of land use from another incompatible use. The strip may be of variable width and includes fences, screen plantings or earthen mounds to buffer the adjoining property from noise, traffic or visual nuisances.
23. **Building.** Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals or property, but not including signs, billboards or fences. When a structure is divided in separate parts by unpierced walls extending from the ground up, each portion so separated shall be deemed a separate building, except for residential dwellings, mini warehousing/storage/rental garages.
24. **Building, height of.** The vertical distance from the average grade at the point where the grade meets the wall of the building, to the highest point of the coping of a flat roof, deck line of a mansard roof, or the mean height level between eaves and ridge for gable, hip and gambrel roofs.
25. **Bulk Plant.** That portion of property where flammable liquids, gases or liquefied petroleum products are distributed or stored where the aggregate capacity of all such storage exceeds six thousand (6000) gallons.
26. **Child Day Care.** (definitions from Chapter 237A, Code of Iowa) The care, supervision or guidance of a child by a person other than the parent, guardian, relative or custodian for periods of less than twenty-four (24) hours per day per child on a regular basis in a place other than the child's home, but does not include care, supervision or guidance of a child by any of the following:
  - a. an instructional program administered by a public or non-public school system accredited by the department of education or the state board of regents, except a program provided under section 279.49, Code of Iowa
  - b. a church-related instructional program of not more than one day per week
  - c. short-term classes held between school terms
  - d. a child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to Chapter 135B, Code of Iowa
  - e. a non-profit program operated by volunteers for no charge for not more than two hours during any twenty-four (24) hour period
  - f. a program provided by the state or a political subdivision, which provides recreational classes for a period of less than two (2) hours per day
  - g. a program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five (5) years of age or older and attending school

27. **Commercial Feedlot/ Confinement Operation.** The feeding, farrowing and raising of feeder and dairy cattle, swine, sheep and poultry in a confined area where grazing is not possible, and where at least half of the livestock and poultry feed is not grown on the premises. To be defined as "commercial", such operation must be owned or controlled by a partnership or corporation not living on the site. This definition is not meant to include family farms which have incorporated for business purposes.
28. **Commercial WECS.** A WECS of equal to or greater than 50 kW in total name plate generating capacity.
29. **Communication Tower/Facility.** A tower or antenna, whether guyed or of monopole or lattice-type design, or equipment and associated facilities constructed to transmit or receive signals for the purpose of providing communication services for commercial use. This definition includes, but is not limited to radio, television, cellular, PCS, telephone and microwave towers.
30. **Commission.** The Marshall County Zoning Commission.
31. **Corn Suitability Rating (CSR)** . An index for ranking the productivity of soils and their suitability for row-crop production in Iowa. The CSR system rates soils from five (5) to one hundred (100), with one hundred (100) reserved for those soils a) located in areas of most favorable weather conditions in Iowa, b) that have high yield potential, and c) that can be continuously row-cropped. (A detailed description of the CSR system, including methodology and CSR estimates for various soil types, may be found in Special Report Number 66, "Productivity Levels of Some Iowa Soils", April, 1971, published by the Agricultural and Home Economics Experiment Station and Cooperative Extension Service, Iowa State University.)
32. **Day Nursery, Nursery School, or Day Care (Public).** Any agency, institution , establishment or place which provides supplemental parental care and/or educational work, other than lodging overnight, for seven (7) or more children of pre-school age for compensation.
33. **Development.** Any man-made change to alter the existing land use of a parcel of land including but not limited to buildings, structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
34. **District.** A section or sections of the unincorporated area or any portion thereof of Marshall County, Iowa for which the district regulations governing the use of buildings, land or lot area and height of buildings are uniform.
35. **District Zone Maps.** The official maps upon which are designated the boundaries of the various zone districts as enumerated in this Ordinance. There are only two official district zone maps. One shall be displayed in the Marshall County Recorder's office, and the other shall be displayed in the Marshall County Zoning Administrator's office.
36. **Driveway.** A private road providing access for vehicles and pedestrians to the principal building or use on a lot.
37. **Dwelling.** A building, or portion thereof, designed or used exclusively for residential occupancy, but not including a summer cottage.
38. **Dwelling, Single Family.** A dwelling arranged, designed or intended for occupancy by one family.
39. **Dwelling, Two Family.** A dwelling arranged, designed or intended for occupancy by two families, living independently of each other.
40. **Dwelling, Multiple Family.** A dwelling arranged, designed or intended for occupancy by more than two families, living independently of each other.
41. **Earthen Berm.** An embankment of earth created by adding the material to the location. The berm is then graded and landscaped to act as a natural area which is visually pleasing. Usually associated with a buffer area.
42. **Easement.** A grant of one or more of the property rights by the owner to, or for the use by, the public, a corporation or another person or entity.
43. **Elder Family Home.** A private household as defined by Chapter 335.31, Code of Iowa, 1995, owned by a responsible party offering a social living arrangement for at least two but not more than five (5) persons, the majority of whom are elders, who are not related within the third degree of consanguinity and who are not able or willing to adequately maintain themselves in an independent living arrangement, but who are essentially capable of physical self care. An Elder Family Home shall be registered in accordance with Chapter 231A, Code of Iowa, 1995, and any amendments thereto.
44. **Elder Group Home.** A single-family residence that is a residence of a person who is providing room, board, and personal care to three (3) through five (5) elders who are not

- related to the person providing the service within the third degree of consanguinity or affinity. An Elder Group Home shall be registered in accordance with Chapter 231B, Code of Iowa, 1995, and any amendments thereto.
45. **Factory-built Home.** Any structure, designed for residential use, which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly purpose and installation, on a building site. For the purpose of this Ordinance, factory built homes include mobile homes, manufactured homes and modular homes as well as "recreational vehicles" which are placed on a site for greater than 180 consecutive days and is not fully licensed and ready for highway use.
  46. **Factory-built Home Park.** A parcel or contiguous parcels of land divided into two (2) or more factory-built home lots for sale or lease.
  47. **Fall Zone.** The area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.
  48. **Family.** One or more persons occupying a premises and living as a single housekeeping unit as distinguished from a group occupying a hotel, motel, tourist house, boarding house or bed and breakfast, herein defined.
  49. **Family Home.** Any community-based residential home which is licensed as a residential care facility under Chapter 135C, Code of Iowa, 1995, or as a child foster care facility under Chapter 237, Code of Iowa, 1995 to provide room and board, personal care, habilitation services, and supervision in a family exclusively for not more than eight (8) developmentally disabled persons and any necessary support personnel. However, a family home does not mean an individual foster family home licensed under Chapter 237 IC. A family home also means an Elder Family Home. A family home shall not be located within one-fourth of a mile from another family home.
  50. **Farm and Farming (Agriculture).** The building(s) and use of land for growing agricultural or farm produce or products, including but not limited to the following: grains, hay, vegetables, fruits and trees, grazing, dairying and raising of livestock and poultry; and the storing and treating and feeding of the farm produce or products.
  51. **Farmstead.** A combination of structures, with one dwelling, yards, windbreaks, well and other improvements which are held and operated in conjunction with agricultural crop and/or livestock production.
  52. **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.
  53. **Flood.** A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.
  54. **Flood Boundary and Floodway Map.** The official map prepared by the Federal Emergency Management Agency (FEMA) as a part of the flood insurance study of a community, delineating the boundaries of the floodway and the floodway fringe and showing associated 100 year flood level and delineating the boundaries of the general flood plains for one hundred (100) year floods. In Marshall County only the portion north of state highway 30 and east of county road S75 (Marsh Avenue) is currently included in these maps.
  55. **Flood Elevation, Base or 100-Year.** The elevation flood waters would reach at a particular site during the occurrence of a specific flood. A 100-year flood elevation is that elevation that flood waters would reach in a 100-year flood. There is a one in one hundred (1 in 100) chance each year for such a flood.
  56. **Flood Hazard Boundary Map.** The official map(s) prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration, community Panel No.s 190890 0001 A and 190890 0002 A, which delineates the flood hazard areas applicable to the community.
  57. **Flood Plain.** Any land area susceptible to being inundated by water as a result of a flood. Also referred to as Special Flood Hazard Area (SFHA).
  58. **Flood Plain Management.** The operation of an overall program of correction and preventive measures for reducing flood damage and promoting the wise use of flood plains, including but not limited to: emergency preparedness plans, flood control works, floodproofing and flood plain management regulations.

59. **Floodproofing.** Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
60. **Floodway.** The channel of a river, stream or other watercourse and those portions of the flood plain adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not result in substantially higher flood levels and flow velocities.
61. **Floodway Fringe.** Those portions of the flood plain, other than the floodway, which can be filled, levied or otherwise obstructed without causing substantially higher flood levels or flow velocities.
62. **Fully Enclosed Area Below Lowest Floor.** An enclosed area below the "lowest floor" (not including basements) that is subject to flooding but which is used solely for the parking of vehicles, building access and low damage potential storage and is designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must be certified by a registered professional engineer.
63. **Garage, Private.** A structure with appropriate access to a public or private driveway, road, alley, street or highway. Said structure to be designed, intended or used for the parking of the private motor vehicles of the family or families resident upon the premises; provided that not more than two (2) of the spaces therein may be rented for the private vehicles of persons not resident upon the premises and further provided that no more than one commercial vehicle per family dwelling therein, and that no commercial service or industry connected with motor vehicles shall be carried on therein.
64. **Garage, Public.** A structure (not a private or storage garage) designed, intended or used for equipping, fueling, servicing, parking, repairing, hiring, selling or storing motor vehicles.
65. **Garage, Storage.** Any building or premises, including a mini-storage garage, used for storing motor vehicles (other than commercial vehicles), recreational vehicles and trailers, boats, furniture or other miscellaneous personal property, excluding such things as automobile fuels and oils or other hazardous or volatile substances, pursuant to previous arrangements and in which motor vehicles are not equipped, serviced, repaired, hired or sold.
66. **Gasoline/Service Station.** See Garage, Public.
67. **Grade.** The following are the designated grades for:
- a. Buildings having walls adjoining one (1) street only, the elevation of the regularly established sidewalk grade at the center of the wall adjoining the street.
  - b. Buildings having walls adjoining more than one (1) street, the average of the elevation of the regularly established sidewalk grades at the center of all walls adjoining the street.
  - c. Buildings having no wall adjoining the street, the average level of the finished surface of the ground adjacent to the exterior walls of the building. Any wall approximately parallel to and not more than five (5) feet from a street line is considered as adjoining the street.
68. **Group Housing.** A building or place where lodging or boarding is provided for compensation or not; for five (5) or more individuals, but not open to transient guests as would be found in a hotel/motel. Normally associated with a charitable organization or government financed program to assist unique groups of people.
69. **Guyed Tower.** A communications tower that is supported, in whole or in part, by guy wires and ground anchors.
70. **Health Care Facility.** An establishment for provision of care to persons suffering of illness, injury or disability and includes hospitals, custodial homes, nursing homes, convalescent homes, extended care facilities and similar facilities.
71. **Health Club.** A non-medical service establishment intended to maintain or improve the physical condition of paying customers. Contains exercise and game equipment and facilities, steam baths, saunas, hot tubs or similar equipment or facilities.
72. **Height, Tower.** The distance measured from the finished grade to the highest point on the tower or other structure, including the base pad and any antenna, in reference to a tower or other structure.
73. **Historic Structure.** Any structure that is:
- a. Listed individually in the National Register of Historic Places, maintained by the Department of the Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;

- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either (i) an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in States without approved programs.
74. **Home Occupation.** Any occupation or activity carried on by a member of the immediate family, residing on the premises, provided that any such activity shall not occupy more than fifty (50) percent of the first floor area of one (1) story of the principal building; provided further that not more than one (1) person not a member of the family there residing shall be regularly employed in addition to the proprietor; provided further that there shall be no display of goods, storage of goods, equipment or materials outside, and no exterior advertising on the premises other than a small sign not to exceed two (2) square feet in area carrying only the name and occupation of any occupant of the premises; provided further that the building or premises occupied shall not thus be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, the emission of odor, gas, dust, smoke, fumes, noise or in any other way, and provided further that no such building shall include features of design not customary in buildings for residential use.
75. **Hospital.** An institution providing primary health services and medical or surgical care to persons, primarily in-patients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions and including as an integral part of the institution, related facilities such as laboratories, out-patient facilities, training facilities, medical offices and staff residences.
76. **Hotel.** A structure in which lodging or meals and lodging, is provided and offered to the public for compensation and which is open to transient guests, intending to lodge in such structure for less than fourteen (14) days, including motels and tourist houses.
77. **Industry, Heavy.** When used in this Ordinance, term refers to a use engaged in the basic processing and manufacturing of material or products predominantly from extracted or new materials, or a use engaged in the storage of, or manufacturing process using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.
78. **Industry, Light.** When used in this Ordinance, term refers to a use engaged in the manufacture, predominantly from previous prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging and a use engaged in warehousing, distribution, wholesale trade and catalogue sales.
79. **Institution.** A building or use occupied or run by a government agency, non-profit organization or institution of higher learning to serve the social, educational, charitable and/or religious needs of the public.
80. **Junk.** Any material as defined in Chapter 567-100.2, Iowa Administrative Code, 1995.
81. **Junkyard.** Any area where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, handled or stored, including but not limited to dismantling of automobiles or other vehicles or machinery, housewrecking yards, used lumber yards and places or yards for storage of structural steel materials. The storage of three (3) or more vehicles which are not drivable and which are not located inside an enclosed structure constitutes a junkyard. Junkyards shall not be permitted in any zoning district without a special use permit from the Zoning Commission and Board of Supervisors.
82. **Kennel, Commercial.** Any establishment where three or more dogs, cats, or other animals normally allowed outdoors, six months or older, not owned by the owner of the premises, are kept for breeding, boarding, grooming, selling or training services in return for compensation.
83. **Kennel, Private.** A non-commercial kennel at a private residence where four or more dogs, cats or both are kept for the hobby of the householder, as opposed to a commercial kennel. The keeper of a hobby kennel may keep adult dogs or cats and may raise and sell not more than fifteen (15) total offspring regardless of species during any calendar year without becoming a commercial kennel.
84. **Land Evaluation and Site Assessment (LESA) System.**



- a. A point system which evaluates a site's suitability for agricultural use in relation to soil productivity and locational, economic and governmental factors. The LESA System consists of two (2) parts:
  1. **Land Evaluation:** The land evaluation part rates soil productivity. Soils are rated and placed into groups according to their suitability for a stated agricultural use (i.e. cropland). Relative point values, established by the State Natural Resources Conservation Service, are assigned to each group.
  2. **Site Assessment:** The site assessment part identifies locational and other factors, other than soil productivity, that contribute to the suitability of a site for agricultural use. Each factor is weighted and assigned a range of values, established by the Marshall County Land Use Plan Committee, Zoning Commission and Board of Supervisors, according to local needs and objectives.
- b. The result of the LESA evaluation is a numerical score for a given site ranging from 0-300 points, with higher scores indicating a higher suitability for agricultural use.
85. **Lattice Tower.** A self-supporting tower with three or four sides, open, steel frame structure used to support communications equipment.
86. **Livestock.** Cattle, horses, sheep, swine, goats, poultry, llamas, ostrich, emu, or any other animal or fowl which are kept for commercial, hobby, or personal purposes. Each head of horses or cattle shall be considered one (1) animal unit. Each head of swine, sheep, goats, llamas, ostrich or emus shall be considered one half (1/2) an animal unit. A mother and offspring shall be considered one head until weaned.
87. **Lot.** A tract of land represented and identified by number or letter designation on an official plat or a designated aliquot part, government lot, parcel or tract established as permitted by law, to be separately owned, used, developed or built upon. A lot shall contain no more than one principal building and its attendant accessory buildings.
88. **Lot Area.** Total horizontal area within lot lines, excluding that portion devoted to a road or street or easement therefore.
89. **Lot, Corner.** Lots conforming to the following specified conditions shall be considered as corner lots for the purposes of this Ordinance:
  - a. A lot fronting on two (2) intersecting streets, which form an interior angle of one hundred thirty-five (135) degrees or less, and which lot has a frontage of not less than twenty-five (25) feet on each of such streets.
  - b. A lot located at the angle in a street where the interior angle formed by the intersection of the street lines is one hundred thirty-five (135) degrees or less, and which lot has frontage of not less than twenty-five (25) feet on each leg of such angle.
90. **Lot, Depth of.** The mean horizontal distance between the front and rear lot lines. In a triangular lot the rear lot line shall be the angle point of the triangle opposite the front lot line.
91. **Lot, Flag.** A lot whose area is situated behind another lot(s) with a narrow frontage extended to a street or road. The term flag lot refers to the shape of the lot.
92. **Lot, Interior.** A lot other than a corner lot.
93. **Lot Lines.** Property line bounding a lot.
94. **Lot Line, Flag.** On a flag lot, the lot line essentially parallel to, and between, the front and rear lot lines. Any line varying by more than forty-five (45) degrees from a side lot line, that is not a front or rear lot line.
95. **Lot Line, Front.** The lot line separating a lot from a street/road right-of-way or road easement.
96. **Lot Line, Rear.** The line opposite and most distant from the front lot line.
97. **Lot Line, Side.** Any lot line other than a front, rear or flag lot line.
98. **Lot of Record.** A lot or parcel of land that the contract or deed to which has been recorded in the office of the Recorder of Marshall County, Iowa prior to the effective date of this Ordinance. As applied to the Subdivision Ordinance, the effective date is the effective date of that Ordinance.
99. **Lot, Through.** A lot having frontage on two non-intersecting streets, as distinguished from a corner lot.
100. **Lot Width.** The mean horizontal distance between the side lot lines.
101. **Lowest Floor.** The floor of the lowest enclosed area in a building including a basement except when all following criteria are met:
  - a. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the requirements for a "fully enclosed area below

lowest floor" as defined in this Ordinance, and

- b. The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage and
- c. Machinery and service facilities (i.e. hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the 100-year flood level, and
- d. The enclosed area is not a "basement" as defined in this Ordinance.

In cases where the lowest enclosed area satisfies criteria A,B,C and D above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

- 102. **Lumber Yard.** A premises on which new lumber and related new building materials are sold.
- 103. **Manufactured Home.** A factory built structure, which is manufactured or constructed under the authority of 42 United States Code, Sec. 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its frame or body any wheels or axles. A mobile home is not a manufactured home, except as hereinafter provided.
- 104. **Meteorological Tower.** For the purposes of this Ordinance, meteorological towers are those towers which are erected primarily to measure wind speed and directions plus other data relevant to siting WECS.
- 105. **Mini-Warehousing/Storage/Rental Garages.** A building or group of buildings containing individual, compartmentalized, controlled access units for the inside storage of goods and wares.
- 106. **Mobile Home.** Any structure used for living, sleeping, business or storage purposes, having no foundation, prior to placement, other than wheels, blocks, skids, jacks, horses or skirtings, and which is, has been or reasonably may be equipped with wheels or other devices for transporting the structure from place to place, whether by motive power or other means. Any mobile home placed in Marshall County must be placed on a permanent foundation, have the hitch removed and the wheels removed. The term "mobile home" shall include camp cars, house cars, and any travel trailer/RV that is located, for living purposes, on any lot for more than forty-five (45) consecutive days.
- 107. **Mobile Home Park.** Any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored for use as single family detached one-story residences, either free of charge or for revenue purposes, and shall include any building, structure or enclosure used or intended for use as part of such mobile home park.
- 108. **Monopole Tower (Self-support Tower).** A communication tower consisting of a single pole, constructed without guy wires and ground anchors.
- 109. **Motel/Tourist Home.** See Hotel.
- 110. **Non-Conforming Use.** The lawful use of any building or land that was established prior to or at the time of passage of this Ordinance, or amendments thereto, which does not conform after the passage of this Ordinance, or amendments thereto, with the use regulation of the district in which it is situated.
- 111. **Non-Commercial WECS.** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a total name plate generating capacity of not more than 50 kW and which is intended to primarily reduce on-site consumption of utility power.
- 112. **Nursing Home.** A home for the aged, chronically ill or incurable persons in which three (3) or more persons not of the immediate family are received, kept and provided with food, or shelter and care for compensation.
- 113. **One Hundred (100) Year Flood.** A flood which has the magnitude of occurring once every one hundred (100) years. There is a one in one hundred (1 in 100) chance each year for such a flood.
- 114. **Ordinance.** Wherever the word "Ordinance" is used in this Ordinance it shall refer to the Zoning Ordinance of Marshall County, Iowa.
- 115. **Overlay District.** A district which acts in conjunction with the underlying Zoning District or Districts. Development within the overlay district must conform to the requirements of both zones or the more restrictive of the two.
- 116. **Parcel.** A part or tract of land.
- 117. **Parking Lot.** A parcel of land devoted to enclosed or unenclosed spaces for the public parking of more than one motor vehicle.

118. **Parking Space.** A parcel of land devoted to enclosed or unenclosed space for the parking of one motor vehicle.
119. **Permanent Foundation.** A site-built or site-assembled system of stabilizing devices when running gear assembly is removed. It must be capable of transferring design dead loads and live loads unique to local home sites, wind, seismic, soil and water side conditions that may be imposed on the structure. The foundation shall be to a depth of not less than forty-two inches (42") below grade and constructed of materials approved by the Uniform Building Code.
120. **Principal Building.** A building in which is conducted the principal use of the lot on which it is located.
121. **Principal Use.** The main use of land or structure as distinguished from an accessory use.
122. **Public Water and Public Sanitary Sewer System.** Whenever the words "Public Water System" or "Public Sanitary Sewer System" are used herein, they shall refer to one that is owned and maintained by a government agency for the use of the general public or a privately owned and maintained system for the general use of a specific area, which shall have been approved by the County Board of Health and County Sanitarian.
123. **Public Use Area.** Parks, playgrounds and other recreational areas and open spaces; scenic and historic sites; schools and other buildings and structures; stadiums, gymnasiums or comparable facilities; and other places where the public is directly or indirectly invited to visit or permitted to congregate.
124. **Rear Line of the Principal Building.** A line extending to either side lot line, from the rear-most part of the principal building. The rear of any principal building shall be the side of the principal building facing the rear lot line.
125. **Recreational Vehicle.** A vehicle which is:
  - a. Built on a single chassis;
  - b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
  - c. Designed to be self-propelled or permanently towable by a light-duty truck; and
  - d. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.
126. **Recycling Center/Facility.** A site where commercial, domestic and yard wastes are sorted, packed, baled, composted and/or processed for re-use.
127. **Right-of-Way.** The land area secured or reserved by a governmental agency giving it or the public the right to travel on, over and under the area.
128. **Road or Street.** All property, other than an alley, dedicated or intended for public or private road, street, highway, freeway or other roadway purposes, or to the public easement thereof.
129. **Road or Street Line.** The dividing line between a lot, tract or parcel of land and a continuous road, street or alley and any public easement thereof.
130. **Roadside Stand.** A temporary structure so designed and constructed that the structure is easily portable or can be readily moved, and which is adjacent to a road and used only for sale of farm products produced or grown on the premises.
131. **Rotor diameter.** The diameter of the circle described by the moving rotor blades.
132. **Sanitary Landfill.** A site where solid wastes are disposed of by utilizing the principles of engineering to confine the solid waste to the smallest practical volume and to cover it with a layer of earth so that no nuisance or hazard to the public health is created. The only sanitary landfill in Marshall County is the Marshall County Sanitary Landfill in Section 6, T 83 N, R 18 W.
133. **Set Back.** The required minimum distance between any structure and any lot line(s).
134. **Sign.** Any word(s), lettering, figures, emblems, pictures, trade names or trade marks used by an individual, firm or association, a corporation, a profession, a business, a service, a community, a church or a school and visible from any public street or right-of-way and designed to attract attention for commercial or non-profit purposes. This is not to be construed to include directional signs erected or required by governmental bodies, legal notices, signs bearing only property numbers or names of occupants on premises.
135. **Sod Farm.** An agricultural use of land and buildings where the primary purpose of the land is growing, harvesting and selling of sod on the wholesale market.
136. **Special Flood Hazard Area.** The land within a community subject to the "100-year flood". This land is identified as Zone A on the community's Flood Hazard Boundary Map.
137. **Stable, Private.** A building or structure used or intended to be used for housing horses belonging to the owner of the property only for non-commercial purposes.

138. **Stable, Public and Riding Academy.** A building or structure used or intended to be used for the housing only of horses on a fee basis. Riding instruction may be given in connection with a public stable or riding academy.
139. **Start of Construction.** Includes substantial improvement(s) and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles or piers, the construction of columns or any work beyond the stage of excavation, or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or any other structural part of the building, whether or not that alteration affects the external dimensions of the building.
140. **Story.** That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, or if there is no floor above it, then the space between the floor and the ceiling or roof next above it.
141. **Story, Half.** A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than sixty (60) percent of the floor area is finished off for use. A half story may be used for occupancy only in conjunction with and by the occupancy of the floor immediately below.
142. **Structural Alterations.** Any replacement or changes in the type of construction or in the supporting members of a building, such as bearing walls or partitions, columns, beams, girders or change in the roof line, beyond ordinary repairs and maintenance.
143. **Structure.** Anything constructed or erected with a fixed location on the ground, attached to the ground or which is attached to something having a permanent location on the ground, including, but not limited to buildings, factory-built homes, sheds, cabins, factories, billboards or poster panels, storage tanks or similar uses.
144. **Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.
145. **Substantial Improvement.** Any improvement to a structure which satisfies either of the following criteria:
- a. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (1) before the "start of construction" of the improvement, (2) if the structure has been "substantially damaged," and is being restored, before the damage occurred.. The term does not, however, include any project for improvement of a structure to comply with existing federal, state or local health, sanitary, access or safety code specifications which are solely necessary to assure access and safe conditions for the existing use. The term also does not include any alteration of an "historic structure" provided the alteration will not preclude the structure's designation as an "historic structure".
  - b. Any addition which increases the original floor area of a building by twenty- five (25) percent or more.
146. **Summer Cottage.** A single family dwelling, intended for seasonal or temporary occupancy only, and not as a family residence for more than seven (7) months during any entire year.
147. **Tract.** An aliquot part of a section, a lot within an official plat, or a government lot.
148. **Travel Trailer.** A recreational vehicle, with or without motive power; designed as a temporary dwelling, not exceeding eight (8) feet in width and thirty-two (32) feet in length, exclusive of separate towing unit. Such vehicles are customarily and ordinarily used for travel or recreational purposes and not used for permanent habitation.
149. **Travel Trailer Park/Commercial Campground.**
- a. Any lot, tract or parcel of land licensed and used or offered for use in whole or in part, with or without charge, for the parking of occupied travel trailers, pickup campers, converted buses, motor homes tent trailers, tents or similar devices used

for temporary portable housing. Such use shall be permitted during the months of May, June, July, August and September. During the months of October through April, the use shall not exceed thirty (30) days duration and shall be solely for living and/or sleeping purposes.

- b. Unoccupied mobile homes, travel trailers, campers, converted buses, motor homes, tent trailers or similar devices may be located in travel trailer parks for storage purposes under the following conditions:
  1. A specific area must be designated as a storage area and all vehicles shall be located in this area during such time as the use is for storage.
  2. A site plan shall be submitted identifying the sites for occupied use and sites for storage.
  3. Nothing in this Article shall be construed to permit the repair, maintenance, sales or servicing of vehicles located in a travel trailer park.
150. **Total Height (WECS).** The highest point, above ground level, reached by a rotor tip or any other part of the WECS.
151. **Tower.** Any structure than is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television towers, microwave towers, common-carrier towers, cellular telephone towers and all communication towers, alternative tower structures, and the like.
152. **Tower (WECS).** Towers include vertical structures that support the electrical generator, rotor blades, or meteorological equipment.
153. **Tower height (WECS).** The total height of the WECS exclusive of the rotor blades.
154. **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.
155. **Urban Development.** All forms of non-farm development including structures and land uses of a residential, commercial, industrial and recreational nature.
156. **Wind Energy Conversion System (WECS).** An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and metrological towers that operate by converting the kinetic energy of wind into electrical energy. The energy maybe used on-site or distributed into the electrical grid.
157. **Wind Turbine.** A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy
158. **Yard.** an open space on the same lot with a building, unoccupied and unobstructed by any portion of the structure from the ground upward, except as otherwise provided in this Ordinance. In measuring the width, length or depth, the least distance between the lot line or right-of-way and the nearest building shall be used.
159. **Yard, Front.** A yard extending across the full width of the lot and measured between the front lot line, right-of-way or street line, whichever shall be the nearest, and the nearest wall of the building or any projection thereof, other than the projection of unenclosed porches or decks, steps or balconies not exceeding eight (8) feet in depth.
160. **Yard, Rear.** A yard extending across the full width of the lot and measured between the rear lot line and the nearest building wall or any projection thereof, other than the projection of unenclosed porches or decks, steps or balconies, not exceeding eight (8) feet in depth. On interior lots, the rear yard is opposite the front yard. On corner lots, the rear yard is considered as opposite the road upon which the lot has its least dimension.
161. **Yard, Side.** A yard extending from the front yard to the rear yard and measured between the side lot lines and the nearest building wall or any projection thereof, other than the projection of unenclosed porches or decks, steps or balconies, not exceeding eight (8) feet in depth.
162. **Zoning Administrator.** The individual appointed by the Board of Supervisors in accordance with Chapter 335, Code of Iowa, 1995, with the sole responsibility to administer the Marshall County, Iowa Revised Zoning Ordinance in accordance with Chapter 335, Code of Iowa, 1995. This person may delegate some zoning enforcement responsibilities to other county employees within the Zoning Department with approval of the Board.
163. **Zoning Permit.** A lawful permit issued by the Zoning Administrator of Marshall County, Iowa, for the erection, reconstruction or alteration of a building, structure or use of land.

# ARTICLE III

## MAPS & DISTRICTS

**SECTION 1. ESTABLISHMENT OF ZONING DISTRICTS.** In order to carry out the purpose and intent of this Ordinance and the Marshall County Comprehensive Land Use Plan, the unincorporated area of Marshall County, Iowa is hereby divided into the following zoning district classifications:

"A-1"...Agricultural District

"R-1"...Residential District

"R-2"...Residential District

"R-3"...Residential District

"R-PUD"...Residential Planned Unit Development

"C-1"...General Commercial/Light Industrial District

"C-2"...Heavy Industrial District

"F-P"...Flood Plain Overlay District

"U-1"...Unclassified District

"AZ-1"...Airport Tall Structure District

**SECTION 2. ZONING MAP.** With the exception of the Flood Plain Overlay Districts, the boundaries of these Districts are indicated on the Official Zoning Map of Marshall County, Iowa; which map is made a part of this Chapter by reference. The Official Zoning Map of Marshall County, Iowa, with all notations, designations, references and other matters shown thereon shall be and are hereby made a part of this Ordinance as fully described and set forth herein. The Official Zoning Map, properly attested, shall be and remain on file in the office of the Recorder of Marshall County, Iowa, and a second copy shall remain in the office of the Marshall County Zoning Administrator. It shall be the responsibility of the Zoning Administrator to see that the Official Zoning Maps are kept current at all times.

**Subsection A.** If in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matters portrayed on the Official Zoning Map, said changes shall be given an amendment number and entered with all necessary details in Section 3, of the Authorizing Resolution, and shall be properly recorded on the face of the Official Zoning Maps.

**Subsection B.** The Board of Supervisors may from time to time adopt a new Official Zoning Map which supersedes the prior Official Zoning Map, in the event that the Official Zoning Map becomes damaged or destroyed; or for the purposes of clarity due to a number of boundary changes, or to correct drafting errors or omissions; provided, however, that any such adoption shall not have the effect of amending the original Zoning Ordinance or any subsequent amendment thereof.

## SECTION 3. INTERPRETATION OF DISTRICT BOUNDARIES.

**Subsection A.** Boundaries indicated as approximately following the center lines of streets, highways, roads or alleys shall be construed to follow such center lines.

**Subsection B.** Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.

**Subsection C.** Boundaries indicated as approximately following city limits shall be construed as following said limits.

**Subsection D.** Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

**Subsection E.** Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of a change in the shore line boundaries shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.

**Subsection F.** Boundaries indicated as parallel to or extensions of features indicated in Subsections A through E above shall be so construed. Distances not specifically shown on the Official Zoning Map shall be recorded on the Marshall County GIS Computer Mapping System, maintained by the Marshall County Auditor's Office with the assistance of the Marshall County Zoning Administrator or an agent of that office. Exact distances and angles shall be maintained on this system.

**Subsection G.** Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Subsections A through F above, the Board of Adjustment shall interpret the district boundaries.

**SECTION 4. VACATED STREETS.** Whenever any street, road, alley or other public way is vacated by official action as provided by law, the Zoning Districts adjoining the sides of such public way shall be automatically extended, depending on the side or sides to which such land reverts, to include the right-of-way thus vacated, which shall henceforth be subject to all regulations of the extended District or Districts.

**SECTION 5. FLOOD PLAIN OVERLAY MAP.** The boundaries of the flood plain overlay districts shall be the same as shown on the Flood Hazard Map issued by the Federal Insurance Administration, dated June 3, 1977, Community-Panel No. 190890 0001A & Community Panel No. 190890 0002A. These maps are hereby adopted by reference as the Official Flood Identification Maps. These maps shall have the same force and effect as if they were all fully set forth or described herein. Subsequent amendment to these maps shall be adopted automatically. The flood plain overlay districts shall include the corresponding designated areas identified on the Flood Hazard Boundary Map:

"Zone A"...The designated 100-year flood plain level.

The maps are available for review in the office of the Marshall County Zoning Administrator.

**SECTION 6. INTERPRETATION OF FLOOD HAZARD MAP BOUNDARIES.** The boundaries of the General Flood Plain (Zone A) shall be determined by scaling distances on the Official Flood Identification Maps. Where interpretation is needed to determine the exact location of the boundaries of the districts as shown on the maps, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Zoning Administrator shall make the necessary interpretation. Any person contesting the location of the district boundary shall be given a reasonable opportunity to present their case to the Marshall County Board of Adjustment, as provided in Article XX, and to submit their own technical evidence if they so desire.

# ARTICLE IV

## GENERAL REGULATIONS

**SECTION 1. GENERAL REGULATIONS.** The regulations set forth in this Article qualify or supplement, as the case may be, the regulations set forth elsewhere in this Ordinance.

## SECTION 2. ACCESSORY BUILDINGS IN AGRICULTURAL AND RESIDENTIAL DISTRICTS.

**Subsection A.** No accessory building shall be erected in any front yard as defined in Article II, Section 1, Subsection A (139.) except as provided hereinafter. Accessory buildings may be built in the front yard if they are at least fifty (50) feet from the right-of-way line; however, only one accessory building is allowed in the front yard. Accessory buildings shall be distant at least ten (10) feet from any other separate buildings or structures on the same lot, and at least three (3) feet from alley lines and from lot lines of adjoining lots which are in any residential districts.

**Subsection B.** Accessory buildings, except buildings or structures housing animals or fowl, may be erected as a part of the principal building, or may be connected thereto by a breeze-way or similar structure, provided all yard requirements for a principal building are complied with.

**Subsection C.** No accessory building or group of accessory buildings in any residential district shall cover more than twenty-five (25) percent of the rear yard. A private garage shall not exceed a maximum area of twelve hundred (1200) square feet.

**Subsection D.** An accessory building may be built on the adjoining subdivision lot or tract, if both parcels are owned by the same individual, family or firm, and the owner signs and records a "Restrictive Covenant and Agreement Not to Sever" in cooperation with the Zoning Department.

## SECTION 3. ACCESSORY BUILDINGS AND USES, OTHER DISTRICTS.

**Subsection A.** Accessory buildings which are not a part of the principal building may be built in a rear yard to within five (5) feet of the rear lot line; but the same shall not occupy more than thirty-five (35) percent of the rear yard.

**Subsection B.** If any portion of a detached accessory building is within a side yard of a principal building on the same lot, such detached accessory building shall not be nearer to the side lot line than would be required for the building wall of a principal building on the same lot.

**Subsection C.** No detached accessory building is permitted within the limits of a front yard.

**Subsection D.** No detached accessory building may be placed in any rear yard or any side yard so that any part of such building is nearer the street line than is permitted for a wall of a principal building on the same lot.

**Subsection E.** No accessory building shall be used for dwelling purposes.

**SECTION 4. ACCESSORY BUILDINGS, RESTRICTIONS ON.** No accessory building shall be used for human occupancy.

**SECTION 5. BUILDINGS ON THROUGH LOTS.** Through lots extending from road to road shall provide the required front yard on both roads. Accessory buildings may be located in the side yard or the yard opposite to the direction the house is facing, so long as they are not closer than fifty (50) feet from the right-of-way line.

**SECTION 6. CONFORMANCE REQUIRED.** Except as may be hereinafter specified no land, building, structure or premises shall hereafter be used and no building, or part thereof, or other structure shall be located, erected, reconstructed, extended, enlarged or altered, except in conformity with the provisions of this Ordinance.

**SECTION 7. CONTINUING EXISTING USES.** Any use, building or structure, existing at the time of the enactment of this Ordinance may be continued, even though such use, building or structure may not conform



with the provisions of this Ordinance for the District in which it is located. Neither shall any change of title or right to possession affect such continuation of any existing use. However, should such use cease for a period of one (1) year, the use may not be resumed thereafter.

**SECTION 8. CORNER LOTS.** For corner lots platted after the effective date of this Ordinance, the front yard setback shall apply to both street sides of the lots. On corner lots platted and of record at the effective date of this Ordinance, the side yard regulation shall apply to the larger street side of the lot, except where such lot line is the front lot line of lots to the rear of said corner lot, in which case there shall be a side yard on the larger street side of the corner lot of not less than fifty (50) percent of the setback required on the front of the lots to the rear of the corner lots; and no accessory building on such corner lot shall project beyond the setback line of the lots in the rear; provided further that this restriction shall not be so interpreted as to reduce the buildable width of the corner lot to less than twenty-eight (28) feet.

**SECTION 9. DISINCORPORATION AND SEVERANCE.** Any additions to the unincorporated areas of the County resulting from the disincorporation of a municipality or severance of a part of a municipality shall be automatically classified as in the "R-1" Residential District until otherwise re-classified by the rezoning process.

**SECTION 10. FENCES AND WALLS.** In any A-1, R-1, R-2 or R-3 District, on any lot used for residential purposes, fences and walls not exceeding eight (8) feet in height are permitted within the limits of the side and rear yards. A fence or wall not exceeding four and one half (4 1/2) feet in height is permitted within the limits of the front yard. In the case of retaining walls or supporting embankments, the above requirements shall apply only to that part of the wall above ground surface of the retained embankment. In all other districts, fences and walls are permitted not exceeding eight (8) feet in height within the limits of the yard. In all cases fences shall be constructed with the best side facing the neighboring land user.

**SECTION 11. GASOLINE STATIONS, PUBLIC GARAGES AND COMMERCIAL PARKING LOTS.**

**Subsection A.** No gasoline station or public garage or commercial parking lot shall have an entrance or exit for vehicles within two hundred (200) feet of any school, public playground, church, hospital, public library or institution for children.

**Subsection B. Requirements.**

(1) Pump islands, light standards and related minor accessory equipment not involving repair work or servicing of vehicles other than for fuel, air and water shall be permitted in the yard areas provided no gasoline pump or fuel dispensing equipment shall be located within twelve (12) feet of any street right-of-way.

(2) No oil draining pit or appliance for such purpose shall be located within twenty-five (25) feet of any Residential District boundary, nor within twelve (12) feet of any street right-of-way line, unless enclosed within a building.

**Subsection C.** On corner lots, all vehicular entrances to, or exits from, and curb openings shall be set back a minimum of fifty (50) feet from the projecting intersection of curb lines and such openings shall not exceed thirty-five (35) feet in width at the curb line. There shall be a minimum of twenty (20) feet measured along the curb line between any series of driveways.

**Subsection D.** One permanent, free-standing, double-faced post or pedestal sign shall be permitted for each street or road upon which a service station property abuts; provided that such sign shall not project over the right-of-way line of the abutting street. Said sign shall not exceed fifty (50) square feet in area per face. Non-permanent moveable advertising signs shall be permitted provided the area does not exceed nine (9) square feet per face.

**SECTION 12. INTERPRETATION, PURPOSE AND CONFLICT.** Whenever the regulations of this Ordinance require a greater width or size of yards, courts or other open spaces, or require a greater percentage of the lot to be left unoccupied or impose other higher standards than are required in any other statutes or local ordinance or regulation, the provisions of this Ordinance shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a greater percentage of the lot to be left unoccupied, or impose other higher standards than are required by this Ordinance, the provisions of such statute or local ordinance or regulation shall govern.

**SECTION 13. LOTS OF RECORD.** (Undersized and Separately Owned.) Side yard requirements for dwellings on lots of record at the time of passage of this Ordinance that are under separate ownership from adjacent lots and which do not meet the minimum requirements of their District may be reduced as follows:

**Subsection A.** Interior Lots - the width of each of the side yards may be reduced to twelve (12) percent of the width of the lot on lots having a width of fifty (50) feet or more. On lots having a width of less than fifty (50) feet, each side yard shall be no less than five (5) feet.

**Subsection B.** Corner Lots - the width of the side yard adjacent to the side street may be reduced to not less than ten (10) feet. The width of the side yard opposite the side street may be reduced as the interior lot reduction above set forth. For the purposes of this section only, any lot platted as such at the time of the effective date of this Ordinance, which shall not be so platted as to be in conformity with the minimum area requirements of this section and which shall be under separate ownership, of record, from any adjoining lot or portion of any adjoining lot, may be used for the purpose of construction of a single family dwelling for a period of one (1) year following the effective date of this Ordinance, provided however, that actual construction thereof shall have begun within the said one (1) year period and the construction shall not be abandoned. Notwithstanding this exception with respect to area requirements, there shall be no exception for such platted lots with respect to compliance with the requirements of the State Plumbing Code and the Marshall County Board of Health.

**SECTION 14. METHOD OF YARD MEASUREMENT.** The setback of the building for front rear and side yards shall in all cases be measured at a right angle from the lot line to the nearest point of the adjacent building wall, foundation, pile or footing of the building or structure.

**SECTION 15. MINIMUM GROUND FLOOR AREA REQUIREMENTS.**

**Subsection A.** A one story single family dwelling shall contain not less than seven hundred twenty (720) square feet of usable ground floor area, exclusive of open porches, garages or steps.

**Subsection B.** A two story single family dwelling shall contain not less than six hundred fifty (650) square feet of usable ground floor area, exclusive of open porches, garage or steps.

**SECTION 16. NON-CONFORMING USES OR BUILDINGS.** No existing building or premises devoted to a use not permitted by this Ordinance in the District in which such building or premises is located, except when required to do so by law or order, shall be enlarged, extended, reconstructed, substituted or structurally altered, unless the use thereof is changed to a use permitted in the District in which such building or premises is located, except as follows:

**Subsection A. SUBSTITUTION.**

(1) If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or of a more restricted classification.

(2) Whenever a non-conforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

**Subsection B. DISCONTINUANCE.** If a voluntary use is discontinued for one (1) year or more, it shall not be re-established unless specifically approved by the Board of Supervisors after recommendation by the Zoning Commission.

**Subsection C. REPLACING DAMAGED BUILDINGS.** Any non-conforming building or structure damaged more than sixty (60) percent of its value prior to the damage, exclusive of the foundations, at the time of damage by fire, flood, explosion, war, riot, or act of God shall not be restored or reconstructed and used as before such occurrence; but if less than sixty (60) percent of the building or structure is damaged above the foundation, it may be restored, reconstructed or used as before, provided that it be done within six (6) months of such occurrence.

**Subsection D. NON-CONFORMING USE MAY BE EXTENDED.** The lawful use of a building or lot of record existing on the effective date of this Ordinance may be extended

throughout the building, providing such building or lot of record was so arranged or designed for such non-conforming use on the date this Ordinance became effective.

## **SECTION 17. OFF-STREET PARKING AREAS REQUIRED.**

**Subsection A.** In all Districts, in connection with every industrial, commercial, business, trade, institutional, recreational or dwelling use, and similar uses, spaces for parking and storage of vehicles shall be provided in accordance with the following schedule:

- (1)** Automobile sales and service garages - fifty (50) percent of floor area.
- (2)** Banks, businesses and professional offices - fifty (50) percent of floor area.
- (3)** Bowling alleys - five (5) spaces for each alley.
- (4)** Churches and schools - one (1) space for each eight (8) seats in a principal auditorium, or one (1) space for each seventeen (17) classroom seats, whichever is greater.
- (5)** Dance halls, assembly halls - two hundred (200) percent of floor area used for dancing or assembly.
- (6)** Dwelling - one (1) parking space for each family or dwelling unit.
- (7)** Funeral homes, mortuaries - one (1) parking space for each five (5) seats in the principal auditorium.
- (8)** Furniture and appliance stores, household equipment or furniture repair shops, over one thousand (1,000) square feet of floor area - one hundred (100) percent of floor area.
- (9)** Hospitals - one (1) parking space for each four (4) beds.
- (10)** Hotels, lodging houses - one (1) space for each two (2) bedrooms.
- (11)** Manufacturing plants - one (1) space for each three (3) employees on the maximum working shift.
- (12)** Restaurants, beer parlors and night clubs, over one thousand (1,000) square feet floor area - two hundred (200) percent of floor area.
- (13)** Retail stores, supermarkets, etc. under two thousand (2,000) square feet floor area - two hundred (200) percent of floor area.
- (14)** Retail stores, supermarkets, etc. over two thousand (2,000) square feet floor area - one hundred (100) percent of floor area.
- (15)** Sports arenas, auditoriums other than in schools - one (1) parking space for each six (6) seats.
- (16)** Theaters, assembly halls with fixed seats - one (1) parking space for each six seats.
- (17)** Wholesale establishments or warehouses - one (1) space for each (2) employees.

**Subsection B.** In the case of any building, structure or premises, the use of which is not specifically mentioned therein, the provisions for a use which is so mentioned and to which said use is similar shall apply.

**Subsection C.** Where a lot does not abut on a public alley or easement of access there shall be provided an access drive not less than eight (8) feet in width in the case of a dwelling, and not less than eighteen (18) feet in width in all other cases, leading to the loading or unloading spaces and parking or storage areas required hereunder in such manner as to secure the most appropriate development of the property in question, except where provided in connection with a use permitted

in a Residential District, such easement of access or access drive shall not be located in any Residential District.

**Subsection D.** Every parcel of land hereafter used as a public or private parking area, including a commercial lot, shall be developed and maintained in accordance with the following requirements:

(1) No part of any parking space shall be closer than five (5) feet to an established street right-of-way or alley line. In case the parking lot adjoins an "R" District, it shall be set back at least five (5) feet from the "R" District boundary and shall be effectively screened - planted.

(2) Any off-street parking area, including any commercial parking lot, for more than five (5) vehicles shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the Zoning Administrator, so as to provide a durable and dustless surface; shall be so graded and drained as to dispose of all surface water accumulation within the area, and shall be so arranged and marked as to provide for orderly and safe loading or unloading and parking and storage of self-propelled vehicles.

(3) Any lighting used to illuminate any off-street parking area, including any commercial parking lot, shall be so arranged as to reflect light away from adjoining premises in any "R" District.

**Subsection E.** Subject to the other requirements of this Section, off-street parking areas may be established in any "R" District that immediately abuts upon or is directly across an alley from a "C" District; provided such parking shall be for the use of one or more business or industrial establishments located in the adjoining "C" District and further provided that such parking area shall not extend more than one hundred (100) feet from the boundary of the less restrictive District.

**SECTION 18. ONE PRINCIPAL BUILDING TO A LOT.** Every building hereafter erected or structurally altered shall be located on a lot, as defined herein, and in no case shall there be more than one (1) principal building per lot, unless otherwise specified in this Ordinance.

**SECTION 19. PERMIT PREVIOUSLY ISSUED.** Nothing herein contained shall require any change in the overall layout, plans, construction, size or designated use of any building or part thereof, for which approvals and/or required permits have been granted before the enactment of this Ordinance; the construction of which, in conformance with such plans, shall have been started prior to the effective date of this Ordinance, and completion thereof, carried on in a normal manner and not discontinued for reasons other than those beyond the builder's control.

**SECTION 20. PLAT OF SURVEY OR SUBDIVISION REQUIRED.** Whenever an aliquot part, government lot, lot, parcel, parcel of record or tract of land may be divided into two (2) or more parts, such split shall be in conformance with the Marshall County Subdivision and Platting Ordinance before a Zoning or Building Permit for any resulting parcel or lot may be issued.

**SECTION 21. REAR YARD REQUIREMENTS AND THROUGH LOTS.** No principal or accessory building shall be erected or structurally altered on a through lot so as to place any principal wall of such building nearer the rear lot line of such through lot than is permitted for the front lot line in such District.

**SECTION 22. REQUIRED YARD CANNOT BE REDUCED.** No lot shall be reduced in area so as to make any yard or any other open space less than the minimum required by this Ordinance. No part of a yard or other open space provided about any building or structure for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard or other open space required under this Ordinance for another building or structure. Off-street parking and loading areas may occupy all or any part of any required yard or open space except as otherwise specified in this Ordinance.

**SECTION 23. SALE OF LOTS BELOW MINIMUM AREA REQUIREMENTS.** No parcel of land which has less than the minimum width and area requirements for the District in which it is located may be cut off from another parcel of land for the purpose, whether immediate or future, of building or development as a lot, except by permit of the Board of Adjustment or except where it is added to another parcel to meet the

requirements of this Ordinance. No space needed to meet the width, yard, area, coverage, parking or other requirements of this Ordinance for lot or building may be sold or leased away from such lot or building.

**SECTION 24. SEWAGE DISPOSAL.** Sewage disposal systems shall be approved by the Marshall County Sanitarian in conformance with applicable regulations adopted by the Marshall County Board of Health and the State of Iowa.

**SECTION 25. STREET FRONTAGE REQUIRED.** Except as otherwise provided herein, any lot containing a structure used in whole or in part for residential purposes shall either abut for a minimum of forty (40) feet on a public road or have an exclusive, unobstructed private easement of access a minimum of twenty (20) feet wide to a public road. In the case where access is to be provided by easement to two (2) or more single family dwellings or for one (1) or more two family or multiple family dwellings, a common easement of access of a minimum of fifty (50) feet wide shall be provided.

**SECTION 26. UTILITIES EXEMPT.** No requirement, restriction, or regulation contained in this Ordinance, with the exception of those contained in the Flood Plain Overlay District, shall be construed to control the type or location of any poles, towers, wires, gas mains, cables or any other similar distributing or operating equipment of a telephone, telegraph, power, gas or railroad company. However, this exemption shall not apply to any accessory structures or buildings on such sites.

**SECTION 27. VISION CLEARANCE.** In all Districts, no fence, hedge, wall, sign or other obstruction shall be permitted which obstructs the view of approaching vehicles three-and-one-half (3 1/2) feet above the traveled portion of a roadway within the area of a triangle formed by the center of the intersection and points one hundred fifty (150) feet from the center of the intersection when measured along the centerlines of the intersecting roads.

**SECTION 28.** No recreational vehicle nor fifth wheel trailer or camper shall be used as a habitation for more than 90 days in any 365 day period without a special use permit.

# ARTICLE V

## AGRICULTURAL LAND PRESERVATION AND NATURAL RESOURCE PROTECTION

### SECTION 1. LAND CLASSIFICATIONS.

**Subsection A.** The following agricultural land classifications, determined from the Land Evaluation and Site Assessment (LESA) System as adopted for Marshall County, Iowa, are hereby established:

TABLE V.1

Land Classifications	SA	LESA
"Low" Agricultural Value	0-172	0-151
"Moderate" Agricultural Value	173-188	152-254
"High" Agricultural Value	189-200	255-300

**Subsection B.** It is the intent of this Ordinance that land scoring between 255-300 points on the LESA System should be strongly encouraged for retention in agricultural use and/or non-agricultural development should be discouraged. It is the further intent of this Ordinance that R-1, R-2, R-3, C-1, and C-2 Districts should not be established on land scoring 255-300 points on the LESA System or where sensitive environmental conditions exist. Sensitive environmental conditions include, but shall not be limited to, areas of severe slope or erosion potential, flood hazard areas, mineral or other non-renewable resource areas, hydrologically sensitive areas, significant vegetation, soils with severe limitations to development or other natural features which would indicate that uses and densities permitted would be inappropriate.

**Subsection C.** Determinations of sensitive environmental conditions shall be made with reference to the Soil Survey of Marshall County, Iowa (issued September, 1981), the Critical Resource Overlay Map (1995) and the Marshall County Comprehensive Land Use Plan.

# ARTICLE VI

## AGRICULTURAL DISTRICT "A - 1"

**SECTION 1. STATEMENT OF INTENT.** The A-1 District is intended and designed to provide for the agricultural community and protect agricultural land from encroachment of urban land uses. The County Development Plan designates agricultural land into two categories: Agriculture Areas (AG) and Agricultural/Residential Areas (AR). AG areas are intended to preserve rural character by restricting the development of new rural non-farm dwellings by requiring large lot development. Subdivisions may be created in these areas if they are so allowed in the Marshall County Comprehensive Land Use Plan. Areas designated on the Plan as AR allow development of isolated rural non-farm dwellings and rural residential subdivisions.

## SECTION 2. PERMITTED USES.

**Subsection A.** Only the use of structures and/or land listed in this Section shall be permitted in the A-1 District.

- (1) Agriculture - Crop Production.
- (2) Agriculture - Livestock Production.
- (3) Farmstead.
- (4) Animal hospitals and veterinary clinics, provided however, that such uses not be permitted on parcels where the LESA score is 254-300.
- (5) Seed research facilities including lab facilities, storage and refrigeration.
- (6) City and County buildings and facilities.
- (7) Single Family Residences - Includes single family dwellings, manufactured homes when placed on a permanent foundation, and converted to real property and taxed as site-built dwelling as provided by law; and farmstead which has been severed from the farm and is no longer held and operated in conjunction with an agricultural land use.
- (8) Mobile Homes - Includes homes when the owner converts the mobile home to real estate property on which they own by:
  - (a) Destruction of the vehicular frame.
  - (b) Attaching the mobile home to a permanent foundation.
  - (c) Notifying the Marshall County Assessor who shall inspect for compliance and collect the mobile home vehicle title from the owner and enter the property on the tax roll.
- (9) Churches or other places of worship and Sunday School buildings.
- (10) Public schools and private education institutions having no rooms regularly used for housing or sleeping quarters except custodian's quarters.
- (11) Cemeteries, including mausoleums.
- (12) Kennels for the raising, breeding and boarding of dogs or other small animals; provided that all buildings including exercise runways be at least fifty (50) feet from all property lines and at least two hundred (200) feet from any Residential District or residential property line.
- (13) Stables and riding academies and other structures for housing animals or fowl. Any such structure must be in the rear yard (if there is also a residence) and at least

seventy-five (75) feet from the boundary lines of the property on which it is located.

**(14)** Specialized horticultural operations including truck gardens, nurseries, greenhouses and orchards.

**(15)** Forests, wildlife preserves, parks and conservation areas.

**(16)** Traffic control signs.

**(17)** Grain bins and buildings for the seasonal or temporary storage of grain.

**(18)** Public utility structures and accessory equipment; including their transmitting stations and towers to any height. The base of the tower must be a distance equaling the height of the tower from any existing principal or accessory structure, other than the base of the station. The routing of transmission lines shall be restricted to locations which minimize the disruption of agricultural activities and developed residential areas.

**(19)** Sod farms.

**(20)** Child day care facilities serving six (6) or fewer children and operating only between the hours of 6:00 a.m. and 7:00 p.m.

(Amend. 98-01)

**Subsection B.** Other permitted uses after recommendation of the Zoning Commission and approval of the Board.

**(1)** Grain elevators and the usual accessory structures.

**(2)** Advertising signs. (Iowa Department of Transportation does not allow advertising signs along state highways unless they are on commercially zoned land and advertise for something off-premises.)

### **SECTION 3. PERMITTED ACCESSORY USES.**

**Subsection A.** The following are permitted accessory uses:

**(1)** Use of land and structures customarily incidental and subordinate to a principal use.

**(2)** Home occupations within the residence.

**(3)** Seed and feed dealerships, provided however, there is no showroom or other commercial activity. A sign no larger than twenty (20) square feet in area, stating only the names of the owners or proprietors or the business name, may be affixed to the building storing the feed and seed. This shall be the only exterior advertising sign allowed for such a use.

**(4)** Roadside stands offering for sale only products grown on the premises from any of the above permitted uses. Such stands shall be removed during any season or period when they are not being used for the sale of the aforementioned goods.

**(5)** Private kennel.

**(6)** Bed and breakfast homes. A Certificate of Compliance must be applied for and may be issued upon submittal of a \$300.00 application fee and meeting the following requirements:

**(a)** Accommodations must be in the family home which the host/hostess is in residence.



- (b) Accommodations are limited to a maximum of two families at any one time.
- (c) Food shall be served for compensation only to overnight guests and not to the general public.
- (d) A sign not to exceed two (2) square feet in area carrying the name of the bed and breakfast home and host/hostess is permitted on the premises.
- (e) In addition to the required parking spaces for the residence, one (1) additional parking space shall be provided for each family accommodated.
- (f) Upon arrival, guests shall register with the host/hostess their names, address, and license plate number of the vehicle being used by the guests. Records of guests shall be kept for a period of three (3) years and shall be made available for examination by Marshall County, State of Iowa, and Federal officials upon request.
- (g) Compliance with the above certifies conformance to zoning regulations only. Other local and state regulations regarding any related permits and licenses are the responsibility of the applicant.
- (7) Temporary asphalt and concrete mixing plants, where applicant can show the plant will be temporary, will be completely removed when vacated, will serve a clear public need, and will not disturb the adjoining property owners.
- (8) All wind turbines must set-back the height of the turbine (base to tip of the blades full extended upward) from any lot line or right-of-way lines.
- (8) Non-Commercial WECS, subject to the following standards:

1. **Tower Height:** Parcels smaller than one acre are not recommended for the placement of WECS, and must seek a special use permit. For property sizes between one acre and two acres the tower height shall be limited to 80 ft. For property sizes of two acres or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. **Setback:** No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.
3. **Noise:** Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
4. **Engineer Certification:** Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.
5. **Compliance with FAA Regulations:** Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
6. **Compliance with National Electric Code:** Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.

7. **Utility Notification:** No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### SECTION 4. LOT AREA, FRONTAGE AND YARD REQUIREMENTS

The following minimum requirements shall be observed:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
Dwelling (farm)	35 acres	-----	35 acres
Single family dwelling	25 acres	100 ft.	25 acres
All other permitted uses	25 acres	200 ft.	25 acres

#### SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
Single family dwelling	35 ft.	25 ft.	25 ft.	35 ft.
All other permitted uses	35 ft.	15 ft.	15 ft.	35 ft.

**Subsection A.** A minimum 25 acre lot area is required for any development, building or house in A-1 areas with the following exceptions:

- (1) If the lot is a legally established lot of record, filed in the Marshall County Recorder's office prior to March 18, 1996, a minimum 1 acre (exclusive of the area in the road easement) is required.
- (2) If it is a farmstead, it can be split from the farm land with a minimum of 1 acre (exclusive of the area in the road easement). In order to qualify as a farmstead there must be evidence that the farmhouse, outbuildings, windbreak, etc. were on the piece to be split. It can not have been converted to crop production.
- (3) If it is an area designated on the county development plan as ***Agricultural/Residential***, a minimum of one acre (exclusive of the area in the road easement) is required.
- (4) If it is evaluated by the L.E.S.A. system as being low to moderate value agricultural land (a score of less than 254 on the L.E.S.A. scale). A minimum of one acre (exclusive of the area in the road easement) is required.

#### SECTION 5. PROHIBITED USES. The following uses are prohibited in this district:

**Subsection A.** Adult book stores, adult motels, adult movie arcades/theaters, friendship clubs, dating clubs or services, escort services, nude modeling studios, establishments for nude encounter sessions, massage parlors or any other business oriented toward titillation or gratification of sexual feelings or desires of patrons.

**Subsection B.** Junkyards. Except with approval by the Board of Adjustment under a two-year renewable Special Use Permit, provided however, that such uses not be permitted on parcels where the LESA score is between 254-300.

# ARTICLE VII

## RESIDENTIAL DISTRICT "R-1"

**SECTION 1. STATEMENT OF INTENT.** The "R-1" District is intended and designed to provide for the development of both low and medium density single family subdivisions in the rural areas. This District is not intended to permit isolated rural dwellings, nor is it intended for commercial uses. Any land rezoned to "R-1" shall be located on adequately constructed and paved County or State roads.

**Subsection A.** No (R-1) Residential District shall be created closer than two thousand (2,000) feet to any existing feed lot, confinement facility or confinement poultry farm.

**SECTION 2. PERMITTED USES.** Only the use of structures and land listed in this Section shall be permitted in the "R-1" District.

**Subsection A.** Single Family Dwellings.

**Subsection B.** Developmentally disabled group homes in compliance with Chapter 335.25, 1995 Code of Iowa.

**Subsection C.** Family Homes including Elder Family Homes.

**Subsection D.** Child Day Care facilities serving six (6) or fewer children and operating only between the hours of 6:00 a.m. and 7:00 p.m.

**Subsection E.** Churches and other places of worship and Sunday School buildings.

**Subsection F.** Public Schools and private education institutions having a curriculum comparable to that given in public schools and having no rooms regularly used for housing or sleeping except such quarters as are necessary for custodians.

**Subsection G.** Parks and conservation areas.

**SECTION 3. PERMITTED ACCESSORY USES.** The following are permitted accessory uses in the "R-1" District:

**Subsection A.** Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses, unless otherwise excluded.

**Subsection B.** Home occupations entirely within the residential structure.

**Subsection C.** Accessory utility services and equipment for use by adjacent properties.

**Subsection D.** Bed and Breakfast Homes. A Certificate of Compliance must be applied for and may be issued upon meeting the criteria set forth in Article VI, Section 3, Subsection A, (6) (a-g).

**Subsection E.** Non-Commercial WECS, subject to the following standards:

1. **Tower Height:** Parcels smaller than one acre are not recommended for the placement of WECS, and must seek a special use permit. For property sizes between one acre and two acres the tower height shall be limited to 80 ft. For property sizes of two acres or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. **Setback:** No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.
3. **Noise:** Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.

4. **Engineer Certification:** Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.
5. **Compliance with FAA Regulations:** Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
6. **Compliance with National Electric Code:** Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
7. **Utility Notification:** No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
8. All wind turbines must set-back the height of the turbine (base to tip of the blades full extended upward) from any lot line or right-of-way lines.

#### SECTION 4. LOT AREA, FRONTAGE AND YARD REQUIREMENTS.

The following minimum requirements shall be observed in the "R-1" District:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
Single family dwelling	1 acre	100 ft.	1 acre
All other permitted uses	1 acre	200 ft.	1 acre

#### SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
Single family dwelling	35 ft.	15 ft.	15 ft.	35 ft.
All other permitted uses	35 ft.	15 ft.	15 ft.	35 ft.

#### MINIMUM GROUND FLOOR AREA\*

One Story: 1,000 sq. feet                      Two Story: 800 sq. feet

\*(Exclusive of open porches, garages or steps.)

#### SECTION 5. PROHIBITED USES. The following uses are prohibited in this district:

**Subsection A.** Adult book stores, adult motels, adult movie arcades/theaters, friendship clubs, dating clubs or services, escort services, nude modeling studios, establishments for nude encounter sessions, massage parlors or any other business oriented toward titillation or gratification of sexual feelings or desires of patrons.

**Subsection B.** Junkyards and junk cars not stored in a building or permanent structure.

**Subsection C.** Animals and livestock other than household pets including but not limited to dogs, cats, and other small animals. Commercial kennels are prohibited in this District.

# ARTICLE VIII

## RURAL RESIDENTIAL DISTRICT "R-2"

**SECTION 1. STATEMENT OF INTENT.** The "R-2" District is intended and designed to provide for the development of both low and medium density single family subdivisions in the rural areas where similar residential development appears likely to occur adjacent to, or near cities or towns having a zoning ordinance and to corresponding future suburban development with the residentially zoned areas of such cities or towns. This District is not intended to permit isolated rural dwellings, nor is it intended for commercial uses. Any land rezoned to "R-2" shall be located within two miles of adequately constructed and paved County or State roads.

**Subsection A.** No (R-2) Residential District shall be created closer than two thousand (2,000) feet to any existing feed lot, confinement facility or confinement poultry farm.

**SECTION 2. PERMITTED USES.** The following uses are permitted in this District:

**Subsection A.** . Single Family Dwellings.

**Subsection B.** Developmentally disabled group homes in compliance with Chapter 335.25, 1995 Code of Iowa.

**Subsection C.** Family Homes including Elder Family Homes.

**Subsection D.** Child Day Care facilities serving six (6) or fewer children and operating only between the hours of 6:00 a.m. and 7:00 p.m.

**Subsection E.** Farms and agriculture.

**Subsection F.** Livestock as defined in this Ordinance shall be allowed in "R-2" Districts only to those parcels or lots on which livestock exists as of the date of passage of this Ordinance, and are listed on the Marshall County R-2/R-3 Livestock Special Use Permit Register, and whose owners currently possess a livestock special use permit. Said parcels shall be allowed to continue to maintain livestock, regardless of transfer, sale or forfeiture of title provided a special use permit is granted under this subsection and the following procedures and conditions are met:

(1) Any commercial sales of any livestock shall be limited in that not more than one (1) person, not a member of the applicant's family, shall be regularly employed in addition to the applicant's family.

(2) No exterior advertising is allowed other than one (1) sign not to exceed sixteen (16) square feet in area and this sign shall not be erected within twenty- five (25) feet of a lot line, or road right-of-way, whichever is nearer.

(3) All lights or other illumination shall be so constructed as to protect on- coming traffic from direct light.

(4) All allowable livestock shall be within adequate fences so as to contain livestock at all times and prevent free roaming of livestock. Fences shall be required to be inspected by at least two of the Township Trustees of the Township in which the parcel is situated for compliance with this Ordinance and Chapter 359A of the Code of Iowa. Proof of inspection shall be submitted to the office of the Zoning Administrator upon application for a Livestock Special Use Permit in the form of written approval by the Township Trustees.

(5) Such fences shall be so constructed or so located so as not to allow any part of the livestock from coming into contact with the neighbor's land and vegetation.

(6) All pasture fences confining livestock under this subsection shall be a minimum of one hundred (100) feet from the nearest residence excepting the residence of the applicant.

**(7)** All shelter buildings or windbreaks, whether natural or man-made when shelter buildings are not present, and all outside dry lots shall be at least two hundred (200) feet from the nearest neighbor's residence and one hundred (100) feet from all water wells. Each new shelter building or man-made windbreak or expansion of any existing building or man-made windbreak shall require a building permit issued under the provisions of this Ordinance and comply with all building, yard and set-back requirements for the specific district in which it is located. However, buildings or man-made windbreaks in existence on the effective date of this Ordinance which do not meet the distance separation requirements of this subsection shall be considered a nonconforming building or use and be subject to the restrictions of Article XVII of this Ordinance.

**(8)** Dry lots next to buildings in existence on the effective date of this Ordinance shall be subject to the requirements of this subsection unless variance is granted by the Board of Adjustment due to a demonstrable hardship or difficulty so great as to warrant a variation from the separation distances. Any variation granted may require that any dry lot be on the opposite side of the existing building from the nearest neighboring residence.

**(9)** There shall be a minimum lot size for the presence of livestock of at least two (2) acres exclusive of any road or street or easement therefore. There shall be a maximum total of two (2) animal units per acre of the total lot.

**(10)** The property owner and/or pastured livestock applicant shall maintain vegetative ground cover over at least ninety (90%) percent of any pasture at all times.

**(11)** Livestock maintained within buildings and dry lots shall have the following minimum requirements for the size of each dry lot:

**(a)** Cattle - five hundred (500) square feet per actual head.

**(b)** Swine - fifty (50) square feet per actual head.

**(c)** Horses - five hundred (500) square feet per actual head.

**(d)** Sheep and goats - fifty (50) square feet per actual head.

**(e)** All other livestock shall be provided with a dry lot of at least fifty (50) square feet total.

**(f)** Such dry lot minimum sizes shall be in addition to any space within buildings for livestock. The applicant shall have either ownership or a written lease for control over all land required by this subsection.

**(12)** Each applicant for a special use permit under this subsection shall submit, with the application, a type-written nuisance management plan detailing the applicant's methods of controlling odors and flies and managing the livestock's waste. Such plan shall include how waste is to be stored until disposed of by land application and the specific land to be used for the waste disposal. If the land used for disposal is not owned by the applicant, the owner of the land to be used for disposal shall join with the applicant in signing the application.

**(13)** There shall be a minimum of one (1) acre of land per animal unit available for land application each calendar year if the land is in an R-2 or R-3 District. There shall be a minimum of one half (1/2) an acre per animal unit available for land application each calendar year if the land used for application is in an A-1 District.

**(14)** Notwithstanding an initial approval of such a nuisance management plan, the Board of Adjustment may, after notice and a hearing as set out in Article XVIII, modify the special use permit to require additional actions by the applicant to further control odors, flies and waste runoff, storage and disposal.

**(15)** All special uses granted under this subsection shall be granted only for the applicant, and at the applicant's expense, be recorded in the office of the Marshall County Recorder for each and every parcel of land so mentioned in the permit. No special uses granted under this subsection shall run with the land.

**(16)** Owners of neighboring lots may provide written waiver of the separation distance requirements of this subsection. All written waivers shall be notarized, recorded at the applicant's expense on the land records of both parcels and run with the land.

**(17)** The applicant shall allow the Zoning Administrator access to the property subject to the special use permit at any time for the purpose of insuring compliance with the conditions of the permit.

**(18)** A register of all parcels or lots with livestock in existence at the time of the effective date of this Ordinance shall be on file in the office of the Zoning Administrator. Only those parcels or lots named in the register shall be allowed to seek a special use permit under this subsection. All other parcels or lots in any R-2 zone shall be prohibited from maintaining any livestock.

**(19)** If any parcel or lot named in the register should fail to maintain livestock of any kind on that parcel or lot for more than one year that parcel or lot shall not be allowed to seek a special use permit under this subsection, and shall be prohibited from keeping or maintaining any livestock on that parcel or lot.

**(20)** Application for a Livestock Special Use Permit under this subsection shall be accompanied by a fee of \$200.00 and shall be made payable to the Marshall County Treasurer.

**Subsection G.** Churches and other places of worship and Sunday School buildings.

**Subsection H.** Public Schools and private education institutions having a curriculum comparable to that given in public schools and having no rooms regularly used for housing or sleeping except such quarters as are necessary for custodians.

**Subsection I.** Parks and conservation areas.

**Subsection J.** Boarding and Lodging Houses.

**SECTION 3. PERMITTED ACCESSORY USES.** The following are permitted accessory uses in the "R-2" District:

**Subsection A.** Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses, unless otherwise excluded.

**Subsection B.** Home occupations entirely within the residential structure.

**Subsection C.** Accessory utility services and equipment for use by adjacent properties.

**Subsection D.** Bed and Breakfast Homes. A Certificate of Compliance must be applied for and may be issued upon meeting the criteria set forth in Article VI, Section 3, Subsection A, (6) (a-g).

**Subsection E.** Non-Commercial WECS, subject to the following standards:

1. **Tower Height:** Parcels smaller than one acre are not recommended for the placement of WECS, and must seek a special use permit. For property sizes between one acre and two acres the tower height shall be limited to 80 ft. For property sizes of two acres or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. **Setback:** No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.

3. **Noise:** Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
4. **Engineer Certification:** Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.
5. **Compliance with FAA Regulations:** Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
6. **Compliance with National Electric Code:** Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
7. **Utility Notification:** No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
8. All wind turbines must set-back the height of the turbine (base to tip of the blades full extended upward) from any lot line or right-of-way lines.

#### SECTION 4. LOT AREA, FRONTAGE AND YARD REQUIREMENTS.

The following minimum requirements shall be observed in the "R-2" District:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
Single family dwelling	1 acre	70 ft.	1 acre
All other permitted uses	1 acre	200 ft.	1 acre

#### SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
Single family dwelling	35 ft.	7 ft.	7 ft.	35 ft.
All other permitted uses	35 ft.	7 ft.	7 ft.	35 ft.

#### MINIMUM GROUND FLOOR AREA\*

One Story: 1,000 sq. feet                      Two Story: 800 sq. feet

\*(Exclusive of open porches, garages or steps.)

#### SECTION 5. PROHIBITED USES. The following uses are prohibited in this district:

**Subsection A.** Adult book stores, adult motels, adult movie arcades/theaters, friendship clubs, dating clubs or services, escort services, nude modeling studios, establishments for nude encounter sessions, massage parlors or any other business oriented toward titillation or gratification of sexual feelings or desires of patrons.

**Subsection B.** Junkyards and junk cars not stored in a building or permanent structure.

**Subsection C.** Commercial kennels are prohibited in this District.



# ARTICLE IX

## MULTIPLE TYPE RESIDENTIAL DISTRICT "R-3"

**SECTION 1. STATEMENT OF INTENT.** The "R-3" District is intended and designed to provide a District for various dwelling types in densities approaching urban type development composed of single and multiple family residential development and subdivisions in the rural areas where similar residential development appears likely to occur. This District is not intended to permit isolated rural dwellings, nor is it intended for commercial uses. Any land rezoned to "R-3" shall be located on adequately constructed and paved County or State roads.

**Subsection A.** No (R-3) Residential District shall be created closer than two thousand (2,000) feet to any existing feed lot, confinement facility or confinement poultry farm.

**SECTION 2. PERMITTED USES.** The following uses are permitted in this District:

**Subsection A.** . Single Family Dwellings.

**Subsection B.** Two Family and multiple family dwellings including apartments.

**Subsection B.** Developmentally disabled group homes in compliance with Chapter 335.25, 1995 Code of Iowa.

**Subsection C.** Family Homes including Elder Family Homes, Elder Group Homes, Health Care Facilities, Hospitals and Nursing Homes.

**Subsection D.** Child Day Care facilities serving six (6) or fewer children and operating only between the hours of 6:00 a.m. and 7:00 p.m.

**Subsection E.** Farms and agriculture excluding livestock.

**Subsection F.** Churches and other places of worship and Sunday School buildings.

**Subsection G.** Public Schools and private education institutions having a curriculum comparable to that given in public schools and having no rooms regularly used for housing or sleeping except such quarters as are necessary for custodians.

**Subsection H.** Parks and conservation areas, Recreational Facilities and Health Clubs.

**Subsection I.** Boarding and Lodging Houses, Group Housing, Hotels and Motels.

**SECTION 3. PERMITTED ACCESSORY USES.** The following are permitted accessory uses in the "R-3" District:

**Subsection A.** Uses of land or structures customarily incidental and subordinate to one of the principal permitted uses, unless otherwise excluded.

**Subsection B.** Home occupations entirely within the residential structure.

**Subsection C.** Accessory utility services and equipment for use by adjacent properties.

**Subsection D.** Bed and Breakfast Homes. A Certificate of Compliance must be applied for and may be issued upon meeting the criteria set forth in Section 3, Subsection A, (6) (a-g).

**Subsection E.** Non-Commercial WECS, subject to the following standards:

1. **Tower Height:** Parcels smaller than one acre are not recommended for the placement of WECS, and must seek a special use permit. For property sizes between one acre and two acres the tower height shall be limited to 80 ft. For

- property sizes of two acres or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. **Setback:** No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.
  3. **Noise:** Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
  4. **Engineer Certification:** Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.
  5. **Compliance with FAA Regulations:** Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
  6. **Compliance with National Electric Code:** Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
  7. **Utility Notification:** No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
  8. All wind turbines must set-back the height of the turbine (base to tip of the blades full extended upward) from any lot line or right-of-way lines.

#### SECTION 4. LOT AREA, FRONTAGE AND YARD REQUIREMENTS.

The following minimum requirements shall be observed in the "R-3" District:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
Single family dwelling	1 acre	60 ft.	1 acre
Two family	1 acre	65 ft.	5000 sq. feet
Multiple family	1 acre	80 ft.	3000 sq. feet
All other permitted uses	1 acre	200 ft.	---

#### SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
Single family dwelling	35 ft.	7 ft.	7 ft.	35 ft.
Two family	35 ft.	10 ft.	10 ft.	35 ft.
Multiple family	35 ft.	12 ft.	12 ft.	35 ft.
All other permitted uses	35 ft.	12 ft.	12 ft.	35 ft.

#### MINIMUM GROUND FLOOR AREA\*

One Story: 1,000 sq. feet                      Two Story: 800 sq. feet

\*(Exclusive of open porches, garages or steps.)

#### SECTION 5. PROHIBITED USES. The following uses are prohibited in this district:

**Subsection A.** Adult book stores, adult motels, adult movie arcades/theaters, friendship clubs, dating clubs or services, escort services, nude modeling studios, establishments for nude encounter

sessions, massage parlors or any other business oriented toward titillation or gratification of sexual feelings or desires of patrons.

**Subsection B.** Junkyards and junk cars not stored in a building or permanent structure.

**Subsection C.** Animals and livestock other than household pets including but not limited to dogs, cats, and other small animals. Commercial kennels are prohibited in this District.

## **SECTION 6. SITE PLAN.**

Subsection A. Site Plan (if required) shall be in accordance with Article XVI.

# ARTICLE X

## GENERAL COMMERCIAL DISTRICT "C-1"

**SECTION 1. STATEMENT OF INTENT.** This District is intended to accommodate the full range of retail commercial services and products, wholesaling and warehousing. Residences are not permitted within the District, although apartments within the stores and business houses will be permitted.

**Subsection A.** No (C-1) Commercial District shall be created closer than two thousand (2,000) feet to any existing feed lot, confinement facility or confinement poultry farm.

**SECTION 2. USES PERMITTED.** The following uses are permitted within this District:

**Subsection A.** All uses involving retailing, commercial services and products, professional services to the general public, wholesaling, distributing and warehousing including:

- (1) Agricultural retail/service outlets.
- (2) Amusement places.
- (3) Antique and used furniture shops.
- (4) Apartments located in a building devoted to non-residential uses in part.
- (5) Art shops and galleries including art classes.
- (6) Bakeries.
- (7) Banks and financial institutions.
- (8) Barber shops and beauty salons and similar personal service shops.
- (9) Bicycle and motorcycle repair shops excluding commercial wrecking, dismantling or junkyards.
- (10) Book, flower and gift shops.
- (11) Bottling works.
- (12) Bowling alleys.
- (13) Broadcasting and telecasting stations, studios and offices including towers for transmitting cellular communications.
- (14) Business and commercial schools, dancing and music academies.
- (15) Car wash.
- (16) Catering and delicatessen shops.
- (17) Churches and parish houses.
- (18) Clinics (medical, dental and similar types).
- (19) Clothing retail and service.
- (20) Confectionery stores, dairy stores, including ice cream snack bars.
- (21) Convenience stores.
- (22) Day nurseries.

- (23)** Dressmaking, millinery and tailoring shops.
- (24)** Drug stores.
- (25)** Dry cleaning.
- (26)** Electric, radio and TV sales and repair shops.
- (27)** Garages, public and storage.
- (28)** Gasoline stations including repair and body shops.
- (29)** Greenhouses.
- (30)** Grocery stores.
- (31)** Hotel and motels.
- (32)** Laundromats and laundries.
- (33)** Lawn mower repair shops.
- (34)** Professional offices including laboratories.
- (35)** Metal working and machine shops.
- (36)** Milk distributing and processing concerns.
- (37)** Mobile home sales lots.
- (38)** Motor vehicle sales and service concerns including parts.
- (39)** Parking lots.
- (40)** Photography studios.
- (41)** Plumbing supply and service shops.
- (42)** Private clubs and lodges.
- (43)** Repair, rental and servicing of any article the sale, warehousing, fabrication or assembly of which is permitted in this District.
- (44)** Restaurants and fast food outlets.
- (45)** Retail stores.
- (46)** Shoe repair shops.
- (47)** Small appliance sales and service.
- (48)** Taverns.
- (49)** Tinsmiths.
- (50)** Theaters.
- (51)** Undertaking establishments, including funeral homes and ambulance services.
- (52)** Variety stores.
- (53)** Veterinary clinics including observation kennels for household pets only.

**(54)** Warehouses.

**(55)** Wholesale concerns.

**(56)** Accessory uses and buildings subject to the provisions of Article XVII.

**(57)** Any light manufacturing or light industrial use which is carried on entirely within the buildings, which is not noxious or offensive due to the emission of odors, gases, smoke or noise, which is not a menace to public health and safety and which will not substantially or permanently injure the appropriate use of the neighboring property.

**Subsection B.** *This section is reserved for future use.*

**Subsection C.** *This section is reserved for future use.*

**Subsection D.** *This section is reserved for future use.*

**Subsection E.** Non-Commercial WECS. Subject to the following standards:

**1. Tower Height:** Parcels smaller than one acre are not recommended for the placement of WECS, and must seek a special use permit. For property sizes between one acre and two acres the tower height shall be limited to 80 ft. For property sizes of two acres or more, there is no limitation on tower height, except as imposed by FAA regulations.

**2. Setback:** No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.

**3. Noise:** Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.

**4. Engineer Certification:** Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.

**5. Compliance with FAA Regulations:** Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

**6. Compliance with National Electric Code:** Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.

**7. Utility Notification:** No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

All wind turbines must set-back the height of the turbine (base to tip of the blades full extended upward) from any lot line or right-of-way lines.

### **SECTION 3. LOT AREA, FRONTAGE AND YARD REQUIREMENTS.**

The following minimum requirements shall be observed in the "C-1" District:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
All uses	No minimum	No minimum	No minimum

SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
All Uses	50 ft.	No mininum**	20 ft.	20 ft.
All other permitted uses	50 ft.	No mininum**	20 ft.	2 ft.

\* 5 ft. from alley lines.  
\*\*except when adjoining any residential district or use, in which case fifteen (15) feet shall be required

SECTION 4. PROHIBITED USES. The following uses are prohibited in this district:

- Subsection A.** Adult book stores, adult motels, adult movie arcades/theaters, friendship clubs, dating clubs or services, escort services, nude modeling studios, establishments for nude encounter sessions, massage parlors or any other business oriented toward titillation or gratification of sexual feelings or desires of patrons.
- Subsection B.** Junkyards and junk cars not stored in a building or permanent structure.
- Subsection C.** Animals and livestock other than household pets including but not limited to dogs, cats, and other small animals.

SECTION 5. SITE PLAN.

Subsection A. Site Plan (if required) shall be in accordance with Article XVI.

# ARTICLE XI. A.

## R-P.U.D. Residential Planned Unit Development Overlay District

### ARTICLE XI. A.

#### R-P.U.D. Residential Planned Unit Development Overlay District

##### SECTION 1. STATEMENT OF INTENT.

**Subsection A.** The term "Planned Unit Development" (PUD) means an area for which a comprehensive site plan has been prepared indicating, but not limited to the following: land uses, open space allocations, on-site circulation for both pedestrians and automobiles, parking, set-backs, housing densities, building spacings, land coverage, landscaping, relationships with adjoining areas and streets, building heights, accessory uses, architectural treatment, storm water management and sanitary sewer treatment. The general purposes of a Planned Unit Development (PUD) are as follows:

- (1) To promote flexibility in design and permit planned diversification in the locating of structures.
- (2) To promote an efficient use of land and to facilitate a more economic arrangement of buildings, circulation systems, land uses and utilities.
- (3) To protect and preserve to the greatest extent possible existing landscape features and amenities and environmentally sensitive areas, and to utilize such features in a harmonious fashion.
- (4) To provide for more usable and suitably located recreation facilities and other public and common facilities than would otherwise be provided under conventional land development procedures.
- (5) To combine and coordinate architectural styles, building forms and building relationships within the PUD.
- (6) To retain a substantially equivalent population density and area coverage permitted in the district in which the project is located.

**Subsection B.** It is the further intent of these regulations to protect groundwater resources to the maximum extent practical through proper management of resources and routes of contamination within the District.

##### SECTION 2. APPLICABILITY

**Subsection A.** The PUD overlay is intended to be used only in conjunction with the A-1, R-1, R-2 and R-3 residential zoning districts and the AR (ag/residential) comprehensive land use plan district.

##### SECTION 3. MINIMUM AREA AND OWNERSHIP REQUIREMENTS

**Subsection A.** The R-PUD shall be reserved for development of tracts not less than five (5) acres in size under single ownership, or under joint ownership with consent of owners of all the land involved, provided that the project area be in single ownership by the time the final development plan is approved.

##### SECTION 4. GENERAL QUALIFICATIONS

**Subsection A.** The review of an R-PUD by the Planning and Zoning Commission, and its recommendations to the Board of Supervisors shall be guided by the following criteria:

- (1) The uses within the PUD shall be compatible with surrounding land uses and county land use policies.



- (2) The intensity of development shall not impose unnecessarily adverse effects on surrounding properties.
- (3) Entrances and exits to the PUD shall be provided in such a manner to facilitate access by emergency vehicles and the efficient and safe traffic circulation in the vicinity.
- (4) Street improvements, both public and private, shall be made in conformance with Article XII, Unincorporated Areas Subdivision Improvements Required, Platting and Subdivision Ordinance of Marshall County, Iowa, 1994, other than those requirements specifically exempted by this Article.
- (5) Sidewalks and lighting standards shall be according to the specifications of the County Engineer and the Marshall County Zoning Ordinance, as approved by the Board of Supervisors.
- (6) Adequate and safe location of play areas for children, as well as other recreational areas, shall be provided in the PUD.
- (7) Landscape plans for open spaces shall be provided, and the open spaces at external boundaries of the site shall be landscaped and maintained to provide a suitable transition, and if necessary a buffer zone, to abutting property.
- (8) Where possible, buildings shall be oriented to insure adequate light and air.
- (9) The provisions of all other Articles of the Marshall County Zoning Ordinance shall be met unless specifically exempted by this Article.

## **SECTION 5. COMMON UTILITIES**

**Subsection A.** The R-PUD shall be permitted only where common water and common sewage treatment systems are utilized.

**Subsection B.** All common sewage treatment systems must be designed by the applicant and approved by the Iowa Department of Natural Resources, Waste Water Division, prior to final approval by the Zoning Commission.

## **SECTION 6. PRINCIPAL PERMITTED USES**

**Subsection A.** In an R-PUD only the following uses are permitted:

- (1) Single Family, Two Family and Multiple Family Dwellings. Single family, two family and multiple family dwellings as permitted in the district in which the project is located.
- (2) Other Uses. Other uses as permitted in the R-3 District.
- (3) Accessory Uses. Accessory uses as permitted in the R-3 District.
- (4) Neighborhood Retail Uses. Neighborhood retail uses may be specifically and selectively authorized as to the type and size, but only when integrated by design as an accessory element of the project. It is intended that such commercial uses serve primarily those residents within the PUD, but should not be restricted from service to customers outside the PUD development area.
- (5) Community Facilities. Community facilities, including recreational facilities, as recommended by the Planning and Zoning Commission, and approved by the Board of Supervisors.
- (6) Family Homes. Family homes including Elder Family Homes, provided, however that a family home shall not be located within one-fourth (1/4) of a mile from another family home.

## SECTION 7. USE CONTROL

**Subsection A.** In a R-PUD, the zoning/building permit for commercial uses shall be issued with an agreement by the applicant to complete the construction of sixty (60) percent of the total number of dwelling units planned within a time period assigned by the Planning and Zoning Commission.

**Subsection B.** In a R-PUD there shall be a minimum of fifteen (15) percent of the total net area of the PUD dedicated or reserved as usable common open space land. Common open space shall be clearly designated on the plan as to character of use and development, and shall not include:

- (1) Areas reserved for the exclusive use or benefit of an individual tenant or land owner.
- (2) Dedicated streets, alleys and other public rights-of-way.
- (3) Vehicular drives, parking, loading and storage areas.

**Subsection C.** Suitable provisions for the maintenance and upkeep of open spaces shall be provided through a Homeowners' Association, Deed Covenants or through other similar provisions as approved by the Board of Supervisors. If the land is deeded to a Homeowners' Association, the developer shall file a declaration of covenants and restrictions that will govern the Association, to be submitted with the final application for the PUD. An outline of the declaration shall be submitted with the preliminary application. The provisions shall include, but not be limited to:

- (1) The Homeowners' Association must be set up before dwellings are sold.
- (2) Membership must be mandatory for each home buyer and any successive buyer.
- (3) The open space restriction must be permanent.
- (4) The Homeowners' Association must be responsible for liability insurance, taxes and the maintenance of recreational and other facilities, and all public open spaces.
- (5) All or any part of the open space system may be conveyed to the County Conservation Board by joint agreement of the developer, County Conservation Board and the County Supervisors. Such conveyance may be by dedication or easement.

## ARTICLE 8. SIGNS

**Subsection A.** Signs shall be permitted only in commercial areas. Such signs shall be subject to the limitations of the underlying zoning district within which the sign is to be located. Signs for commercial uses shall be no more than fifteen (15) square feet in area, placed flush on one wall and generally not observable from the periphery of the development.

## ARTICLE 9. LAYOUT AND DESIGN REQUIREMENTS

**Subsection A.** The regulations, requirements and standards of the underlying zoning district in which the PUD is to be located shall apply to the layout and design of the total project. Where necessary, to insure compatibility of buildings and uses with each other and with off-site properties, the Planning and Zoning Commission may recommend, and the Board of Supervisors may specify modifications of such regulations, requirements and standards. The layout and design shall be subject to the following limitations:

- (1) Yards. The yard requirement for the underlying zoning district in which the PUD is to be located shall apply to all exterior boundary lines of the site. A minimum of ten (10) feet shall be provided between detached structures.
- (2) Number of Dwelling Units.
  - (a) The number of dwelling units permitted in an R-PUD shall be as follows:

Underlying Zoning District

## Number of Units

(Per Acre of Net  
Development)

A-1 Agricultural	2.0
R-1 Single Family Residential	4.5
R-2 Rural Residential	6.0
R-3 Multi-Family Residential	14.0

(b) Net development area shall be that area remaining after subtracting those portions of the site set aside for non-residential uses such as schools, public parks, and commercial uses.

(3) Off-Street Parking. The total required off-street parking shall be governed by Article XVI of the Marshall County Zoning Ordinance. As appropriate, parking areas shall be screened from adjacent structures and streets with hedges, plantings, fences, earth berms, changes in grade and/or other similar screening devices.

**SECTION 10. OTHER CONSIDERATIONS**

**Subsection A.** The design of a PUD shall reflect the inherent natural resource capabilities and limitations of the site. These factors would include, but not be limited to, the following: soils, slopes, floodplains, vegetation, wildlife cover and corridors, geology, hydrology (water resources) and uniform features. Cultural/historical features may be significant to certain sites. Design guidelines to be considered are as follows:

- (1) Natural drainage shall be retained whenever possible and if necessary, improved.
- (2) Consideration shall be given to preserving natural site amenities and minimizing impacts on sensitive environmental areas.
- (3) Existing trees or unique vegetation shall be preserved whenever possible. The location of trees and other vegetation is to be considered in designing building location, underground services, circulation patterns and paved areas.
- (4) If the development includes floodplain areas, they shall be preserved as permanent open space.
- (5) Consideration shall be given to the natural topography, and major grade changes shall be avoided. If the development includes steep slopes or other soil erosive areas, protective measures shall be taken.

**SECTION 11. PRELIMINARY PLANNING CONFERENCE**

**Subsection A.** Prior to the preparation of a formal application, the developer shall meet with the County PUD Review Staff (including the Zoning Administrator, Sanitarian and County Engineer) to discuss the proposed development. The staff shall inform the applicant of the County's policies, which may affect the development, and of the specific requirements and procedures involved in submitting an application for a PUD. It is advised that the conference occur prior to any extensive financial expenditure on the part of the developer.

**SECTION 12. PRELIMINARY APPLICATION SUBMISSION RULES, REQUIREMENTS AND PROCEDURES**

**Subsection A.** After the preliminary planning conference, the applicant will submit an "Planned Unit Development Application" form, twelve (12) copies of a preliminary PUD plan (map), all accompanying written submittals and an application fee based on the schedule below:

5-10 Acres \$100

10-20 Acres \$200

More than 20 Acres \$500

All submissions shall be made to the Planning and Zoning Administrator of Marshall County. The preliminary PUD plan shall contain all of the following information:

- (1) The name and address of all owners of the site proposed for development as well as the name and address of all professional site planners, architects, engineers, landscape architects, surveyors or other consultants.
- (2) A legal description of the site proposed for development.
- (3) One (1) large copy, and twelve (12) 17 1/2" x 36" copies of an Overall Development Plan (ODP), reflecting the intended use and future street locations for adjacent areas of the proposed PUD when the proposed PUD is intended to represent a single phase of a longer range development. The ODP will contain all of the following information:
  - (a) The ODP will clearly show the entire area proposed for the final PUD Overlay District, as well as all boundary dimensions thereof at a scale appropriate for accurate viewing.
  - (b) The ODP will show and identify all public streets or roads in and around the proposed overlay area.
  - (c) The ODP shall show a date, a north arrow and a legend for all graphical aspects.
  - (d) The ODP will represent each proposed development area of the project as distinct development types including but not limited to, single family, multiple family, commercial and open space areas. These areas should be shown as a bubble map with each development type having a distinct color.
  - (e) The ODP will show all existing and future proposed access points, both public and private, to all existing public streets or roads.
  - (f) The ODP will be labeled with the proposed development name.
- (4) The location of all property lines, existing streets, easements, utilities and any other significant physical features.
- (5) Date, north arrow and graphic scale (not less than 1"=100') of all drawings submitted.
- (6) Present and (if applicable) proposed zoning classifications.
- (7) An indication of the existing conditions on the tract including contour lines (at minimum five foot intervals), water courses and existing drainage structures, wooded areas and isolated trees of ten (10) inches or more in diameter, existing streets, sidewalks or other indication of those which will be removed and those which will be retained as part of the development.
- (8) An indication of the area surrounding the site showing land use, peculiar physical features, public facilities and existing zoning.
- (9) An explanatory statement of the general purpose of the project, including the nature of the project, proposed land uses, building types, density ranges, conformance with land use policies and description of the open space and recreational system. The statement shall supplement the site plan with narrative information.
- (10) A site plan of the proposed development indicating the general location of the following:
  - (a) All buildings, structures and other improvements.
  - (b) Common open space.

- (c) Off-street parking facilities and number of spaces to be provided.
- (d) Sidewalks where required.
- (e) Illuminated areas.
- (f) Use of open space being provided.
- (g) Landscape plan with screening or buffering of the development perimeters.
- (h) Indication as to which areas and streets are intended to be public.
- (i) All utilities including storm drainage, sanitary sewers, water service and fire hydrants.
- (j) Such other documents explaining other circumstances as the Planning and Zoning Commission may require.

(11) Quantitative data indicating the following:

- (a) Total number of dwelling units.
- (b) Proposed lot coverage of buildings and structures (percent of total).
- (c) Approximate gross and net residential densities (units per acre), excluding all streets and roadways (if applicable).
- (d) Total amount of usable open space area provided in the tract.
- (e) Such other calculations as the Planning and Zoning Commission may require.

(12) Elevation of perspective drawings of all buildings and improvements sufficient to show the developer's intent.

(13) A development schedule indicating (a) the approximate date when construction of the project will begin; (b) the stages in which the project will be built and the approximate date when construction of each stage will begin; (c) the approximate dates when the development of each of the stages will be completed; and (d) the area and location of the common open space that will be provided at each stage.

(14) If the applicant intends to sell or lease all or a portion of the PUD after the project is approved, a statement shall be presented to the Commission. If applicable, the conditions of the sale and maintenance of such developed properties shall be stipulated. An outline of any covenants, deed restrictions or other similar agreements between the applicant and future owners shall be presented.

## **ARTICLE 13. PRELIMINARY PUD PLAN APPROVAL PROCESS**

**Subsection A.** The approval of a preliminary PUD Plan shall be by the Board of Supervisors after having held a legal public hearing, and upon recommendation of the Planning and Zoning Commission and County staff. The preliminary PUD Plan shall be submitted to the Planning and Zoning Commission for its review and recommendations. The Commission may require changes or alterations in the Plan and shall then advise the Board of Supervisors that such plans do or do not comply with the development policies of the County. Preliminary approval by the Board shall be binding as to the general intent and apportionment of the land and improvements, but shall not be construed to render inflexible the ultimate design, specific uses or final Plan of the project. Such approval shall be valid for six (6) months. In their discretion and for good cause, the Board of Supervisors may extend the preliminary approval for an additional six (6) months.

**ARTICLE 14. FINAL APPLICATION AND DEVELOPMENT PLAN**

**Subsection A.** Within six (6) months following approval of the preliminary development plan by the Board of Supervisors, the applicant shall submit twelve (12) copies of a final development plan and an application fee of \$200. The final PUD Plan shall identify the location and extent of uses and improvements as authorized in the approved preliminary PUD Plan and complying with any stipulations of the Board. The final PUD Plan shall include the following:

- (1) All of the materials listed in Section 12, above, for Preliminary Application Submission.
- (2) An accurate legal description and property survey of the entire area included within the PUD.
- (3) Designation of the location of all proposed structures, and the internal uses in sufficient detail to determine off-street parking requirements.
- (4) Architectural elevations, pavement types, culverts, common open space, recreation facilities, sidewalks, illumination, landscaping and any other pertinent features of the PUD.
- (5) Certificates, seals and signatures required for the dedication of land, recording of documents and such other legal documents as may be required.
- (6) Accurate tabulations on the use of the area, including land area, number of buildings, net and gross number of dwelling units per acre, total common open space, percentage of building coverage of the total area, percentage of paved area and total number of parking spaces provided.
- (7) All curb cuts, driving lanes, parking and loading areas, public transportation points, street signs and illuminated facilities for same.
- (8) Any other plans or specifications that may be necessary for final engineering approval of drainage, street design and other facilities by the County Engineer or Planning and Zoning Commission, as well as all waste water treatment plans necessary for approval by the County Sanitarian.

**Subsection B.** Upon receipt of the final PUD Plan, the County staff and Planning and Zoning Commission shall review the submitted documents and determine whether or not the final plans substantially conform to the approved preliminary PUD Plan and the provisions of this Article. Upon review of the final PUD Plan, the Planning and Zoning Commission shall forward to the Board of Supervisors, along with the Commission recommendations, the final plan and any other necessary supporting information.

**SECTION 15. BOARD ACTION ON FINAL APPLICATION AND PUD PLAN**

**Subsection A.** If the final plan is in conformity with the approved preliminary plan, a resolution shall then be prepared for Board adoption as part of the official zoning map and identified appropriately thereon.

**Subsection B.** The final PUD Plan, final plat and all associated legal documents shall be filed with the County Recorder in accordance with the provisions of existing statutes and following procedures as required by said Recorder.

**Subsection C.** Approval of the final PUD Plan by the Board of Supervisors shall be null and void if the plat is not recorded within thirty (30) days after the date of approval.

**SECTION 16. PERFORMANCE SCHEDULE**

**Subsection A.** The developer shall comply with the provisions of Article XII, Unincorporated Areas Subdivision Improvements Required, Platting and Subdivision Ordinance of Marshall County, Iowa, 1994.

**Subsection B.** Written notice of abandonment, or the expiration of five (5) years from the date of final approval by the Board of Supervisors of a Planned Unit Development which has not then been completed, shall be cause for the approval to be reviewed. The Board may terminate approval after having given due consideration to the preservation of open space to that part of the project, which has already been developed. Decision by the Board to terminate approval shall be made only after holding a public hearing.

# ARTICLE XI. A.

## R-P.U.D. Residential Planned Unit Development Overlay District

### SECTION 1. STATEMENT OF INTENT.

**Subsection A.** The term "Planned Unit Development" (PUD) means an area for which a comprehensive site plan has been prepared indicating, but not limited to the following: land uses, open space allocations, on-site circulation for both pedestrians and automobiles, parking, setbacks, housing densities, building spacings, land coverage, landscaping, relationships with adjoining areas and streets, building heights, accessory uses, architectural treatment, storm water management and sanitary sewer treatment. The general purposes of a Planned Unit Development (PUD) are as follows:

1. To promote flexibility in design and permit planned diversification in the locating of structures;
2. To promote an efficient use of land and to facilitate a more economic arrangement of buildings, circulation systems, land uses and utilities
3. To protect and preserve to the greatest extent possible existing landscape features and amenities and environmentally sensitive areas, and to utilize such features in a harmonious fashion;
4. To provide for more usable and suitably located recreation facilities and other public and common facilities than would otherwise be provided under conventional land development procedures;
5. To combine and coordinate architectural styles, building forms and building relationships within the PUD.
6. To retain a substantially equivalent population density and area coverage permitted in the district in which the project is located.
7. To create neighborhoods that combined uses such as low intensity commercial activities, single family dwellings, multiple family dwellings and recreational areas in a closer proximity and intensity.

**Subsection B.** It is the further intent of these regulations to protect groundwater resources to the maximum extent practical through proper management of resources and routes of contamination within the District.

### SECTION 2. APPLICABILITY

**Subsection A.** The PUD overlay is intended to be used only in conjunction with the A-1, R-1, R-2 and R-3 residential zoning districts and the AR (ag/residential) comprehensive land use plan district, or an attendant LESA evaluation of less than 254 points indicating non-prime ag-land.

### SECTION 3. MINIMUM AREA AND OWNERSHIP REQUIREMENTS

**Subsection A.** The R-PUD shall be reserved for development of tracts not less than five (5) acres in size under single ownership, or under joint ownership with consent of owners of all the land involved, provided that the project area be in single ownership by the time the final development plan is approved.

### SECTION 4. GENERAL QUALIFICATIONS

**Subsection A.** The review of a R-PUD by the Planning and Zoning Commission, and its recommendations to the Board of Supervisors shall be guided by the following criteria:

1. The uses within the PUD shall be compatible with surrounding land uses and county land use policies.
2. The intensity of development shall not impose unnecessarily adverse effects on surrounding properties.
3. Entrances and exits to the PUD shall be provided in such a manner to facilitate access by emergency vehicles and the efficient and safe traffic circulation in the vicinity.



4. Street improvements, both public and private, shall be made in conformance with Article XII, Unincorporated Areas Subdivision Improvements Required, Platting and Subdivision Ordinance of Marshall County, Iowa, 1994, other than those requirements specifically exempted by this Article.
5. Sidewalks and lighting standards shall be according to the specifications of the County Engineer and the Marshall County Zoning Ordinance, as approved by the Board of Supervisors.
6. Adequate and safe location of play areas for children, as well as other recreational areas, shall be provided in the PUD.
7. Landscape plans for open spaces shall be provided, and the open spaces at external boundaries of the site shall be landscaped and maintained to provide a suitable transition, and if necessary a buffer zone, to abutting property.
8. Where possible, buildings shall be oriented to insure adequate light and air.
9. The provisions of all other Articles of the Marshall County Zoning Ordinance shall be met unless specifically exempted by this Article.

## SECTION 5. COMMON UTILITIES

**Subsection A.** The R-PUD shall be permitted only where common water and common sewage treatment systems are utilized.

**Subsection B.** All common sewage treatment systems must be designed by the applicant and approved by the Iowa Department of Natural Resources, Waste Water Division, prior to final approval by the Zoning Commission.

## SECTION 6. PRINCIPLE PERMITTED USES

**Subsection A.** In a R-PUD only the following uses are permitted:

1. Single Family, Two Family and Multiple Family Dwellings. Single family, two family and multiple family dwellings as permitted in the district in which the project is located.
2. Other Uses. Other uses as permitted in the R-3 District.
3. Accessory Uses. Accessory uses as permitted in the R-3 District.
4. Neighborhood Retail Uses. Neighborhood retail uses may be specifically and selectively authorized as to the type and size, but only when integrated by design as an accessory element of the project. It is intended that such commercial uses serve primarily those residents within the PUD, but should not be restricted from service to customers outside the PUD development area.
5. Community Facilities. Community facilities, including recreational facilities, as recommended by the Planning and Zoning Commission, and approved by the Board of Supervisors.
6. Family Homes. Family homes including Elder Family Homes, provided, however that a family home shall not be located within one-fourth (1/4) of a mile from another family home.

## SECTION 7. USE CONTROL

**Subsection A.** In a R-PUD, the zoning/building permit for commercial uses shall be issued after a reasonable number of proposed dwelling units of the entire R-PUD (the total expected development area regardless of phased R-PUDs) have been built. Said number to be recommended by the Planning and Zoning Commission, and approved by the Board of Supervisors upon final approval.

**Subsection B.** In a R-PUD there shall be a minimum of fifteen (15) percent of the total net area of the PUD dedicated or reserved as usable common open space land. Common open space shall be clearly designated on the plan as to character of use and development, and shall not include:

1. Areas reserved for the exclusive use or benefit of an individual tenant or land owner.
2. Dedicated streets, alleys and other public rights-of-way.
3. Vehicular drives, parking, loading and storage areas.

**Subsection C.** Suitable provisions for the maintenance and upkeep of open spaces shall be provided through a Homeowners' Association, Deed Covenants or through other similar provisions

as approved by the Board of Supervisors. If the land is deeded to a Homeowners' Association, the developer shall file a declaration of covenants and restrictions that will govern the Association, to be submitted with the final application for the PUD. An outline of the declaration shall be submitted with the preliminary application. The provisions shall include, but not be limited to:

1. The Homeowners' Association must be set up before lots are sold.
2. Membership must be mandatory for each home buyer and any successive buyer.
3. The open space restriction must be permanent.
4. The Homeowners' Association must be responsible for liability insurance, taxes and the maintenance of recreational and other facilities, and all public open spaces.
5. All or any part of the open space system may be conveyed to the County Conservation Board by joint agreement of the developer, County Conservation Board and the County Supervisors. Such conveyance may be by dedication or easement.

## SECTION 8. SIGNS

**Subsection A.** Signs shall be permitted under the rules and regulations for each underlying zoning district as indicated by Article XV of the Marshall County Zoning Ordinance.

## SECTION 9. LAYOUT AND DESIGN REQUIREMENTS

**Subsection A.** The regulations, requirements and standards of the underlying zoning district in which the PUD is to be located shall apply to the layout and design of the total project. Where necessary, to insure compatibility of buildings and uses with each other and with off-site properties, the Planning and Zoning Commission may recommend, and the Board of Supervisors may specify modifications of such regulations, requirements and standards. The layout and design shall be subject to the following limitations:

1. Yards. The yard requirement for the underlying zoning district in which the PUD is to be located shall apply to all exterior boundary lines of the site. A minimum of ten (10) feet shall be provided between detached structures.
2. Number of Dwelling Units.
  - a. The number of dwelling units permitted in a R-PUD (the sum of all phases of a proposed R-PUD) shall be as follows:

Number of Units	
<u>Underlying Zoning District (Per Acre of Net Development)</u>	
A-1 Agricultural	2.0
R-1 Single Family Residential	4.5
R-2 Rural Residential	6.0
R-3 Multi-Family Residential	14.0

2. Net development area shall be that area remaining after subtracting those portions of the site set aside for non-residential uses such as schools, public parks, and commercial uses
4. Off-Street Parking. The total required off-street parking shall be governed by Article of the Marshall County Zoning Ordinance. As appropriate, parking areas shall be screened from adjacent structures and streets with hedges, plantings, fences, earth berms, changes in grade and/or other similar screening devices.

## SECTION 10. OTHER CONSIDERATIONS

**Subsection A.** The design of a PUD shall reflect the inherent natural resource capabilities and limitations of the site. These factors would include, but not be limited to, the following: soils, slopes, floodplains, vegetation, wildlife cover and corridors, geology, hydrology (water resources) and uniform features. Cultural/historical features may be significant to certain sites. Design guidelines to be considered are as follows:

1. Natural drainage shall be retained whenever possible and if necessary, improved.
2. Consideration shall be given to preserving natural site amenities and minimizing impacts on sensitive environmental areas.

3. Existing trees or unique vegetation shall be preserved whenever possible. The location of trees and other vegetation is to be considered in designing building location, underground services, circulation patterns and paved areas.
4. If the development includes floodplain areas, they shall be preserved as permanent open space.
5. Consideration shall be given to the natural topography, and major grade changes shall be avoided. If the development includes steep slopes or other soil erosive areas, protective measures shall be taken.

## **SECTION 11. PRELIMINARY PLANNING CONFERENCE**

**Subsection A.** Prior to the preparation of a formal application, the developer shall meet with the County PUD Review Staff (including the Zoning Administrator, Sanitarian and County Engineer) to discuss the proposed development. The staff shall inform the applicant of the County's policies which may affect the development and of the specific requirements and procedures involved in submitting an application for a PUD. It is advised that the conference occur prior to any extensive financial expenditure on the part of the developer.

## **SECTION 12. PRELIMINARY APPLICATION SUBMISSION RULES, REQUIREMENTS AND PROCEDURES**

**Subsection A.** After the preliminary planning conference, the applicant will submit a "Planned Unit Development Application" form, twelve (12) copies of a preliminary PUD plan (map), all accompanying written submittals and an application fee based on the schedule below:

5-10 Acres	\$100
10-20 Acres	\$200
More than 20 Acres	\$500

All submissions shall be made to the Planning and Zoning Administrator of Marshall County. The preliminary PUD plan shall contain all of the following information:

1. The name and address of all owners of the site proposed for development as well as the name and address of all professional site planners, architects, engineers, landscape architects, surveyors or other consultants.
2. A legal description of the site proposed for development.
3. One (1) large copy, and twelve (12) 17 1/2" x 36" copies of an Overall Development Plan (ODP), reflecting the intended use and future street locations for adjacent areas of the proposed PUD when the proposed PUD is intended to represent a single phase of a longer range development. The ODP will contain all of the following information:
  - a. The ODP must be for a R-PUD with a minimum area of twenty-five (25) acres.
  - b. The ODP will clearly show the entire area proposed for the final PUD Overlay District, as well as all boundary dimensions thereof at a scale appropriate for accurate viewing.
  - c. The ODP will show and identify all public streets or roads in and around the proposed overlay area.
  - d. The ODP shall show a date, a north arrow and a legend for all graphical aspects.
  - e. The ODP will represent each proposed development area of the project as distinct development types including but not limited to, single family, multiple family, commercial and open space areas. These areas should be shown as a bubble map with each development type having a distinct color.
  - f. The ODP will show all existing and future proposed access points, both public and private, to all existing public streets or roads.
  - g. The ODP will be labeled with the proposed development name.
  - h. Any of the above-mentioned requirements of an ODP may be amended to reflect changes in design, preference or marketability following the normal rules to amend the zoning ordinance as found in Article XXIII.
5. The location of all property lines, existing streets, easements, utilities and any other significant physical features.
6. Date, north arrow and graphic scale (not less than 1"=100') of all drawings submitted.

7. Present and (if applicable) proposed zoning classifications.
8. An indication of the existing conditions on the tract including contour lines (at minimum five foot intervals), water courses and existing drainage structures, wooded areas and isolated trees of ten (10) inches or more in diameter, existing streets, sidewalks or other indication of those which will be removed and those which will be retained as part of the development.
9. An indication of the area surrounding the site showing land use, peculiar physical features, public facilities and existing zoning.
10. An explanatory statement of the general purpose of the project, including the nature of the project, proposed land uses, building types, density ranges, conformance with land use policies and description of the open space and recreational system. The statement shall supplement the site plan with narrative information.
11. A site plan of the proposed development indicating the general location of the following:
  - a. All buildings, structures and other improvements.
  - b. Common open space.
  - c. Off-street parking facilities and number of spaces to be provided.
  - d. Sidewalks where required.
  - e. Illuminated areas.
  - f. Use of open space being provided.
  - g. Landscape plan with screening or buffering of the development perimeters.
  - h. Indication as to which areas and streets are intended to be public.
  - i. All utilities including storm drainage, sanitary sewers, water service and fire hydrants.
  - j. Such other documents explaining other circumstances as the Planning and Zoning Commission may require.
13. Quantitative data indicating the following:
  - a. Total number of dwelling units.
  - b. Proposed lot coverage of buildings and structures (percent of total).
  - c. Approximate gross and net residential densities (units per acre), excluding all streets and roadways (if applicable).
  - d. Total amount of usable open space area provided in the tract.
  - e. Such other calculations as the Planning and Zoning Commission may require.
15. Elevation of perspective drawings of all buildings and improvements sufficient to show the developer's intent.
16. A development schedule indicating (a) the approximate date when construction of the project will begin; (b) the stages in which the project will be built and the approximate date when construction of each stage will begin; (c) the approximate dates when the development of each of the stages will be completed; and (d) the area and location of the common open space that will be provided at each stage.
17. If the applicant intends to sell or lease all or a portion of the PUD after the project is approved, a statement shall be presented to the Commission. If applicable, the conditions of the sale and maintenance of such developed properties shall be stipulated. An outline of any covenants, deed restrictions or other similar agreements between the applicant and future owners shall be presented.

### **SECTION 13. PRELIMINARY PUD PLAN APPROVAL PROCESS**

**Subsection A.** The approval of a preliminary PUD Plan shall be by the Board of Supervisors after having held a legal public hearing, and upon recommendation of the Planning and Zoning Commission and County staff. The preliminary PUD Plan shall be submitted to the Planning and Zoning Commission for its review and recommendations. The Commission may require changes or alterations in the Plan and shall then advise the Board of Supervisors that such plans do or do not comply with the development policies of the County. Preliminary approval by the Board shall be binding as to the general intent and apportionment of the land and improvements, but shall not be construed to render inflexible the ultimate design, specific uses or final Plan of the project. Such approval shall be valid for six (6) months. In their discretion and for good cause, the Board of Supervisors may extend the preliminary approval for an additional six (6) months.

### **SECTION 14. FINAL APPLICATION AND DEVELOPMENT PLAN**

**Subsection A.** Within six (6) months following approval of the preliminary development plan by the Board of Supervisors, the applicant shall submit twelve (12) copies of a final development plan and an application fee of \$200. The final PUD Plan shall identify the location and extent of uses and improvements as authorized in the approved preliminary PUD Plan and complying with any stipulations of the Board. The final PUD Plan shall include the following:

1. All of the materials listed in Section 12, above, for Preliminary Application Submission.
2. An accurate legal description and property survey of the entire area included within the PUD.
3. Designation of the location of all proposed structures, and the internal uses in sufficient detail to determine off-street parking requirements.
4. Architectural elevations, pavement types, culverts, common open space, recreation facilities, sidewalks, illumination, landscaping and any other pertinent features of the PUD.
5. Certificates, seals and signatures required for the dedication of land, recording of documents and such other legal documents as may be required.
6. Accurate tabulations on the use of the area, including land area, number of buildings, net and gross number of dwelling units per acre, total common open space, percentage of building coverage of the total area, percentage of paved area and total number of parking spaces provided.
7. All curb cuts, driving lanes, parking and loading areas, public transportation points, street signs and illuminated facilities for same.
8. Any other plans or specifications that may be necessary for final engineering approval of drainage, street design and other facilities by the County Engineer or Planning and Zoning Commission, as well as all waste water treatment plans necessary for approval by the County Sanitarian.

**Subsection B.** Upon receipt of the final PUD Plan, the County staff and Planning and Zoning Commission shall review the submitted documents and determine whether or not the final plans substantially conform to the approved preliminary PUD Plan and the provisions of this Article. Upon review of the final PUD Plan, the Planning and Zoning Commission shall forward to the Board of Supervisors, along with the Commission recommendations, the final plan and any other necessary supporting information.

## **SECTION 15. BOARD ACTION ON FINAL APPLICATION AND PUD PLAN**

**Subsection A.** If the final plan is in conformity with the approved preliminary plan, a resolution shall then be prepared for Board adoption as part of the official zoning map and identified appropriately thereon.

**Subsection B.** The final PUD Plan, final plat and all associated legal documents shall be filed with the County Recorder in accordance with the provisions of existing statutes and following procedures as required by said Recorder.

**Subsection C.** Approval of the final PUD Plan by the Board of Supervisors shall be null and void if the plat is not recorded within thirty (30) days after the date of approval.

## **SECTION 16. PERFORMANCE SCHEDULE**

**Subsection A.** The developer shall comply with the provisions of Article XII, Unincorporated Areas Subdivision Improvements Required, Platting and Subdivision Ordinance of Marshall County, Iowa, 1994.

**Subsection B.** Written notice of abandonment, or the expiration of five (5) years from the date of final approval by the Board of Supervisors of a Planned Unit Development which has not then been completed, shall be cause for the approval to be reviewed. The Board may terminate approval after having given due consideration to the preservation of open space to that part of the project which has already been developed. Decision by the Board to terminate approval shall be made only after holding a public hearing.

# ARTICLE XI

## HEAVY INDUSTRIAL DISTRICT "C-2"

**SECTION 1. STATEMENT OF INTENT.** This District is intended and designed to accommodate uses of a heavy industrial nature. The purpose of this District is to permit the normal operation of industry subject to regulation of those nuisance factors which may be detrimental to adjacent properties. This District should be located only in sound industrial locations with direct access to highways and other needed transportation facilities and utilities. No residences shall be permitted in this District. No commercial uses are permitted except those incidental to the permitted uses.

## SECTION 2. PERMITTED USES.

**Subsection A.** Only the use of structures and/or land listed in this Section shall be permitted in the C-2 District.

- (1) Any industrial use, process or treatment whatsoever, including sale at wholesale, storage, sale at retail of products manufactured or processed on the premises, repair, rental and servicing of any commodity.
- (2) Acid manufacture and other chemical manufacturing processing.
- (3) Bulk plants including storage of petroleum products.
- (4) Cement, hydrated lime, gypsum and other similar materials manufacture.
- (5) Distillation of bones.
- (6) Explosive manufacture and storage.
- (7) Public sewage disposal and treatment plants.
- (8) Starch manufacture.
- (9) Concrete mixing, concrete products manufacture.
- (10) Fat rendering, fertilizer or glue manufacture.
- (11) Garbage, offal or dead animal reduction.
- (12) Grain elevators and/or feed mills.
- (13) Petroleum or its products, refining or wholesale storage of, and asphalt plants.
- (14) Salvage and/or junkyards, including auto wrecking and salvage, used parts sales and junk, iron, rags or paper storage or baling. No part of the front yard is to be used for the conduct of business in any manner except for parking of customer or employee vehicles. Any premises on which such activities are conducted shall be wholly enclosed with a building or by a wall or fence, reasonably maintained, not less than six (6) feet in height, and in which the cracks are less than fifteen (15) percent of the area.
- (15) Slaughter houses, meat-packing and processing plants and stockyards.
- (16) Hide trading.
- (17) Other similar uses.

**Subsection B.** *This section is reserved for future use.*

**Subsection C.** *This section is reserved for future use.*

**Subsection D.** *This section is reserved for future use.*

**Subsection E.** Non-Commercial WECS. Subject to the following standards:

- 1. Tower Height:** Parcels smaller than one acre are not recommended for the placement of WECS, and must seek a special use permit. For property sizes between one acre and two acres the tower height shall be limited to 80 ft. For property sizes of two acres or more, there is no limitation on tower height, except as imposed by FAA regulations.
- 2. Setback:** No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.
- 3. Noise:** Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
- 4. Engineer Certification:** Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.
- 5. Compliance with FAA Regulations:** Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
- 6. Compliance with National Electric Code:** Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
- 7. Utility Notification:** No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

All wind turbines must set-back the height of the turbine (base to tip of the blades full extended upward) from any lot line or right-of-way lines.

### SECTION 3. LOT AREA, FRONTAGE AND YARD REQUIREMENTS.

The following minimum requirements shall be observed in the "C-2" District:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
All uses	No minimum	No minimum	No minimum
All other permitted uses	No minimum	No minimum	No minimum

#### SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
All Uses	50 ft.	No minimum**	20 ft.	20 ft.
All other permitted uses	50 ft.	No minimum**	20 ft.	2 ft.

\* 5 ft. from alley lines.

\*\*except when adjoining any residential district or use, in which case fifteen (15) feet shall be required

**SECTION 4. OFF-STREET PARKING AND LOADING.** Space for off-street parking and loading shall be provided in accordance with the provisions herein.

**SECTION 5. SITE PLANS.** Site plan requirements shall be in accordance with Article XVI.

**SECTION 6. REQUIRED CONDITIONS.** No use shall be permitted to be established or maintained which by reason of its nature or manner of operation is or may become hazardous, obnoxious or offensive owing to the emission of odor, dust, smoke, cinders, gas, fumes, noise, vibrations, refuse matter or water-carried waste. All facilities required for the discharge, collection and treatment of liquid, solid or gaseous waste shall be designed, constructed and operated in accordance with all statutes and regulations of the State of Iowa.

**SECTION 7. PROHIBITED USES.** The following uses are prohibited in this district:

**Subsection A.** Adult book stores, adult motels, adult movie arcades/theaters, friendship clubs, dating clubs or services, escort services, nude modeling studios, establishments for nude encounter sessions, massage parlors or any other business oriented toward titillation or gratification of sexual feelings or desires of patrons.

**Subsection B.** Junkyards and junk cars not stored in a building or permanent structure as described previously in this Article.

**Subsection C.** Animals and livestock except as previously allowed in this Article.



# ARTICLE XII

## FLOOD PLAIN OVERLAY DISTRICT "F-P"

### SECTION 1 - STATUTORY AUTHORITY, FINDINGS OF FACT AND PURPOSE

#### Subsection A.

The Legislature of the State of Iowa has in Chapter 335, Code of Iowa, as amended, delegated the power to counties to enact zoning regulations to secure safety from flood and to promote health and the general welfare.

#### Subsection B. Findings of Fact.

1. The flood hazard areas of Marshall County are subject to periodic inundation which can result in loss of life and 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 of the community.
2. These flood losses, hazards, and related adverse effects are caused by: (i) The occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding and (ii) the cumulative effect of obstructions on the flood plain causing increases in flood heights and velocities.
3. This ordinance relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources.

#### Subsection C. Statement of Purpose.

It is the purpose of this Ordinance to protect and preserve the rights, privileges and property of Marshall County and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses described in Section 1, Subsection B, (1) of this Ordinance with provisions designed to:

1. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
2. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.
3. Require that uses vulnerable to floods, including public facilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
4. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
5. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

### SECTION 2 - GENERAL PROVISIONS

#### Subsection A - Lands to Which Ordinance Apply

The provisions of this Ordinance shall apply to all lands within the jurisdiction of Marshall County, Iowa, shown on the Official Flood Plain Zoning Map as being within the boundaries of the Floodway, Floodway Fringe, General Flood Plain and Shallow Flooding (Overlay) Districts, as established in Section III.

### **Subsection B - Establishment of Official Flood Plain Zoning Map**

The Flood Insurance Rate Maps prepared as part of the Flood Insurance Study for Marshall County, Iowa, dated November 16, 2011, are hereby adopted by reference and declared to be the Official Flood Plain Zoning Map. The flood profiles and all explanatory material contained with the Flood Insurance Study are also declared to be a part of this ordinance.

### **Subsection C - Rules for Interpretation of District Boundaries**

The boundaries of the zoning district areas shall be determined by scaling distances on the Official Flood Plain Zoning Map. When an interpretation is needed as to the exact location of a boundary, the Zoning Administrator shall make the necessary interpretation. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this Ordinance.

### **Subsection D - Compliance**

No 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.

### **Subsection E - Abrogation and Greater Restrictions**

It is not intended by this Ordinance to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provision of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

### **Subsection F - Interpretation**

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 the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

### **Subsection G - Warning and Disclaimer of Liability**

The standards required by this Ordinance are considered reasonable for regulatory purposes. This Ordinance does not imply that areas outside the designated Flood Plain (Overlay) District areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of Marshall County nor any officer or employee thereof for any flood damages that from reliance on this Ordinance or any administrative decision lawfully made thereunder.

### **Subsection H - Severability**

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

## **SECTION 3 - ESTABLISHMENT OF ZONING (OVERLAY) DISTRICTS**

The flood plain areas within the jurisdiction of this ordinance are hereby divided into the following districts; (i) Floodway District (FW), (ii) Floodway Fringe District (FF), (iv) General Flood Plain District (FP) and (v) Shallow Flooding District (SF). The boundaries shall be as shown on the Official Flood Plain Zoning Map. Within these districts, all uses not allowed as Permitted Uses or permissible as Conditional Uses are prohibited unless a variance to the terms of this ordinance is granted after due consideration by the Board of Adjustment.

## **SECTION 4 - FLOODWAY (OVERLAY) DISTRICT (FW)**

### **Subsection A - Permitted Uses**

The following uses shall be permitted within the Floodway District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstruction, the storage of material or equipment, excavation or alteration of a watercourse.

1. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
2. Industrial-commercial uses such as loading areas, parking areas, airport landing strips.
3. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
4. Residential uses such as lawns, gardens, parking areas and play areas.
5. Such other open-space uses similar in nature to the above uses.

### **Subsection B - Conditional Uses**

The following uses which involve structures (temporary or permanent), fill, storage of materials or equipment, excavation or alteration of a watercourse may be permitted only upon issuance of a Special Use Permit by the Board of Adjustment as provided for in Section 8, Subsection C. Such uses must also meet the applicable provisions of the Floodway District Performance Standards.

1. Uses or structures accessory to open-space uses.
2. Circuses, carnivals, and similar transient amusement enterprises.
3. Drive-in theaters, new and used car lots, roadside stands, signs and billboards.
4. Extraction of sands, gravel and other materials.
5. Marinas, boat rentals, docks, piers and wharves.
6. Utility transmission lines and underground pipelines.
7. Other uses similar in nature to uses described in Section IV A or B which are consistent with the provisions of Section IV C and the general spirit and purpose of this ordinance.

### **Subsection C - Performance Standards**

All Floodway District uses allowed as a Permitted or Special Use shall meet the following standards.

1. No use shall be permitted in the Floodway District that would result in any increase in the 100 year flood level. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
2. All uses within the Floodway District shall:
  - a. Be consistent with the need to minimize flood damage.
  - b. Use construction methods and practices that will minimize flood damage.
  - c. Use construction materials and utility equipment that are resistant to flood damage.
3. No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch or any other drainage facility or system.
4. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.
5. Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
6. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited, Storage of other material may be allowed if readily removable from the Floodway District within the time available after flood warning.
7. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.
8. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.
9. Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

## **SECTION 5 - FLOODWAY FRINGE (OVERLAY) DISTRICT (FF)**

### **Subsection A - Permitted Uses**

All uses within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway Fringe District.

### **Subsection B - Performance Standards**

All uses must be consistent with the need to minimize flood damage and meet the following applicable performance standards.

1. All structures shall
  - a. Be adequately anchored to prevent flotation, collapse or lateral movement of the structure.
  - b. Use construction methods and practices that will minimize flood damage.
  - c. Use construction materials and utility equipment that are resistant to flood damage.
2. **Residential buildings**

All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the 100-year flood level. Construction shall be upon

compacted fill which shall, at all points, be no lower than 1.0 ft. above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed subject to favorable consideration by the Board of Adjustment, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding.

All new residential structures shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.

### **3. Non-residential buildings**

All new or substantially improved non-residential buildings shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the 100-year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; and that the structure, below the 100-year flood level is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to National Geodetic Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator.

#### **4. All new and substantially improved structures:**

- a. Fully enclosed areas below the "lowest floor" (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:
  1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  2. The bottom of all openings shall be no higher than one foot above grade.
  3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

Such areas shall be used solely for parking of vehicles, building access and low damage potential storage.

- b. New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- c. New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### **5. Factory-built homes**

- a. All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.
- b. All factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

### **6. Utility and Sanitary Systems**

- a. On-site waste disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

- b. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities (other than on-site systems) shall be provided with a level of flood protection equal to or greater than one (1) foot above the 100-year flood elevation.
  - c. New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities (other than on-site systems) shall be provided with a level of protection equal to or greater than one (1) foot above the 100-year flood elevation.
  - d. Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.
7. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one (1) foot above the 100-year flood level. Other material and equipment must either be similarly elevated or (i) not be subject to major flood damage and be anchored to prevent movement due to flood waters or (ii) be readily removable from the area within the time available after flood warning.
8. Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 ft. of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.
9. Watercourse alterations or relocations must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural Resources.
10. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable performance standards of this Ordinance. Subdivision proposals intended for residential use shall provide all lots with a means of access which will be passable by wheeled vehicles during the 100-year flood. Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include 100-year flood elevation data for those areas located within the Flood Plain (Overlay) District.
11. Accessory Structures
  - a. Detached garages, sheds, and similar structures accessory to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied.
    1. The structure shall not be used for human habitation.
    2. The structure shall be designed to have low flood damage potential.
    3. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
    4. The structure shall be firmly anchored to prevent flotation which may result in damage to other structures.
    5. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one foot above the 100-year flood level.
  - b. Exemption from the 100-year flood elevation requirements for such a structure may result in increased premium rates for flood insurance coverage of the structure and its contents.
12. Recreational Vehicles
  - a. Recreational vehicles are exempt from the requirements of Section 4, Subsection B, (5) of this Ordinance regarding anchoring and elevation of factory-built homes when the following criteria are satisfied.
    1. The recreational vehicle shall be located on the site for less than 180 consecutive days, and,
    2. The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

- b. Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of Section 4, Subsection B, (5) of this Ordinance regarding anchoring and elevation of factory-built homes.
13. Pipeline river and stream crossings shall be buried in the streambed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.

## **SECTION 6 - GENERAL FLOOD PLAIN (OVERLAY) DISTRICT (FP)**

### **Subsection A - Permitted Uses**

The following uses shall be permitted within the General Flood Plain District to the extent they are not prohibited by any other ordinance (or underlying zoning district) and provided they do not include placement of structures, factory-built homes, fill or other obstructions, the storage of materials or equipment, excavation or alteration of a watercourse.

1. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
2. Industrial-commercial uses such as loading areas, parking areas, airport landing strips.
3. Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
4. Residential uses such as lawns, gardens, parking areas and play areas.

### **Subsection B - Special Uses**

Any uses which involve placement of structures, factory-built homes, fill or other obstructions, storage of materials or equipment, excavation or alteration of a watercourse may be allowed only upon issuance of a Special Use Permit by the Board of Adjustment as provided for in Section 8, Subsection C. All such uses shall be reviewed by the Department of Natural Resources to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the 100 year flood level. The applicant shall be responsible for providing the Department of Natural Resources with sufficient technical information to make the determination.

### **Subsection C - Performance Standards**

1. All conditional uses, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District (Section IV).
2. All conditional uses, or portions thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway Fringe (Overlay) District (Section V).

# **SECTION 7 - SHALLOW FLOODING (OVERLAY) DISTRICT (SF)**

## **Subsection A - Permitted Uses**

All uses within the Shallow Flooding District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet the applicable performance standards of the Shallow Flooding District.

## **Subsection B - Performance Standards**

The performance standards for the Shallow Flooding District shall be the same as the performance standards for the Floodway Fringe District with the following exceptions:

1. In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the number of feet as specified on the FIRM (or a minimum of 2.0 ft. if no number is specified) above the highest natural grade adjacent to the structure.
2. In shallow flooding areas designated as an AH Zone on the Flood Insurance Rate Map, the minimum floodproofing/flood protection elevation shall be equal to the elevation as specified on the FIRM.

# **SECTION 8 - ADMINISTRATION**

## **Subsection A - Appointment, Duties and Responsibilities of Zoning Administrator**

1. The Marshall County Director of Planning and Zoning/Zoning Administrator is hereby appointed to implement and administer the provisions of this Ordinance and will herein be referred to as the Administrator.
2. Duties and responsibilities of the Administrator shall include, but not necessarily be limited to the following:
  - a. Review all flood plain development permit applications to assure that the provisions of this Ordinance will be satisfied.
  - b. Review flood plain development applications to assure that all necessary permits have been obtained from federal, state and local governmental agencies including approval when required from the Department of Natural Resources for flood plain construction.
  - c. Record and maintain a record of (i) the elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of all new or substantially improved structures or (ii) the elevation to which new or substantially improved structures have been floodproofed.
  - d. Notify adjacent communities/counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
  - e. Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this Ordinance.
  - f. Submit to the Federal Insurance Administrator an annual report concerning the community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.
  - g. Notify the Federal Insurance Administration of any annexations or modifications to the community's boundaries.



- h. Review subdivision proposals to insure such proposals are consistent with the purpose of this ordinance and advise the Board of Supervisors of potential conflict.

### **Subsection B - Flood Plain Development Permit**

1. Permit Required - A Flood Plain Development Permit issued by the Administrator shall be secured prior to any flood plain development (any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations), including the placement of factory-built homes.
2. Application for Permit - Application shall be made on forms furnished by the Administrator and shall include the following:
  - a. Description of the work to be covered by the permit for which application is to be made.
  - b. Description of the land on which the proposed work is to be done (i.e., lot, block, track, street address or similar description) that will readily identify and locate the work to be done.
  - c. Indication of the use or occupancy for which the proposed work is intended.
  - d. Elevation of the 100-year flood.
  - e. Elevation (in relation to National Geodetic Vertical Datum) of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.
  - f. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
  - g. Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this Ordinance.
3. Action on Permit Application - The Administrator shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable standards of this Ordinance and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore. The Administrator shall not issue permits for variances except as directed by the County Board of Adjustment.
4. Construction and Use to be as Provided in Application and Plans - Flood Plain Development Permits based on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this Ordinance, prior to the use or occupancy of any structure.

### **Subsection C - Special Uses, Appeals and Variances.**

1. Appointment and Duties of Board of Adjustment - A Board of Adjustment is hereby established which shall hear and decide (i) applications for Conditional Uses upon which the Board is authorized to pass under this ordinance, (ii) appeals, and (iii) requests for variances to the provisions of this ordinance, and shall take any other action which is required of the Board.
2. Conditional Uses - Requests for Conditional Uses shall be submitted to the Administrator, who shall forward such to the Board of Adjustment for consideration. Such requests shall include information ordinarily submitted with applications as well as any additional information deemed necessary to the Board of Adjustment.
3. Appeals - Where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific reason for the appeal. The official from whom the appeal is taken shall transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.
4. Variance - The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this Ordinance that will not be contrary to the public interest where, owing to special

conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards.

- a. Variances shall only be granted upon: (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.
- b. Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- c. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this Ordinance, the applicant shall be notified in writing over the signature of the Administrator that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property.
- e. All variances granted shall have the concurrence or approval of the Department of Natural Resources.

#### 5. Hearings and Decisions of the Board of Adjustment

- a. Hearings. Upon the filing with the Board of Adjustment of an Appeal, an application for a Conditional Use or a request for a Variance, the Board shall hold a public hearing. The Board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.
- b. Decisions. The Board shall arrive at a decision on an Appeal, Conditional Use or Variance within a reasonable time. In passing upon an Appeal, the Board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a Special Use or Variance, the board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as contained in Section 8, Subsection C, (5)(b)(2).

##### 1. Factors Upon Which the Decision of the Board of Adjustment Shall be Based. In passing upon applications for Variances, the Board shall consider all relevant factors specified in other sections of this Ordinance and:

- a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
- b. The danger that materials may be swept on to other land or downstream to the injury of others.
- c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
- d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- e. The importance of the services provided by the proposed facility to the County.
- f. The requirements of the facility for a flood plain location.
- g. The availability of alternative locations not subject to flooding for the proposed use.
- h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

- i. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
  - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
  - l. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
  - m. Such other factors which are relevant to the purpose of this Ordinance.
2. Conditions Attached to Variances - Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Ordinance. Such conditions may include, but not necessarily be limited to:
  - a. Modification of waste disposal and water supply facilities.
  - b. Limitation of periods of use and operation.
  - c. Imposition of operational controls, sureties, and deed restrictions.
  - d. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this Ordinance.
  - e. Floodproofing measures. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.
6. Appeals to the Court - Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the Board.

## SECTION 9 - NONCONFORMING USES

### Subsection A.

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:

1. If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this Ordinance.
2. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.
3. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this Ordinance.

### Subsection B.

Except as provided in Section 9, Subsection A, (2), any use which has been permitted as a Special Use or Variance shall be considered a conforming use.

## **SECTION 10 - PENALTIES FOR VIOLATION**

Violations of the provisions of this Ordinance or failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with grants of Special Uses or Variances) shall constitute a misdemeanor and shall cause a County Infraction to be filed therefore. The penalties for such shall be as allowed in Article XXI of this Ordinance.

## **SECTION 11 - AMENDMENTS**

The regulations and standards set forth in this Ordinance may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.

## **SECTION 12 - SITE PLAN**

### **Subsection A**

Site Plan (if required) shall be in accordance with Article XVI.

## **SECTION 13 - DEFINITIONS**

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

### **BASE FLOOD**

The flood having one (1) percent chance of being equaled or exceeded in any given year. (See 100-year flood).

### **BASEMENT**

Any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see "lowest floor."

### **DEVELOPMENT**

Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

## **EXISTING CONSTRUCTION**

Any structure for which the "start of construction" commenced before the effective date of the community's Flood Insurance Rate Map. May also be referred to as "existing structure".

## **EXISTING FACTORY-BUILT HOME PARK OR SUBDIVISION**

A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the flood plain management regulations adopted by the community.

## **EXPANSION OF EXISTING FACTORY-BUILT HOME PARK OR SUBDIVISION**

The preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

## **FACTORY-BUILT HOME**

Any structure, designed for residential use:, which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this Ordinance factory-built homes include mobile homes, manufactured homes and modular homes and also includes "recreational vehicles" which are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.

## **FACTORY-BUILT HOME PARK**

A parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.

## **FLOOD**

A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

## **FLOOD ELEVATION**

The elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of flood waters related to the occurrence of the 100-year flood.

## **FLOOD INSURANCE RATE MAP (FIRM)**

The official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.

## **FLOOD PLAIN**

Any land area susceptible to being inundated by water as a result of a flood.

## **FLOOD PLAIN MANAGEMENT**

An overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency preparedness plans, flood control works,

floodproofing and flood plain management regulations.

## **FLOODPROOFING**

Any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.

## **FLOODWAY**

The channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one (1) foot.

## **FLOODWAY FRINGE**

Those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

## **HISTORIC STRUCTURE**

Any structure that is:

- a. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either i) an approved state program as determined by the Secretary of the Interior or ii) directly by the Secretary of the Interior in states without approved programs.

## **LOWEST FLOOR**

The floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

- a. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section VI B4(a) of this Ordinance and
- b. The enclosed area is unfinished (not carpeted, dry-walled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and
- c. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the 100-year flood level, and
- d. The enclosed area is not a "basement" as defined in this section.

In cases where the lowest enclosed area satisfies criteria a, b, c, and d above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

## **NEW CONSTRUCTION**

(new buildings, factory-built home parks) - Those structures or development for which the start of construction commenced on or after the effective date of the Flood Insurance Rate Map. (Alternate Language - ... on or after January 2, 2003.)

## **NEW FACTORY-BUILT HOME PARK OR SUBDIVISION**

A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the effective date of flood plain management regulations adopted by the community.

## **ONE HUNDRED (100) YEAR FLOOD**

A flood, the magnitude of which has a one (1) percent chance of being equaled or exceeded in any given year or which, on the average, will be equaled or exceeded a least once every one hundred (100) years.

## **RECREATIONAL VEHICLE**

A vehicle which is:

- a. Built on a single chassis;
- b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

## **SPECIAL FLOOD HAZARD AREA**

The land within a community subject to the "100-year flood". This land is identified as Zone A on the community's Flood Insurance Rate Map.

## **START OF CONSTRUCTION**

Includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement, was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

## **STRUCTURE**

Anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factor-built homes, storage tanks, and other similar uses.

## **SUBSTANTIAL DAMAGE**

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

## **SUBSTANTIAL IMPROVEMENT**

Any improvement to a structure which satisfies either of the following criteria:

1. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (i) before the "start of construction" of the improvement, or (ii) if the structure has been "substantially damaged" and is being restored, before the damage occurred. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe conditions for the existing use. The term also does not include any alteration of an "historic structure", provided the alteration will not preclude the structure's designation as an "historic structure".
2. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after the effective date of the first floodplain management regulations adopted by the community shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

## **VARIANCE**

A grant of relief by a community from the terms of the flood plain management regulations.

## **VIOLATION**

The failure of a structure or other development to be fully compliant with the community's flood plain management regulations.



# ARTICLE XIII

## UNCLASSIFIED DISTRICT "U-1"

**SECTION 1. STATEMENT OF INTENT.** This District includes government owned land and easements, land subject to periodic overflow from rivers and streams, quarries and gravel pits and residual land not available for residential use because of available access.

## SECTION 2. PERMITTED USES.

**Subsection A.** The following uses are permitted in this District:

- (1) Summer cottages and cabins for seasonal and not permanent or year-round occupancy and which buildings need not abut on a street or road.
- (2) Commercial kennels, riding stables, small animal farms, provided, however, that any buildings in which animals are housed shall be at least two hundred (200) feet from any dwelling besides the dwelling on that lot.
- (3) Extraction of sand, gravel, stone, clay or other raw materials.
- (4) Dumping of non-combustible materials for land fill purposes.
- (5) Sanitary landfills for the disposal of garbage and waste materials when the proposed site is approved by the Board of Supervisors, provided, however, that the same shall be under the supervision and control of a government agency.
- (6) Amusement and recreational developments for temporary or seasonal periods only.
- (7) Gun clubs and shooting ranges.
- (8) Public and private forests and wildlife reservations or similar conservation projects.
- (9) Public or private landing fields.
- (10) Accessory uses and buildings.
- (11) Governmental uses of all kinds.

## SECTION 3. LOT AREA, FRONTAGE AND YARD REQUIREMENTS.

The following minimum requirements shall be observed in the "U-1" District:

<u>Use</u>	<u>Lot Area</u>	<u>Frontage/Lot Width</u>	<u>Lot Area per Family</u>
Single family dwelling	1 acre	70 ft.	1 acre
All other permitted uses	1 acre	200 ft.	1 acre

### SET-BACK REQUIREMENTS

<u>Use</u>	<u>Front</u>	<u>Side</u>	<u>Flag</u>	<u>Rear</u>
Single family dwelling	35 ft.	7 ft.	7 ft.	35 ft.
All other permitted uses	35 ft.	7 ft.	7 ft.	35 ft.

### MINIMUM GROUND FLOOR AREA\*

One Story: 1,000 sq. feet                      Two Story: 800 sq. feet

\*(Exclusive of open porches, garages or steps.)

**SECTION 4. PROHIBITED USES.** The following uses are prohibited in this district:

**Subsection A.** Junkyards and junk cars not stored in a building or permanent structure as described previously in this Article.

**Subsection B.** Animals and livestock except as previously allowed in this Article.

# ARTICLE XIV

## AIRPORT TALL STRUCTURE ZONING "AZ - 1"

**SECTION 1. STATEMENT OF INTENT.** This Article regulates and restricts the height of structures and objects of natural growth in the vicinity of the Marshalltown Municipal Airport by creating the appropriate zones and establishing the boundaries thereof; defining certain terms used herein; and referring to the Marshalltown Municipal Airport height zoning map which is incorporated in and made a part of this Article.

It is hereby found that an airport hazard endangers the lives and property of users of Marshall County, and property or occupants of land in its vicinity. Accordingly it is declared:

(i) That the creation or establishment of an airport hazard is a public nuisance and an injury to the County served by Marshalltown Municipal Airport.

(ii) That it is necessary in the interest of the public health, public safety, and general welfare that creation of airport hazards be prevented; and

(iii) That this should be accomplished, to the extent legally possible, by proper exercise of the police power; and

(iv) That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards are public purposes for which the City of Marshalltown may raise and expend public funds, as an incident to the operation of airports, to acquire land or property interests therein.

**SECTION 2. SHORT TITLE.** This Article shall be known and may be cited as the "Marshall County Airport Height Zoning Ordinance."

## SECTION 3. DEFINITIONS.

**Subsection A.** As used in this Ordinance unless the context otherwise requires:

(1) **Airport.** A facility designed and intended for the landing, departure, maintenance, servicing, storage and repair of aircraft, including but not limited to airplanes, helicopters, jets, ultra-lights. The Marshalltown Municipal Airport and any other airport which may be established in Marshall County.

(2) **Airport Elevation.** The highest point of an airport's usable landing area measured in feet above mean sea level.

(3) **Airport Hazard.** Any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 Code of Federal Regulations Sections 77.21, 77.23 and 77.25 as revised March 4, 1972, and which obstruct the air space required for the flight of aircraft and landing or take-off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

(4) **Airport Primary Surface.** A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway center line.

(5) **Airspace Height.** For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the Zoning Map, the datum shall be the mean sea level elevation unless otherwise specified.

**(6) Control Zone.** Airspace extending upward from the surface of the earth which may include one or more airports and is normally a circular area of 5 statute miles in radius, with extensions where necessary to include instrument approach and departure paths.

**(7) Decision Height.** The height at which a decision must be made, during an ILS instrument approach, to either continue the approach or to execute a missed approach.

**(8) Heliport.** A designated land area, other than an airport, used primarily for the operation and basing of rotocraft.

**(9) Heliport Primary Surface.** The area of the primary surface coincides size and shape with the designated landing and take-off area of a heliport or helistop. This surface is a horizontal plane at the elevation of the established heliport or helistop elevation.

**(10) Helistop.** A designated landing area other than an airport, used for the operating of rotocraft where no basing facilities are provided.

**(11) Instrument Runway.** A runway having an existing instrument approach procedure utilizing air navigation facilities or area type navigation equipment, for which an instrument approach procedure has been approved or planned.

**(12) Minimum Descent Altitude.** The lowest altitude, expressed in feet above the mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering in execution of a standard instrument approach procedure, where no electric glide slope is provided.

**(13) Minimum Enroute Altitude.** The altitude in effect between radio fixes which assures acceptable navigational signal coverage and meets obstruction clearance requirements between those fixes.

**(14) Minimum Obstruction Clearance Altitude.** The specified altitude in effect between radio fixes on VOR airways, off-airway routes or route segments which meet obstruction clearance requirements for the entire route segment and which assures acceptable navigational signal coverage only within 22 miles of a VOR.

**(15) Runway.** A defined area on an airport prepared for landing and take-off of aircraft along its length.

**(16) Visual Runway.** A runway intended solely for the operation of aircraft using visual approach procedures with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, a military services approved military airport layout plan, or by any planning document submitted to the FAA by competent authority.

**SECTION 4. AIRPORT ZONES AND AIRSPACE HEIGHT LIMITATIONS.** In order to carry out the provisions of this Article there are hereby created and established certain zones which are depicted on the Marshalltown Municipal Airport Height Zoning Map. A structure located in more than one (1) zone of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

Subsection A. Airport Height Zones:

**(1) Primary Surface.** A surface longitudinally centered on a runway extending 200' beyond the end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

**(a) Utility Runway.** 500' width for utility runway 18/36 having a non-precision instrument approach.

(b) **Other than Utility Runway.** 500' width for other than utility runway 12/30 having a non-precision instrument approach with visibility minimums greater than  $\frac{3}{4}$  statute mile.

(2) **Horizontal Zone.** The land lying under a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by:

(a) **Visual Runway.** Swinging arcs of 5,000 feet radii from the center of each end of the primary surface of runways 18 and 36, and connecting the adjacent arcs by lines tangent to those arcs.

(b) **Instrument Runway.** Swinging arcs of 10,000 feet radii from the center of each end of the primary surface of runways 12 and 30, and connecting the adjacent arcs by lines tangent to those arcs.

(Note: The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000 foot arc is encompassed by tangents connecting the two adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.)

No structure shall exceed 150 feet above the established airport elevation in the horizontal zone, as depicted on the Marshalltown Municipal Airport Height Zoning Map.

(3) **Conical Zone.** The land lying under a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet. No structure shall penetrate the conical surface in the conical zone, as depicted on the Marshalltown Municipal Airport Height Zoning Map.

(4) **Approach Zone.** The land lying under a surface longitudinally centered on the extended runway center line and extending outward and upward from each end of the primary surface.

(Note: An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.)

(a) The inner edge of the Approach Surface is:

(i) Utility Runway and Non-precision Instrument Runway:  
500 feet wide for runways 18 and 36.

(ii) 500 feet wide for runways 12 and 30.

(b) The other edge of the approach zone is:

(i) Utility Runway with a Non-precision Instrument  
Approach: 2,000 feet for runways 18 and 36.

(ii) Non-precision Instrument Runway other than Utility:  
3,500 feet for runways 12 and 30.

(c) The approach zone extends for a horizontal distance of:

(i) All Utility and Visual Runways: 5,000 feet at a slope of  
twenty (20) to one (1) for runways 18 and 36.

(ii) Non-precision Instrument Runways other than Utility:  
10,000 feet at a slope of thirty-four (34) to one (1) for runways  
12 and 30.

No structure shall exceed the approach surface to any runway, as depicted on the Marshalltown Municipal Airport Height Zoning Map.

(d) No gathering of 50 or more people may take place within the first 1000' of the approach zone.

**(5) Transitional Zone.** The land lying under those surfaces extending outward and upward at right angles to the runway center line and the runway center line extended at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the Approach Surfaces.

No structure shall exceed the Transitional Surface as depicted on the Marshalltown Municipal Airport Height Zoning Map.

(6) No structure shall be erected in Marshall County that raises the published Minimum Descent Altitude or Decision Height for an instrument approach to any runway, nor shall any structure be erected that causes the Minimum Obstruction Clearance Altitude or Minimum Enroute Altitude to be increased on any Federal Airway in Marshall County. Any person or organization intending to sponsor any of the following construction or alterations must notify the Administrator of the FAA:

(a) Any construction or alteration exceeding 200 feet above ground level.

(b) Any construction or alteration within 20,000 feet of the airport which exceeds a 100: 1 surface from any point on the runway.

(c) When requested by the FAA.

Contact the Marshalltown Municipal Airport Manager for all FAA related rules, regulations, notices, applications or forms.

**SECTION 5. USE RESTRICTIONS.** Notwithstanding any other provision of Section 4, no use may be made of land or water within Marshall County in such a manner as to interfere with the operation of any airborne aircraft. The following special requirements shall apply to each permitted use:

**Subsection A.** All lights or illumination used in conjunction with street, parking, signs or use of land and structures shall be arranged and operated in such a manner that it is not misleading or dangerous to aircraft operating from Marshalltown Municipal Airport or in the vicinity thereof.

**Subsection B.** No operations from any use shall produce smoke, glare or other visual hazards within three (3) statute miles of any usable runway of Marshalltown Municipal Airport.

**Subsection C.** No operations from any use in Marshall County shall produce electronic interference with navigation signals or radio communication between the airport and aircraft.

## **SECTION 6. LIGHTING.**

**Subsection A.** Notwithstanding the provisions of Section 5, the owner of any structure over 200 feet above ground level must install, on the structure, lighting in accordance with Federal Aviation Administration (FAA), Advisory Circular 70-7460-1D and amendments. Additionally, any structure, constructed after the effective date of this Section and exceeding 949 feet above ground level, must install on that structure, high intensity white obstruction lights in accordance with Chapter 6 of FAA advisory Circular 7460-1D and amendments.

**Subsection B.** Any permit or variance granted may be so conditioned as to require the owner of the structure or growth in question to permit

Marshalltown, at the city's expense, to install, operate and maintain thereto such markers or lights as may be necessary to indicate to pilots the presence of an airspace hazard.

**SECTION 7. VARIANCES.** Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use his/her property in violation of this Article, may apply to the Board of Adjustment for variance from such regulations. No application for variance to the requirements of this Article may be considered by the Board of Adjustment unless a copy of the application has been submitted to the Marshalltown Municipal Airport Manager or Aeronautics Director for his/her opinion as to the aeronautical effects of such a variance. If the Marshalltown Municipal Airport Manager or Aeronautics Director does not respond to the Board of Adjustment within fifteen (15) days from receipt of the copy of the application, the Board may make its decision to grant or deny the variance. A variance under this Article shall carry a hearing fee of \$200.00.

# ARTICLE XV

## SIGN AND BILLBOARD REGULATIONS

**SECTION 1. STATEMENT OF INTENT.** The purpose of these regulations are: to encourage the effective use of signs and billboards, to protect and enhance the aesthetic environment; to create an environment that promotes economic development; and to protect and improve pedestrian and traffic safety.

**SECTION 2. APPLICABILITY.** A sign may be maintained, created, painted or erected in the county only in conformance with the standards, procedures, exemptions and other requirements of these regulations.

**Subsection A.** These regulations are specifically set forth to:

- (1) Establish a permit and record-keeping system and an enforcement tool.
- (2) To permit a variety of sign types in Commercial and Industrial Districts, and a limited amount and variety of signs in other Districts. These signs are subject to the proper permit procedures and standards set forth by these regulations.
- (3) Allow certain small identification signs on the particular lot without requiring a permit, but subject to the requirements of these regulations.
- (4) Prohibit any signs not in conformance with these regulations and provide enforcement of these regulations.

## SECTION 3. DEFINITIONS.

**Subsection A.** For the purpose of these regulations the following terms shall be defined as follows:

- (1) **Animated Sign.** Any sign that uses movement or change of lighting to depict action or create a special effect.
- (2) **Billboard.** Off-premises sign owned by an entity intent on selling advertising space on that sign.
- (3) **Building Sign.** Any sign supported by or attached to any building.
- (4) **Freestanding Sign.** Any sign that has a support structure that is independent from any building, placed in, or anchored on the ground.
- (5) **Identification Sign.** Any sign located in a District with only the name and/or address of the occupant on the sign.
- (6) **Marquee.** Any permanent roof-like structure projecting over an entrance containing changeable copy.
- (7) **Non-Conforming Sign.** Any sign or signs that do not conform with the stipulations put forth by these regulations.
- (8) **Off-Premises Sign.** Any sign which advertises services or products located on the premises at another site or delivers a message.
- (9) **On-Premises Sign.** Any sign which is located on the premises of the service or products advertised.
- (10) **Pennant Sign.** Any lightweight material suspended from a rope, wire or string and displayed in a series with or without a message, designed to move in the wind.



**(11) Portable Sign.** Any sign not permanently attached to a structure or the ground, or a sign designed to be transported by wheels. Also, signs painted on vehicles unless the vehicle is used for everyday business.

**(12) Projecting Signs.** Any sign affixed to a building or wall and exceeding six inches beyond the surface of the building or wall.

**(13) Residential Sign.** Any sign located in a District zoned for residential or agricultural uses that contains no commercial message except advertising for

services or products legally conducted or produced on the premises.

**(14) Sign.** Any device which uses illustrations, graphics, words or illumination to advertise, announce the purpose of, or identify a person or entity, or to communicate any type of information to the public.

**(15) Suspended Signs.** Any sign that is suspended from the underside of a horizontal surface and is supported by that surface.

**(16) Temporary Sign.** Any sign which is not permanently mounted and is used only temporarily.

**(17) Wall Sign.** Any sign attached parallel to, but within six inches of a wall that displays only with one sign face or is painted directly on the wall surface.

#### SECTION 4. SIGN DIMENSIONS AND CLEARANCE.

**Subsection A.** Computation of area of individual signs shall include the combination of the writing, emblem, illustrations or other display, together with any background material or color forming an integral part of the display, but not including the supporting framework. On a multi-faced sign the area is computed from only one face so long as the distance between the two sign faces does not exceed three (3) feet. The total combined area of all building signs shall not exceed twenty-five (25) percent of the wall area to which the signs are attached. (Refer to table XV-2)

**Subsection B.** Computation of height shall be measured from average ground level, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign, to the highest point of the sign or support structure, whichever is tallest. (Refer to table XV-2)

**Subsection C.** The following signs may be located in these Districts:

<i>Table XV-1</i>	<b>ZONING DISTRICT</b>								
<b>SIGN TYPE</b>	<b>A-1</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>C-1</b>	<b>C-2</b>	<b>U-1</b>	<b>F-P</b>	<b>AZ-1</b>
<b>FREESTANDING</b>									
Billboard	N	N	N	N	P	P	P	P	N
Portable	N	N	N	N	P	P	P	N	N
Residential	A	A	A	A	N	N	N	N	N
Temporary	N	N	N	N	P	N	P	N	N
Other	P	N	N	N	P	P	P	N	N
<b>BUILDING</b>									
Marquee	N	N	N	N	P	P	N	N	N
Identification	A	A	A	A	A	A	P	P	N

Projecting	N	N	N	N	P	P	N	N	N
Suspended	N	N	N	N	P	N	P	P	N
Wall	N	N	N	N	P	P	P	P	N

**A = Allowed Without Permit P = Allowed With Permit N = Not Allowed**

<b>Table XV-2</b>	<b>Number, Area, Clearance and Height Criteria</b>			
<b>SIGN TYPE</b>	<b>NUMBER</b>	<b>MAXIMUM AREA</b>	<b>MINIMUM CLEARANCE</b>	<b>MAXIMUM HEIGHT</b>
<b>FREESTANDING</b>				
Billboard	1/LOT	300 SQ. FT.	NA	35 FT.
Portable	1/LOT	20 SQ. FT.	NA	4.5 FT.
Residential	1/LOT	4 SQ. FT.	NA	NA
Temporary	1/LOT	3 SQ. FT.	NA	4.5 FT.
Other	1/LOT	16 SQ. FT.	NA	20 FT.
<b>BUILDING</b>				
Marquee	1/BUILDING	25 % OF TOTAL SURFACE OF BUILDING FACE WHICH ATTACHED TO	12 FT.	BELOW ROOF-LINE
Identification	1/BUILDING	2 SQ. FT.	NA	NA
Projecting	1/BUILDING	25 % OF TOTAL SURFACE OF BUILDING FACE WHICH ATTACHED TO	12 FT.	BELOW ROOF-LINE
Suspended	1/ENTRANCE	2 FT. BY 1 FT.	9 FT.	NA
Wall	1/BUILDING	25 % OF TOTAL SURFACE OF BUILDING FACE WHICH ATTACHED TO	NA	BELOW ROOF-LINE

## **SECTION 5. PERMIT REQUIREMENTS.**

**Subsection A.** Any sign that is to be erected, modified or placed on a lot or building that does not meet the criteria in Article XV, Section 6 of this Ordinance must obtain a permit. The owner of such sign shall secure a sign permit prior to the sign being erected, constructed, reconstructed, moved, enlarged, altered or illuminated. The sign permit application fee shall be \$200.00.

**Subsection B.** No sign shall be erected in the public right-of-way unless done so by a licensed government agency.

**Subsection C.** No permit of any kind shall be issued for an existing or proposed sign unless such sign is in conformity with these regulations and an approved signage plan if required.

## **SECTION 6. PERMIT EXCEPTIONS.**

**Subsection A.** No sign may be erected, constructed, reconstructed, moved, enlarged, altered or illuminated without obtaining a permit with the exception of :

(1) Works of art not containing a commercial message.

(2) Memorials and plaques in cemeteries.

- (3)** All signs designated in Table XV-1 as "Allowed without permit" (A).
- (4)** Holiday lights with no commercial message between November 15 and January 15.
- (5)** Signs located inside a building which cannot be read 3 feet from the outside edge of the lot.
- (6)** Temporary signs with political advertising not to exceed a total surface area of thirty-two (32) square feet. Signs may be erected not more than forty-five (45) days before the election and must be removed within seven (7) days following the election.
- (7)** Any sign erected by an official government agency.

**Subsection B.** For any lot or building which the owner proposes one or more signs to be erected that requires a permit the following plans drawn to scale must be submitted:

- (1)** Dimensions of the sign and, if applicable, the dimensions of the wall surface to which the sign will be attached.
- (2)** Dimensions of the sign support structure.
- (3)** The maximum and minimum height of the sign.
- (4)** Location of the sign in relation to the face of the building.
- (5)** Location of the sign in relation to the boundaries of the lot.
- (6)** Optional: Design guidelines including color scheme, lettering, lighting and material.

## **SECTION 7. MISCELLANEOUS RESTRICTIONS.**

**Subsection A.** No animated signs or ones that use movement to attract the attention of the public are permitted with the exception of time and temperature signs.

**Subsection B.** No sign that may be confused with an official traffic sign shall be erected.

**Subsection C.** Inflatable signs, tethered balloons, pennants and strings of lights not permanently attached to a rigid background are all prohibited.

**Subsection D.** Illuminated signs shall be shielded so that no direct light or significant glare shall be cast into a residential use or District. All lighting fixtures used to illuminate an outdoor sign shall be mounted on the sign structure to minimize light pollution. No flashing beacons are permitted. Illuminated signs are permitted in commercial and industrial Districts only.

**Subsection E.** Billboards shall be limited to one (1) structure per lot and must be a minimum of three hundred (300) feet from any other billboard sign, regardless which side of the road way the sign is located.

## **SECTION 8. MAINTENANCE.**

**Subsection A.** All signs shall be properly maintained in good structural condition at all times.

## **SECTION 9. NON-CONFORMING SIGNS.**

**Subsection A.** Signs that do not conform to these regulations shall not be altered or enlarged in any way to aggravate the conforming condition. Also, the sign can not be moved or replaced unless to bring the sign into conformity.

**Subsection B.** If the non-conforming sign is destroyed by natural causes and is replaced it must be within the stipulations of these regulations. The message of the non-conforming sign may be changed but it can not create any new non-conformities.

**SECTION 10. ENFORCEMENT.**

**Subsection A.** Any violation or attempted violation of these regulations may be restrained or corrected by an injunction or other proceedings in compliance with state law. Any violation of these regulations is a violation of the Zoning Ordinance of this County and the corrective measures shall include:

- (1)** Issuance of a stop-work order for all signs on the zoned lot, or an injunction for removal or correction of the non-conformity.
- (2)** Issuance of a County Infraction for the violation.

# ARTICLE XVI

## SITE PLAN REVIEW

### SECTION 1. STATEMENT OF INTENT.

**Subsection A.** The intent of these regulations are: to preserve the natural resources of the land as development and change for human use takes place; to encourage planned development that will protect the aesthetic and monetary value of the property; to control soil erosion, protect groundwater resources, and manage storm water; and to encourage quality development of the property.

### SECTION 2. APPLICABILITY.

**Subsection A.** A site plan review is required whenever a person, firm, corporation or other group wants to develop, re-develop, rezone or alter the use of land to R-3, C-1, C-2 and F-P Districts. The site plan shall be reviewed by the Zoning Administrator or his/her designee for conformance with these regulations with regard to gaining an appropriate permit. For plans requiring a Special Use Permit, the site plan will be reviewed by the Administrator after the Special Use Permit has been issued by the Board of Adjustment.

### SECTION 3. PROCEDURE.

**Subsection A.** The developer shall submit an application for a zoning/building permit and eight (8) copies of the site plan to the Zoning Administrator for review. The Zoning Administrator shall seek the review and comments of the County Engineer, Auditor, Assessor, Sanitarian, Executive Director of County Conservation and others from whom the administrator may request advice and comment.

**Subsection B.** All proposed developments shall conform to the land use policies of the Marshall County Development Plan, the Marshall County Subdivision and Platting Ordinance and such other County Ordinances as may pertain to such developments; and any applicable administrative rules of the Iowa Department of Transportation, Iowa Department of Health, Iowa Department of Natural Resources and other agencies of the State of Iowa. The site plan shall be reviewed as to its conformance with these regulations, compliance with other Ordinances of the County and the effect of the proposed development upon public utilities and the public road system.

**Subsection C.** The Zoning Administrator, after receiving all review and comment from the above named County offices, shall approve, approve subject to conditions or disapprove the site plan. The applicant shall be notified of the decision and of any deficiencies which need correction. Upon approval, the developer shall then be issued a building permit for the proposed development.

**Subsection D.** The developer may appeal the decision of the Zoning Administrator by submitting a letter of appeal to the Planning and Zoning Commission at the Zoning Administrator's office. Such appeal shall be made within thirty (30) days of the Zoning Administrator's decision and shall specify what relief is sought from the Planning and Zoning Commission. The Commission shall hear said appeal at the next possible regular meeting and shall act on the appeal at a regular meeting within sixty (60) days of appeal.

### SECTION 4. ENFORCEMENT.

**Subsection A.** A zoning/building permit shall only be issued after approval of the site plan. The site plan is valid for eighteen (18) months after the date of approval. After eighteen (18) months have elapsed the site plan is null and void if actual development has not commenced.

**Subsection B.** If the Zoning Administrator finds that any construction, proposed construction, or occupancy of a development does not conform with the approved site plan for that tract of land, all zoning permits shall be suspended. Also, all construction shall be stopped until the owner of the project or successors in interest, provide satisfactory proof that the approved site plan will be complied with. Anyone subject to hardship by any decision or action of the Zoning Administrator

under the stipulations of this Section may appeal such action or decision to the Board of Adjustment.

## **SECTION 5. AMENDMENT OR MODIFICATION OF THE SITE PLAN.**

**Subsection A.** If the owner or developer of an approved site plan decides that an amendment to the site plan is necessary, an amendment may be applied for. The Zoning Administrator may grant an amendment to a previously approved site plan if it is deemed that the amendment is in conformance with these regulations. The amendment shall be submitted in the same manner as the original application.

## **SECTION 6. SITE PLAN INFORMATIONAL REQUIREMENTS.**

**Subsection A.** The site plan shall include the following information:

- (1)** The developer's name, address and phone number.
- (2)** The owner's name, address and phone number.
- (3)** Legal description of the property.
- (4)** 911 address of the property (if assigned one).
- (5)** Zoning classification of the property.
- (6)** The land use and zoning of the adjacent properties.
- (7)** A site development plan drawn to scale of one (1) inch equals two hundred (200) feet or larger on standard paper, maximum size of thirty (30) inches by forty-two (42) inches, which will include the following:
  - (a)** North point, scale and date.
  - (b)** Lot dimensions, area and required set-backs.
  - (c)** Location and size of existing and proposed utilities and utility easements.
  - (d)** Existing and proposed road easements, access easements and right-of-ways on or adjacent to the property.
  - (e)** The dimensions and location of existing and proposed points of access to and from the site.
  - (f)** The location, type and depth of existing and proposed wells; the type and location of existing and proposed waste treatment systems.
  - (g)** The location, shape, dimensions and use of all existing and proposed buildings or structures.
  - (h)** The dimensions and location of parking lots, driveways and loading areas. The materials for paving or surfacing shall be identified. The direction of vehicular flow and proposed traffic control signs and markings shall be shown. The number of parking stalls required by the Ordinance and the number actually provided shall be indicated.
  - (i)** The location, type and approximate size of all existing and proposed plant materials to be used in the landscape of the proposed development.
  - (j)** The existing and proposed drainage patterns and method of, or area for, disposal of surface runoff waters, and storm sewer calculations supporting management designs. Methods of control for erosion and siltation on the site shall be identified.

**(k)** The location, height and type of all outside lighting.

**(l)** Any other information as determined by the Zoning Administrator.

## **SECTION 7. SITE PLAN STANDARDS.**

**Subsection A.** The Zoning Administrator shall not approve any site plan which does not conform to the general requirements of these regulations and the specific design standards as follows:

### **(1) Parking Lots.**

**(a)** Parking lots shall be surfaced in a manner approved by the County Engineer to provide a durable and dust-free surface.

**(b)** Planted areas should be edged by concrete, masonry or railroad tie curbs at least six (6) inches high for protection during snow removal and from other vehicular damage.

**(c)** All parking stalls shall be clearly marked. Appropriately placed signs and/or pavement markings shall be employed where necessary to guide internal circulation and traffic ingress and egress.

**(d)** Illumination devices shall be designed so all light is directed on the lot and not onto abutting properties, and shall be directed so as to avoid glare and confusion for moving vehicular traffic.

**(e)** All developments containing parking lots of more than five (5) stalls are encouraged to plant live trees within and on the perimeter of lots at the minimum ration of one (1) tree for every five (5) parking stalls or fraction thereof. The trees should be of a species which are hardy to the area.

**(f)** The expansion of any existing parking areas shall be in conformance with these regulations. If an existing parking area is to be reconstructed or rebuilt in any way, all provisions of these regulations shall apply. This includes the resurfacing of a parking area with a material that is not currently being used, but does not include resurfacing with a similar material as currently used.

**(g)** Driveways and parking stalls shall be at least four (4) feet from the property line of any adjacent property unless shared by two (2) adjoining lots. Ingress and egress driveways shall be separated by an island at least four (4) feet in width. Driveways shall be located at least fifty (50) feet from the intersection of two (2) streets or as far as practical.

### **(2) Landscaping.**

**(a)** Trees shall be placed to avoid interference with the construction, maintenance and operation of public and private utilities and services above or below ground.

**(b)** For multi-family residential development, twenty (20) percent of the lot area must be devoted to landscaping and be free from any impervious surface.

**(c)** Trees shall be planted no closer than four and a half (4.5) feet to a public sidewalk or the anticipated location of a future public sidewalk where one does not now exist, or to a road right-of-way.

### **(3) Site Preservation, Erosion and Drainage Control.**

**(a)** Natural physical characteristics on the site which are of some lasting benefit to the property and to the County shall be protected and conserved.

A serious and reasonable effort shall be made to protect these characteristics. The following are suggested physical features but the developer is not limited to these items:

- (i) Trees with trunks eight (8) inches or greater in diameter measured one (1) foot above the ground.
- (ii) Streams, springs, ponds or other bodies of water.
- (iii) Large scale natural areas of unique value.

(b) The developer shall incorporate measures in the site development to minimize erosion and siltation during construction:

- (i) Topsoil shall be stripped, stockpiled and re-spread over all areas disturbed during construction.
- (ii) All disturbed areas which are not to be paved or covered with buildings shall be sodded, seeded or planted as soon as practical.
- (iii) Erosion and siltation control measures may include sediment basins or traps, temporary diversions, berms, bench terraces or dikes to intercept and divert storm runoff.

(c) All storm water shall be directed into storm water collection facilities where available, or natural drainage features such as creeks, drainage swales or detention ponds. Drainage rates shall not increase the quantity of water or change the manner of discharge on the land of another.

#### **(4) Storage Areas.**

(a) On-site trash bins, receptacles, mechanical equipment and material and equipment storage yards shall be screened from view by a screening fence at least seventy-five (75) percent opaque or compact hedge of sufficient height and density to screen the view at maturity or within three (3) years, whichever is first.

### **SECTION 8. FEES.**

**Subsection A.** Before the site plan is considered by the Zoning Administrator the developer or his/her agent shall pay a fee of \$200 for a site plan of five (5) acres or less, and \$275 for a site plan on more than five (5) acres.



# ARTICLE XVII

## NON-CONFORMING USES

### SECTION 1. STATEMENT OF INTENT.

**Subsection A.** Within the various Districts established by this Ordinance or by amendments that may later be adopted, there exist structures, use of land, use of structures or use of land and structures in combination, which were lawful prior to the adoption of this Ordinance but which would be prohibited, regulated or restricted under the provision of this Ordinance. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that such non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same District.

**Subsection B.** To avoid undue hardship, nothing in this Article shall be deemed to require a change in the plans, construction or designated use of any building on which construction was lawfully begun prior to the effective date of adoption or amendment of this Article and upon which substantial improvements have been made.

**Subsection C.** Any use in existence at the time of adoption of this Article which was not an authorized "non-conforming use" under the previous Zoning Ordinance shall not be authorized to continue as a non-conforming use pursuant to this Article, or amendments thereto.

### SECTION 2. NON-CONFORMING STRUCTURES.

**Subsection A.** Where a structure exists at the effective date of the adoption or amendment of this Article which could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No such structure may be enlarged or altered in a way which increases its non-conformity.

(2) Should such structures be destroyed by any means to any extent of sixty (60) percent or more of its replacement costs at the time of destruction, exclusive of the foundation, it shall not be reconstructed except in conformity with the provisions of this Ordinance. If the structure is less than sixty (60) percent destroyed above the foundation, it may be reconstructed provided this is done within six (6) months of such destruction.

### SECTION 3. NON-CONFORMING USE OF LAND.

**Subsection A.** The lawful use of land upon which no building or structure is erected or constructed, which becomes non-conforming under the terms of this Ordinance as adopted or amended, may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.

(2) No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel which was not occupied by such use at the effective date of adoption or amendment of this Ordinance.

(3) If any such non-conforming use of land ceases for any reason for a period of more than one (1) year, any subsequent use of such land shall conform to the District regulation for the District in which such land is located.

## **SECTION 4. NON-CONFORMING USE OF STRUCTURES.**

**Subsection A.** If a lawful use of a structure, or of a structure and land in combination, exists at the effective date of the adoption or amendment of this Ordinance, that would not be allowed in the District under the terms of this Ordinance, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1)** No existing structure devoted entirely or in part to a use not permitted by this Ordinance in the District in which it is located shall be enlarged, extended, reconstructed, moved or structurally altered except when required by law, unless the use is changed to a use permitted in the District in which such structure is located.
- (2)** Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance. No such use shall be extended to occupy any land outside such building.
- (3)** If no structural alterations are made, a non-conforming use of a structure may be changed to another non-conforming use of a similar nature within the same or a more restrictive zoning classification. Whenever a non-conforming use has been changed to a more restrictive zoning use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.
- (4)** No non-conforming use of a structure, land or structure and land in combination which remains idle or unused for a continuous period of one (1) year, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the District in which such building or land is located.
- (5)** The casual, intermittent, temporary or illegal use of structure, land or structure and land in combination shall not be sufficient to establish the existence of a non-conforming use and the existence of a non-conforming use on the part of a lot or tract shall not be construed to establish a non-conforming use on the entire lot or tract.
- (6)** Any structure devoted to a use made non-conforming by this Ordinance that is destroyed by any means to an extent of sixty (60) percent or more of its replacement cost at the time of destruction, exclusive of the foundation, shall only be reconstructed and used in conformance with the regulations of the District in which such building and land is located. If the structure is less than sixty (60) percent destroyed above the foundation, it may be reconstructed and used as before provided this is done within six (6) months of such destruction.

## **SECTION 5. REPAIRS AND MAINTENANCE.**

**Subsection A.** All non-conforming structures may be repaired for normal maintenance. Nothing in this Article shall be deemed to prevent the strengthening or restoring to a safe condition any building declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

## **SECTION 6. ZONING COMPLIANCE.**

**Subsection A.** A Certificate of Zoning Compliance shall be required of all non-conforming uses when discovered. Application for a certificate for non-conforming uses shall be filed with the Zoning Administrator accompanied by affidavits of proof that such non-conforming use was legally established prior to the effective date of the adoption or amendment of this Ordinance.

# ARTICLE XVIII

## SPECIAL USES

### SECTION 1. STATEMENT OF INTENT.

**Subsection A.** Many land use activities, while not inherently inconsistent with other permitted uses in a particular zoning District, may have significant impacts on the surrounding area. Special Use Permits for such uses allow special conditions to be "attached" to the development to address those impacts. The Special Use Permit process provides for flexibility in identifying the special conditions without making the Ordinance unreasonably complicated. The objective of the Special Use Permit process is to encourage compatibility of the proposed development with the environment, and with existing and future land uses in the area.

#### **(1) Issuance of a Special Use Permit.**

- a. A Special Use Permit may be issued only after review and approval of the submitted application, including any plans, by the Board of Adjustment. An application and plan shall only be approved upon a determination that the development, if completed as proposed, will comply with the provisions of this Article.
- b. A Special Use Permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, and shall incorporate by reference the approved application and plan. The permit shall contain any special conditions or requirements lawfully imposed by the Board of Adjustment. The Zoning Administrator shall cause the permit to be recorded by the applicant, or their agent, with the County Recorder and shall have a copy of the recorded permit on file in the Zoning Office.
- c. All development shall occur strictly in accordance with such approved application and plan.

#### **(2) Application for Special Use Permits.**

- a. The applicant for a Special Use Permit must be a person with the legal authority to take action in accordance with the permit. In general, this means that applications should be made by the owners or lessees of the subject property or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits, or their agents. Any application submitted for consideration by the Board of Adjustment must be signed by the title holder or it can not be accepted.
- b. The application must be submitted on an approved form and must be complete. An application shall be complete when it contains all of the information that is necessary for the Board of Adjustment to decide whether the development, if completed as proposed, will comply with all of the requirements of this Article. Unless the Board informs the applicant at the hearing in what way the application is incomplete, the application shall be presumed to be complete. If incomplete, the Board shall offer the applicant the opportunity to complete the application at a continuation hearing.
- c. To minimize planning costs to the developer, avoid misunderstandings or misinterpretations, and to ensure compliance with the requirements of this Article, a pre-application conference between the developer and the planning staff is encouraged.
- d. Upon receiving an application requesting approval of a Special Use Permit, notice of hearing by the Board of Adjustment shall be given to all property owners within seven hundred fifty (750) feet of the boundary of the property on which the special use is to be located by placing a notice in the United States

mail at least ten (10) days prior to the hearing. Notice shall contain the time and location of said hearing.

### **(3) Standards for Approval.**

- a. The Board shall review the proposed development for conformance to the following development criteria:
  - i. **Compatibility.** The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the Zoning District and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable District regulations. The proposed development shall not be unsightly, obnoxious or offensive in appearance to abutting or nearby properties.
  - ii. **Transition.** The development shall provide for a suitable transition, and if necessary, buffer between the proposed buildings or use and surrounding properties.
  - iii. **Traffic.** The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control and emergency access.
  - iv. **Parking and Loading.** The development shall provide all off-street parking and loading areas as required by this Ordinance, and adequate service entrances and areas. Appropriated screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes or other detrimental impacts.
  - v. **Signs and Lighting.** Permitted signage shall be in accordance with the applicable District regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided, shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity.
  - vi. **Environmental Protection.** The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.
- b. If the Board concludes that all development criteria will be met by the development, it shall approve the application and plans unless it concludes, based on the information submitted at the hearing, that if completed as proposed there is a strong probability the development will:
  - i. Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property, or
  - ii. Impair an adequate supply (including quality) of light and air to surrounding property, or
  - iii. Unduly increase congestion in the roads, or hazard from fire, flood or similar dangers, or
  - iv. Diminish or impair established property values on adjoining or surrounding property, or
  - v. Not be in accord with the intent, purpose and spirit of the Zoning Ordinance or Land Use Policies.

### **(3.10) Supplemental Standards for Conditional Uses**

**(3.11) Communication Towers and Facilities.** Communication towers/facilities existing and/or approved prior to the date of adoption of these standards may continue to be used, however, proposed modifications must be reviewed by the Administrator, and, depending on the nature of the proposed modifications, may be subject to review and approval by the Board of Adjustment.

- A. **Co-Location.** Prior to applying for a Special Use Permit for construction of a new tower/facility, the applicant shall exhaust all alternatives for co-location on

existing towers/facilities. As such, the applicant shall submit evidence demonstrating the following:

1. The planned equipment would exceed the structural capacity of the existing or approved antenna support structure, as documented by a qualified professional engineer licensed in the State of Iowa, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified engineer and the interference cannot be prevented at a reasonable cost.
3. Existing or approved antenna support structures cannot accommodate the planned equipment at the necessary height as documented by a professional engineer licensed in the State of Iowa.
4. Fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower/facility development are presumed to be unreasonable.
5. Frequency coverage maps demonstrate increased coverage due to the lack of any other nearby structure.
6. No new tower/facility shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Adjustment that no existing tower, structure, or alternative technology can accommodate the applicant's needs. Furthermore, no new tower/facility shall be approved that is not in compliance with all standards for approval set forth in Article XVIII, Section 1, Subsection A, (3) and those contained herein.

**B. Separation.** The following separation requirements shall apply to all proposed communication towers and facilities.

1. Separation from residential zoning districts or existing residential properties. Proposed towers/facilities shall be separated from neighboring properties either zoned or utilized for residential purposes as established herein. The minimum separation distance shall be measured from the center of the foundation of the proposed tower/facility to the nearest portion of a property line of a neighboring tax parcel used or zoned for residential purposes. For the purposes of this section, a property shall be considered to be used for a residential purpose, regardless of assessment type, if a dwelling or mobile home exists on the property. A property shall be considered to be zoned for residential purposes if it lies within a Residential (R-1), Residential (R-2), or Residential (R3) zoning district.
  - a. For towers/facilities of self-supporting monopole or lattice-type construction, the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater.
  - b. For guyed towers/facilities the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater, plus one hundred (100%) percent of the length of the longest supporting guy wire.

**C. Height.** The applicant must demonstrate the proposed height of the tower/facility is the minimum necessary to accommodate the proposal's requirements, as documented by a qualified engineer.

**D. Required Setbacks.** The center foundation of all towers/facilities are required to be setback in accordance with the following:

1. From any public right-of-way, the following apply:
  - a. for towers of monopole and lattice-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower or two hundred (200) feet, whichever is greater; and for towers of guyed-type construction, a distance equal to one hundred fifty

- (150%) percent the height of the tower plus the length of guyed wire or two hundred (200) feet, whichever is greater.
- b. from any adjoining property zoned for, or existing in residential use, the distance of three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower/facility for towers of lattice or monopole construction type; and three hundred (300) or one hundred fifty (150%) percent of the height of the tower/facility plus one hundred (100%) percent of the length of the longest supporting guy wire for towers of guyed type construction as measured the center foundation of the tower/facility to the nearest property line.
- c. from other property lines, a distance equal to at least fifty (50%) percent of the height of the tower/facility.
- d. Guys and accessory buildings must satisfy the minimum zoning district setback requirements for accessory buildings within the lease area.

**E. Fencing and Screening.**

- 1. **Security Fencing.** Towers/facilities shall be enclosed by fencing not less than six (6) feet in height and shall be equipped with appropriate anti-climbing devices.
- 2. **Screening.** The lowest six (6) feet of the tower/facility shall be visually screened by trees, large shrubs, solid walls, buildings, solid fencing, and/or any combination thereof, from all public right-of-ways and adjoining zoned, planned, and/or existing residential land uses.

**F. Aesthetics.** Towers/facilities shall meet the following general requirements.

- 1. **Color.** Towers/facilities shall maintain a galvanized steel finish. If required to be painted by the FAA, such required colored schemes must be submitted to the Board of Adjustment. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.
- 2. **Lighting.** Towers/facilities, including antennas, shall not be artificially lighted unless required by the FAA or applicable authority. Unless required as the only option by the FAA, strobe lighting is not permitted. If lighting is required, lighting alternatives and design chosen must cause the least disturbance to the surrounding views. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.
- 3. **Signs.** No signs shall be allowed on any tower/facility, other than safety or warning signs. If any signage is required consistent with this standard, such signage must comply with the requirements of Article XV.

**G. General requirements.**

- 1. The proposed tower/facility must comply with all other applicable local, state or federal regulations.
- 2. The proposed tower/facility will not unreasonably interfere with the view from any publicly-owned or managed areas. A Tower Site Evaluation Form will be completed for the property, and, if, at the determination of the Marshall County Conservation Board, view sheds are impacted to an unnecessary level as a result of a tower/facility, the Board of Adjustment will strongly consider such opinion in review and action on the application.

**H. Removal of Abandoned Towers/Facilities.** The owner of the tower/facility, with written authorization from the property owner, shall file annually a declaration with the Marshall County Planning and Zoning Department as to the continuing operation of every tower/facility installed subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and may be considered abandoned subject to the provisions for removal. The owner of the tower/facility and property owner will be notified that the property is considered to be in a state of abandonment, and such person(s) shall remove the tower/facility, foundational supports, and associated appurtenances within ninety (90) days of receipt of notice from

Marshall County at the owner's expense. Adequate removal shall include the restoration of the site to a state in keeping with the character of the surrounding landscape and the elimination of all ground-level paving. Failure to remove such an abandoned tower/facility within said ninety (90) days shall be grounds to issue a Notice of Violation in accordance with the requirements of this Ordinance and undertake enforcement action upon the tower/facility owner and property owner.

1. Any person, firm or corporation not in compliance with these regulations may be deemed guilty of a County infraction.

**I. Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for towers/facilities must submit the following information (as applicable). All plans shall be drawn at a scale of one (1) inch equals fifty (50) feet.

1. A scaled site plan clearly indicating the location, type and height of the proposed tower/facility, existing land uses, adjacent land uses and zoning classification for all properties within five hundred (500) feet.
2. Legal description of the parent parcel and leased parcel (if applicable).
3. The separation distance between the proposed tower/facility and nearest residentially zoned district and/or existing residential property.
4. The separation distance from other existing and approved towers. The applicant shall also identify the type of construction of the existing tower(s) and owner/operators of such facilities.
5. A landscape plan showing specific landscape materials, existing and those proposed, identifying type and size of materials.
6. Written statements from other applicable jurisdictions such as the FAA regarding coloring and potential lighting requirements. In addition, a copy of the FAA's response to the submitted "Notice of Proposed Construction or Alteration" must be submitted.
7. A statement by the applicant as to whether construction of the tower/facility will accommodate co-location of additional antennas for future users and documentation regarding the standards for co-location established in this Ordinance.
8. Identification of all other tower/facility sites owned and/or operated by the applicant within Marshall County.
9. Elevations showing all facades, indicating exterior materials and color of the tower/facility on the proposed site.
10. Copy of the signed lease agreement with the property owner.
11. Submittal of search rings established for the proposed communication tower and affidavit that the applicant made diligent, but unsuccessful efforts for permission to install or collocate the applicant's wireless communications facilities on all existing towers or other antenna support structures located within an area equal to one hundred percent (100%) of the search ring for the proposed site of the wireless communications facility.

**J. Issuance of Zoning Permits.** If approved by the Board of Adjustment, an Application for Zoning/Building Permit and required submittal materials may be submitted for review and approval to the Planning and Zoning Office at such time that the thirty-day (30) appeal period for all Board of Adjustment decisions has expired. All applications will be reviewed for completeness and conformance to zoning requirements. Preliminary Zoning/Building Permits will be issued in accordance with the provisions of this Ordinance.

**(3.12) Commercial C-WECS (C-WECS).** The requirements of this Ordinance shall apply to all C-WECS proposed after the effective date of this Ordinance. C-WECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing C-WECS, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing C-WECS shall be allowed without full compliance with this Ordinance.

**A. General Requirements for C-WECS**

1. **Color and Finish.** Wind Turbines shall be painted a non-reflective color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective. At C-WECS sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the C-WECS to the natural setting and existing environment.
2. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
3. **Tower configuration.** All wind turbines, which are part of a commercial WECS, shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed.
4. **Lighting.** C-WECS sites shall not be artificially lighted, except to the extent required by the FAA or other applicable authority. 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.
5. **Signage.** All signage on site shall comply with Article XV, of the Marshall County Zoning Ordinance. The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical generator, of the WECS. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the C-WECS sites.
6. **Feeder Lines.** All communications and feeder lines, equal to or less than 34.5kV in capacity, installed as part of a WECS shall be buried.
7. **Waste Disposal.** Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site and disposed of in accordance with all applicable local, state and federal regulations.
8. **Minimum Ground Clearance.** The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.
9. **Signal Interference.** The applicant shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any C-WECS.
10. **Federal Aviation Administration.** All WECS shall comply with FAA standards and permits.
11. **Electrical Codes and Standards.** All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
12. **Setbacks.** The following setbacks and separation requirements shall apply to all wind turbines.
  - a. **Inhabited Structures.** Each wind turbine shall be set back from the nearest residence, school, hospital, church or public library, a distance no less than the greater of (a) two (2) times its total height or (b) one thousand (1,000) feet.
  - b. **Property Lines.** At no time shall any part of the turbine overhang an adjoining property without securing appropriate easements from adjoining property owners.
  - c. **Public Roads.** Setbacks from public road right-of-way, railroad right-of-way, powerlines and structures or any easement thereto shall be a minimum of 1.1 times the height of the tower and rotor.
  - d. **Communication and Electrical Lines.** Each wind turbine shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than 1.1 times its total height, determined from the existing power line or telephone line.



13. **Noise.** Audible noise due to C-WECS sites operations shall not exceed sixty (60) dBA for any period of time, when measured at any residence, school, hospital, church or public library existing on the date of approval of any special use permit from the property line.
- a. In the event audible noise due to C-WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 13 of this subsection shall be reduced by five (5) dBA.
  - b. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
  - c. In the event the noise levels resulting from the C-WECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment provided that the following has been accomplished:
    - i. Written consent from the affected property owners has been obtained stating that they are aware of the C-WECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
    - ii. If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Marshall County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.
14. **Aesthetic Impacts**
- a. The proposed C-WECS will not unreasonably interfere with the view from any publicly-owned or managed areas. A Tower Site Evaluation Form will be completed for the property, and, if, at the determination of the Marshall County Conservation Board, view sheds are impacted to an unnecessary level as a result of a C-WECS, the Board of Adjustment will strongly consider such opinion in review and action on the application.
15. **Safety.**
- a. All wiring between Wind Turbines and the C-WECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of landowners for this line, such option may be approved as a condition of the special use permit by the Board of Adjustment.
  - b. Wind Turbine towers shall not be climbable up to 15 feet above ground level.
  - c. All access doors to Wind Turbine towers and electrical equipment shall be locked when not being serviced.
  - d. Appropriate warning signage shall be placed on Wind Turbine towers, electrical equipment, and C-WECS entrances.

- e. For all WECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
  - f. 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.
16. **Discontinuation and De-commissioning.** A WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Director outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to four (4) feet below ground level within one hundred eighty (180) days of the discontinuation of use. Each Commercial WECS shall have a De-commissioning 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 professional engineer licensed in the State of Iowa. 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 County reserves the right to verify that adequate decommissioning terms are contained in the landowner easement.
17. **Avoidance and Mitigation of Damages to Public Infrastructure.**
- a. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted road authority(ies) prior to construction.
  - b. Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.
  - c. **Drainage System.** The Applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.
  - d. The applicant shall be responsible for restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the road(s) and bridges to preconstruction conditions. Financial security in a manner approved by the Marshall County Attorney's Office shall be submitted covering 130% the costs of all required improvements. This requirement may be waived by the Board of Adjustment by recommendation from the Marshall County Engineer.
18. **Submittal Requirements.** In addition to the submittal requirements defined for Special Use Permit applications, all applications for Commercial WECS must submit the following information (as applicable).
- a. The names of project applicant
  - b. The name of the project owner
  - c. The legal description and address of the project.
  - d. 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.
  - e. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the

- electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.
- f. Engineer's certification(s) as required in these supplemental standards.
- g. Documentation of land ownership or legal control of the property
- h. The latitude and longitude of individual wind turbines.
- i. 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.
- j. Location of wetlands, scenic, and natural areas [including bluffs] within 1,320 feet of the proposed WECS.
- k. An Acoustical analysis
- l. FAA Permit Application
- m. Location of all known communications towers/facilities within 2 miles of the proposed WECS.
- n. Decommissioning Plan
- o. Description of potential impacts on nearby WECS and wind resources on adjacent properties.
- p. Identification of significant migratory patterns and nesting areas for birds in the vicinity.

#### **(4) Burden of Persuasion.**

- a. The burden of persuasion as to whether the development, if completed as proposed, will comply with the requirements of this Article is at all times on the applicant.
- b. The burden of presenting evidence to the Board sufficient enough for it to conclude that the application does not comply with the requirements of this Article is upon the person or persons recommending such a conclusion, unless the information provided by the applicant warrants such a conclusion.

#### **(5) Recommendations on Applications.**

- a. Before being presented to the Board of Adjustment, an application for a Special Use Permit shall be referred to the Zoning Administrator for a recommendation. The Zoning Administrator, or the Zoning Department staff, shall prepare a report setting forth findings concerning the application's conformance to this Article, and any recommendations for requirements or conditions to be imposed on the proposed development by the Board of Adjustment.
- b. The Zoning Department's report shall be submitted along with the application and any other pertinent data to the Board of Adjustment prior to the hearing date for their review.

#### **(6) Board of Adjustment Action on Applications.**

- a. In considering whether to approve an application for a Special Use Permit, the Board shall proceed according to the following format:
  - i. The Board shall establish a finding of facts based upon information contained in the application, the staff report and any information obtained at the public hearing.
  - ii. The Board shall consider such reasonable requirements or conditions to the permit as will ensure the development will satisfy the requirements of this Article. A vote may be taken on such conditions before consideration of whether the permit should be approved or denied for any of the reasons set forth in **Subsection A., (6) (a) (iii)** or **Subsection A., (6) (a) (iv)** of this Article.
  - iii. The Board shall consider whether the application complies with all of the applicable development criteria set forth in **Subsection A., (3) (a)**. Separate votes may be taken with respect to each criterion. If the Board

concludes that the application fails to meet one or more of the criteria, the application shall be denied.

- iv. If the Board concludes that such criteria have been met, the application shall be approved unless it adopts a motion that the application fails to meet any of the approval standards set forth in **Subsection A., (3) (b)**. Separate votes may be taken with respect to each standard.
- b. Any such motion regarding compliance or non-compliance of the application to the development criteria or approval standards shall specify the supporting reasons for the motion. It shall be presumed the application complies with all criteria and standards not specifically found to be unsatisfied.
- c. Without limiting the foregoing, the Board may attach to the permit a condition limiting the duration of the permit.
- d. All conditions and requirements shall be entered on the permit.

#### **(7) Expiration of Special Use Permits.**

- a. A Special Use Permit shall expire automatically if 1) within five years after issuance, substantial action has not been taken to accomplish the purpose of the permit, or 2) after substantial action has been taken and subsequently such work is discontinued for a period of one (1) year, the permit shall immediately expire, or 3) if the special use has been established and subsequently is discontinued for a period of one (1) year, the permit shall immediately expire.
- b. The Board may extend for a period up to one (1) year the date when a permit would otherwise expire pursuant to **(7) (a)** if it concludes that 1) the permit has not expired, or 2) the permit recipient has proceeded in good faith and with due diligence, or 3) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to one (1) year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for the original permit.
- c. For purposes of this Article, the Special Use Permit is issued when the Board votes to approve the application and plans. Substantial action shall include commencement of construction, erection, alteration, demolition or similar work required for the development authorized by the permit. With respect to phased development, this shall apply only to the first phase.

#### **(8) Effect of Permit on Successors and Assigns.**

- a. A Special Use Permit authorizes the permit holder the use of the land or structures in a particular way and subject to certain conditions. As such, it is transferable. However, no person, (including successors or assigns of the original permit holder) may make use of the land or structures covered under such permit except in accordance with all terms and requirements of the permit, so long as the permit remains in effect.

#### **(9) Amendments and Modifications.**

- a. Insignificant modifications to the approved permit are permissible upon authorization by the Administrator. A modification is insignificant if it has no discernible impact on neighboring properties, the general public or those intended to occupy the proposed development.
- b. Minor modifications to the approved permit are permissible with the approval of the Board of Adjustment. Such permission may be obtained without a formal application, public hearing or payment of fees. A modification is minor if it has no substantial impact on neighboring properties, the general public or those intended to use or occupy the proposed development.
- c. All other requests for modifications to the approved permit will be processed as new applications. New conditions may be imposed by the Board of Adjustment, but the applicant retains the right to reject such new conditions by withdrawing the request for modifications and proceeding under the terms and conditions of the original permit.

- d. The permit holder requesting approval of modifications shall submit a written request (including plans as necessary) for such approval to the Administrator, and the request shall specifically identify the modifications. The Administrator shall determine whether the proposed modification falls within the categories set forth above in parts (a), (b), and (c).
  - i. Approval of all modifications must be given in writing.

**(10) Violations.**

- a. Violations of any terms of the Special Use Permit shall be deemed a violation of this Ordinance and punishable under Article XXI of this Ordinance. In addition, Special Use Permits, in connection with which a violation occurs, shall be subject to revocation by the Board of Adjustment after holding a public hearing on the alleged violation.
- b. Violations of any conditions and safeguards, when made a part of the terms of a Special Use Permit granted under this Article, shall be deemed a violation of this Ordinance and shall be subject to the same procedures outlined in **(10) (a)**.
- c. A violation shall be deemed to have occurred when the permit holder fails to comply with any of the terms, conditions or safeguards of the permit, or allows the terms, conditions or safeguards of the permit to be violated.

**(11) Fees.**

- a. There shall be a fee of \$200.00 for a Special Use Permit.

# ARTICLE XIX

## BUILDING PERMITS

### SECTION 1. STATEMENT OF INTENT.

It shall be unlawful to do any excavating, erecting, constructing, reconstructing, enlarging, altering or moving of any building or structure until a Building Permit shall have been issued by the Zoning Administrator. It shall also be unlawful to change the use or occupancy of any building, structure or land from one classification to another, or to change a non-conforming use without the issuance of a Building Permit.

### SECTION 2. APPLICATION FOR A BUILDING PERMIT.

**Subsection A.** Written application on approved forms (which may be obtained at the Marshall County Planning and Zoning Office) shall be filed with the Zoning Administrator and shall be accompanied by the following:

(1) Plans (in duplicate) of the proposed building or structure, drawn to scale, showing the following:

- (a) The actual shape and dimension of the lot to be built upon or to be changed in its use, in whole or in part.
- (b) The exact location, size and height of any building or structure to be erected or altered.
- (c) The existing and intended use of each building or structure or part thereof.
- (d) Such other information as may be necessary to determine and provide for the enforcement of this Ordinance.

**Subsection B.** One (1) copy of such plans shall be returned to the owner when such plans shall have been approved by the Zoning Administrator together with such building permit as may be granted.

**Subsection C.** All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on actual survey or recorded plat. The lot and the location of the building thereon shall be staked out on the ground prior to the commencement of construction.

**Subsection D.** The applicant shall complete the application form and submit it with the above-mentioned materials and the required fee to the Planning and Zoning Office.

**Subsection E.** The application shall be reviewed for conformance with all zoning requirements, flood plain regulations and platting requirements. No permit will be issued unless the applicant is the owner or contract buyer of record or is acting as the agent representing the property owner as authorized in writing.

**Subsection F.** No structure 120 sq. ft. or less in area shall be required to obtain a building permit.

### SECTION 3. PERMIT FEES

**Subsection A.** There shall be a fee for a Building Permit as follows:

For values of \$0-\$10,000 a fee of 3% of the value. For values of \$10,001 and up a fee of \$300 plus 0.2% of the total value.

### SECTION 4. BUILDING PERMIT EXPIRATION.

**Subsection A.** Building permits issued in accordance with the provisions of this Article shall be null and void at the end of six (6) months from the date of issuance if the construction, alteration or change of

use has not commenced during the six (6) months period. Proposed construction or alteration must be completed within one (1) year from the date the permit is issued.

# ARTICLE XX

## PLANNING AND ZONING ADMINISTRATOR

### SECTION 1. ENFORCEMENT BY ZONING ADMINISTRATOR.

**Subsection A.** The position of Planning and Zoning Administrator shall be appointed by the Marshall County Board of Supervisors. It shall be the duty of the Planning and Zoning Administrator, or his/her designee, to enforce this Ordinance with its provisions. All departments, officials and public employees of Marshall County who are vested with the duty or authority to issue permits shall ensure conformance to the provisions of this Ordinance and shall issue no permit for any use, building or purpose if the same would be in conflict with the provisions of this Ordinance.

**Subsection B.** The Planning and Zoning Administrator shall have the following powers and duties in connection with the enforcement of the provisions of this Ordinance:

- (1)** Issue all permits and certificates required by this Ordinance.
- (2)** Upon a finding that any of the provisions of this Ordinance are being violated, shall notify in writing, through the use of a Notice of Violation Letter, the person responsible for such violations, indicating the nature of the violation and the action necessary to correct it. The Administrator or his designee shall order the discontinuance of the illegal use of land, buildings or structures; the removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; the discontinuance of any illegal work being done (through the use of a "Stop Work Order"); or shall take any other action authorized by this Ordinance and the Board of Supervisors to ensure compliance with or to prevent violation of its provisions.
- (3)** Keep a record of all permits, appeals, variances, special use permits, text amendments to the Ordinance, rezoning requests and such other transactions and correspondence pertaining to the administration of this Ordinance.



# ARTICLE XXI

## VIOLATIONS AND PENALTIES

### SECTION 1. STATEMENT OF INTENT.

**Subsection A.** It shall be unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any building or land in violation of any regulation in, or any provision of this Ordinance or any amendment or supplement thereto adopted by the Board of Supervisors of Marshall County. Any person, firm or corporation violating any regulation in, or any provision of this Ordinance or of any amendment or supplement thereto, shall be deemed to have committed a County Infraction. A County Infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty (\$750) for each violation, or if the infraction is a repeat offense a civil penalty not to exceed one thousand (\$1,000) for each repeat offense. Each day each violation continues after the compliance date established on the citation may be deemed a separate County Infraction. A County Infraction is not punishable by imprisonment.

**Subsection B.** When judgment has been entered against a defendant for a County Infraction, the court may impose any of the remedies provided for in the current Iowa Code, Chapter 331.307 (6-9) or may grant appropriate relief to abate or halt the violation, or both, and the court may direct that payment of the civil penalty be suspended or deferred under conditions established by the court. If a defendant willfully fails to pay the civil penalty or violates the terms of any other order imposed by the court, the failure is contempt.

Seeking a civil penalty as authorized under this Section, does not preclude the County from seeking alternative relief from the court in the same action.

### SECTION 2. NOTICE OF COUNTY INFRACTION.

**Subsection A.** The Planning and Zoning Administrator or other officer authorized by the County to enforce a County Code or regulation may issue a civil citation to a person who commits a County Infraction. Issuance of such a citation shall be in conformance with the procedures outlined in Chapter 331.307 (1-4), Code of Iowa, 1995.

### SECTION 3. COURT PROCEDURE.

**Subsection A.** Proceedings before the court for a County Infraction shall be in conformance with Chapter 331.307 (5-11), Code of Iowa, 1995.

### SECTION 4. IMMUNITY.

**Subsection A.** The issuance of a civil citation for a County Infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment or prosecution.

# ARTICLE XXII

## BOARD OF ADJUSTMENT

### SECTION 1. APPOINTMENTS AND TERMS.

**Subsection A.** A Board of Adjustment is hereby created. Such Board shall consist of five (5) members appointed by the Board of Supervisors. The five members of the first Board of Adjustment shall serve terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Thereafter, terms shall be for five years and vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The Board of Supervisors shall have power to remove any member of the Board of Adjustment for cause upon written charges and after public hearing.

### SECTION 2. MEETINGS.

**Subsection A.** The Board of Adjustment shall organize and adopt rules in accordance with provisions of this Ordinance and the Code of Iowa. All meetings of the Board of Adjustment shall be held at the call of the Chairman and at such time and place within the County as the Board of Adjustment may determine. Such Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, and shall keep complete records of its votes, hearings and other official actions. Every rule, regulation, amendment or repeal thereof, and every order, requirement or decision of the Board of Adjustment shall be a public record. The presence of three (3) members shall be necessary to constitute a quorum.

### SECTION 3. APPLICATIONS, APPEALS, HEARINGS AND STAY OF PROCEEDINGS.

**Subsection A. Applications.** An application in cases in which the Board of Adjustment has original jurisdiction under the provisions of this Ordinance may be taken by any property owner including a tenant, or by a governmental officer, department, board or bureau. Such application shall be filed with the Planning and Zoning Administrator who shall transmit same to the Board of Adjustment. Upon approval of a variance the Zoning Administrator shall cause the permit to be recorded by the applicant, or their agent, with the County Recorder and shall have a copy of the recorded permit on file in the Zoning Office. Failure to record the variance within thirty days of the hearing at which it was approved shall cause the variance to expire and it shall be deemed invalid.

**Subsection B. Appeals.** An appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer of the County affected by any decision of the Planning and Zoning Administrator. Such appeal shall be taken within twenty (20) days after the decision by filing with the Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Administrator shall forthwith submit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

**Subsection C. Hearings.** The Board of Adjustment shall fix a reasonable time for the hearing of the appeal or application for variance, give ten (10) days notice by letter to all owners within seven hundred fifty (750) feet in all directions from the property for which the appeal or variation is being sought, and publication at least once, not less than four nor more than 20 days before the date of the hearing in one or more newspapers which meet the requirements of Section 618.14, and decide the same within a reasonable time after it is submitted.

(1) At the hearing, any party may appear in person or by attorney. Any taxpayer, or any officer, department, board or bureau of Marshall County, or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, alleging that such decision is illegal, in whole or in part, specifying the ground of illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Administrator.

**Subsection D. Stay of Proceedings.** An appeal to the Board of Adjustment stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

#### **SECTION 4. JURISDICTION AND POWERS OF THE BOARD OF ADJUSTMENT.**

**Subsection A.** The Board of Adjustment shall have the following powers and it shall be its duty:

- (1)** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Ordinance or of any supplement or amendment thereof.
- (2)** To hear and decide special exception to the terms of this Ordinance upon which such Board of Adjustment is required to pass under this Ordinance.
- (3)** To authorize, upon appeal, in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.
- (4)** To vary the application of the set-back, side yard and rear yard regulations in specific cases where this Ordinance would impose practical difficulties or unnecessary hardship.
- (5)** To authorize Special Uses as set forth in Article XVIII of this Ordinance.
- (6)** Any variance, or appeal hearing requires filing for said action on the appropriate application forms and submitting those forms and other materials as requested by the Zoning Administrator or by the members of the Board along with a \$200.00 hearing fee..

**Subsection B.** No variation in the application of the provisions of this Ordinance shall be made unless and until the Board of Adjustment shall be satisfied that granting the variation will not:

- (1)** Merely serve as a convenience to the applicant and is not necessary to alleviate a demonstrable hardship or difficulty so great as to warrant the variation.
- (2)** Impair the general purpose and intent of the regulations and provisions contained in this Ordinance.
- (3)** Impair an adequate supply of light and air to adjacent properties.
- (4)** Increase the hazard from fire and other danger to said property.
- (5)** Diminish the value of land and buildings in the County.
- (6)** Increase the congestion and traffic hazards on public roads.
- (7)** Otherwise impair the public health, safety and general welfare of the inhabitants of the County.

**Subsection C.** The concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any requirement, decision, order or determination of the Administrator or to decide in favor of the applicant in regard to any matter upon which the Board is authorized by this Ordinance to render a decision.

**Subsection D.** It is not the intention to grant the Board of Adjustment the power or authority to alter or change the Zoning Ordinance or the District Maps. Such power and authority rest solely with the Board of Supervisors, in the manner hereafter provided in Article XXIII.

# ARTICLE XXIII

## DISTRICT CHANGES AND AMENDMENTS

**SECTION 1. GENERAL.** Whenever the public necessity, convenience, general welfare or good zoning practice requires, the Board of Supervisors may by resolution on its own actions, or by petition after recommendation by the Zoning Commission, after public hearings as provided herein, amend, supplement or change the regulations, district boundaries or classifications of property now or hereafter established by this Ordinance or amendments thereof.

### SECTION 2. PROCEDURE FOR CHANGE.

**Subsection A.** Application for any change of District boundaries or classification of property as shown on the Zoning Maps shall be submitted to the county Zoning Commission at the office of the Planning and Zoning Administrator upon such forms and shall be accompanied by such data and information as may be prescribed for that purpose by the Zoning Commission so as to assure the fullest practicable presentation of facts for the permanent record. Each such application shall be verified by at least one of the owners or lessees of property within the area proposed to be reclassified, attesting to the truth and correctness of all facts and information presented with the application. Applications for amendments of the text or requirements of this Ordinance shall likewise be submitted to the County Zoning Commission on forms prescribed by it and shall be verified by the person or persons preparing said amendment.

**Subsection B.** Before submitting its recommendations on a proposed amendment, District boundary change, or classification of property to the Board of Supervisors, the Zoning Commission shall hold at least one (1) public hearing thereon, notice of which shall be given to all property owners within seven hundred fifty (750) feet of the boundary of the property on which the change of District boundary or classification is to take place by placing a notice in the United States mail at least ten (10) days prior to the hearing. Notice shall contain the time and location of said hearing. Notice shall also be given to all property owners by publication at least once, not less than four nor more than 20 days before the date of the hearing in one or more newspapers which meet the requirements of Section 618.14. The notice shall state the place and time which the proposed amendment to the Ordinance, including text and maps, may be examined. When the Zoning Commission has completed its recommendations on a proposed amendment, it shall certify the same to the Board of Supervisors.

**Subsection C.** After receiving the certification of said recommendations on the proposed amendment, the Board of Supervisors shall hold a public hearing thereon, at least once, not less than four nor more than 20 days before the date of the hearing in one or more newspapers which meet the requirements of Section 618.14.

**Subsection D.** After receiving certification of the recommendation on the proposed amendment from the Zoning Commission and after holding the public hearing provided for, the Board of Supervisors shall consider such recommendations and vote on the adoption of the proposed amendment. The proposed amendment shall become effective upon publication in a newspaper(s) of general circulation in Marshall County after a favorable vote of a majority of the members of the Board of Supervisors.

**Subsection E.** Each application for an amendment, except those initiated by the Zoning Commission, shall be accompanied by a check made payable to the Marshall County Treasurer or a cash payment in the amount of three hundred dollars (\$300.00) to cover the approximate costs of this procedure and under no conditions shall said sum or any part thereof be refunded for failure of said amendment to be enacted into law.

# ARTICLE XXIV

## VALIDITY

Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so declared to be invalid.

# ARTICLE XXV

## WHEN EFFECTIVE

This Ordinance shall be in full force and effect in the unincorporated territory of Marshall County on January 1, 1997 after its passage, approval and publication as provided by law.

# **PLATTING AND SUBDIVISION ORDINANCE OF MARSHALL COUNTY, IOWA**

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## **ARTICLE I. TITLE AND PURPOSE**

This Ordinance shall be known and may be cited and referred to as the Platting and Subdivision Ordinance of Marshall County, Iowa. The purposes of this Ordinance are:

1. To provide for accurate, clear, and concise legal descriptions of real estate in order to accurately identify property boundaries for taxation purposes and minimize or prevent, wherever possible, land boundary disputes or real estate title problems;
2. To provide for a balance between the land use right of individual landowners and the economic, social, and environmental concerns of the public when enforcing land use regulations;
3. To provide for county-wide, uniform procedures and standards for the platting of land while allowing the widest possible latitude for cities to establish and enforce ordinances regulating the use of land, within the scope of, but not limited to, Chapters 331, 335, 354, 364, and 414, of the current Code of Iowa;
4. To encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services and utilities, the improvement of land, and the design of subdivisions, consistent with an approved comprehensive plan or other specific community plan, if any.

## **ARTICLE II. DEFINITIONS**

For the purpose of this Ordinance, certain terms and words are hereby defined; words used in the present tense shall include the future; words in the singular number shall include the plural and words in the plural shall include the singular; the word “shall” is always mandatory, and the word “may” is permissive.

1. **ACQUISITION PLAT.** A graphical representative of the division of land or rights in land, created as the result of a conveyance or condemnation for right-of-way purposes by an agency of the government or other persons having the power of eminent domain.
2. **ALIQUOT PART.** A fractional part of a section within the United States public land survey system. Only the fractional parts one-half, one-quarter, one-half of one-quarter, or one-quarter of one-quarter shall be considered an aliquot part of a section.
3. **AGRICULTURE.** The use of land for an agricultural purpose, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, silvaculture, and animal or poultry husbandry, and the necessary accessory operation of any such accessory uses shall be secondary to that of normal agricultural activity carried on upon the premise and provided further that the above use shall not include commercial storage of grain, nor commercial animal or poultry slaughtering or packing, nor the commercial feeding of garbage or offal to any animals.
4. **ALLEY.** A public or private way affording secondary means of access to abutting property.
5. **AUDITOR’S PLAT.** A subdivision plat required by either the Auditor or Assessor, prepared by a registered professional land surveyor under the direction of the Auditor.

6. **BLOCK.** An area of land within a subdivision that is entirely bounded by streets, railroad right-of-way, rivers, tracts of public land, or the boundary of the subdivision.
7. **BOARD.** The Board of Supervisors of Marshall County, Iowa.
8. **BOUNDARY ADJUSTMENT.** A change in an existing boundary line between two tracts of land wherein the new parcel is not meant for independent development and is only meant to enhance the size and/or shape of the neighboring parcel.
9. **BUILDING.** Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals, or property, but not including signs or billboards. When a structure is divided in separate parts by unpierced walls extending from the ground up, each part is deemed a separate building.
10. **COMMISSION.** The Marshall County Zoning Commission.
11. **COMPREHENSIVE PLAN.** The general plan for the development of the county, which has been adopted by the Board and shall include any part of such plan separately adopted and any amendments to such plan or parts thereof.
12. **CONVEYANCE.** An instrument filed with the County Recorder, including any form of deed, contract or change of title certificate.
13. **COUNTY ENGINEER.** The professional engineer registered in the State of Iowa designated as County Engineer by the Board.
14. **COVENANT OF NON-SEVERABILITY.** A document that clearly defines the legal descriptions of two adjacent parcels in which one of the parcels has been, or will be created as an enhancement to the size and/or shape of the other parcel, and states that those parcels will be treated as one parcel under this Ordinance.
15. **DIVISION.** The act of dividing a tract or parcel of land into two or more parcels of land by conveyance. The conveyance of an easement shall not be considered a division for the purposes of this Ordinance.
16. **EASEMENT.** A legally recorded authorization by a property owner for another to use a designated part of property for a specified purpose.
17. **FLOOD.** A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams of rivers, or from the unusual and rapid runoff of surface waters from any source.
18. **FLOOD HAZARD AREA.** Any land area subject to flooding by a one (1) percent probability flood, otherwise referred to as a one hundred (100) year flood as designated by the Iowa Department of Natural Resources (IDNR) or as shown as "Zone A" on the Flood Insurance Rate Maps, or on the Flood Hazard Boundary Maps from the Federal Emergency Management Agency (FEMA) as part of the National Flood Insurance Program; however, flood hazard areas may exist in Marshall County which have not been mapped by IDNR or FEMA.
19. **FLOOD PLAIN.** Any land area susceptible to being inundated by water as a result of a flood.
20. **FLOODWAY.** The channel of a river, stream, or other watercourse and the adjacent lands that are reasonably required to carry and discharge flood waters or

- flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one (1) foot as designated by the Iowa Department of Natural Resources (IDNR) or as shown as "Zone A" on the Flood Insurance Rate Maps, or on the Flood Hazard Boundary Maps from the Federal Emergency Management Agency (FEMA) as part of the National Flood Insurance Program; however, flood hazard areas may exist in Marshall County which have not been mapped by IDNR or FEMA.
21. **GOVERNING BODY.** The Board or a City Council within whose jurisdiction the land is located, which has adopted ordinances regulating the division of land.
  22. **GOVERNMENT LOT.** A tract, within a section, which is normally described by lot number as represented and identified on the township plat of the United States public land survey system.
  23. **IMPROVEMENTS.** Changes to land necessary to prepare it for building sites including, but not limited to grading, filling, street paving, curb paving, sidewalks, walkways, water mains, sewers, drainage ways, and other public works and appurtenances.
  24. **LOT.** A tract of land represented and identified by a number designation on a subdivision plat.
  25. **LOT AREA.** Total horizontal area within lot lines, excluding that portion devoted to a road or street, or easements therefore.
  26. **LOT OF RECORD.** A lot of parcel of land that the contract or deed to which has been recorded in the Office of the Recorder of Marshall County, Iowa.
  27. **METES AND BOUNDS DESCRIPTION.** A description of land that uses distances and angles, uses distances and bearings, or describes the boundaries of the parcel by reference to physical features of the land.
  28. **NON-RESIDENTIAL AGRICULTURAL USE.** The use of land for an agricultural use without any building or other structure which is used, or could be used for the purpose of human habitation.
  29. **OFFICIAL PLAT.** A plat of survey, acquisition plat, retracement plat, Auditor's plat, or subdivision plat which has been completed, reviewed, approved, and recorded in accordance with the requirements of this Ordinance.
  30. **ORDINANCE.** Wherever the word "Ordinance" is used in this Ordinance it shall refer to the Platting and Subdivision Ordinance of Marshall County, Iowa.
  31. **OWNER.** The legal entity holding the title to the property being divided, or such representative or agent as is fully empowered to act on its behalf. When the property has separate legal and equity title holders, concurrence of both shall be necessary.
  32. **PARCEL.** A part of a tract of land.
  33. **PERMANENT REAL ESTATE INDEX NUMBER.** A unique number or combination of numbers assigned to a parcel of land pursuant to Section 441.29, of the current Code of Iowa.

34. **PLAT OF SURVEY.** A graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered professional land surveyor.
35. **PUBLIC WATER SUPPLY SYSTEM AND PUBLIC SANITARY SEWER SYSTEM.** A water supply system or sanitary sewer system that is owned and maintained by a government agency for the use of the general public or a privately owned and maintained system for the general use of a specific area, which shall have been approved by the Marshall County Sanitarian.
36. **RETRACEMENT PLAT OF SURVEY.** A graphical representation of an existing parcel or parcels including a complete and accurate previously recorded description of each parcel within the plat, prepared by a registered professional land surveyor, not involving a division.
37. **RE-SUBDIVISION.** Any subdivision of land which has previously been included in a recorded official plat. In appropriate context it may be a verb referring to the act of preparing a plat of previously subdivided land.
38. **ROAD OR STREET.** All property, other than an alley, dedicated or intended for public or private road, street, highway, freeway or roadway purposes, or to the public easement thereof.
39. **ROAD OR STREET LINE.** The dividing line between a lot, tract or parcel of land and a contiguous road, street, alley or any public easement thereof.
40. **SET BACK.** The required distance between a road or street line, or a lot line and the closest wall of a confirming structure on a lot measured at right angles to the road or street line or lot line.
41. **STRUCTURE.** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.
42. **SUBDIVISION.** A parcel of land divided either repeatedly or simultaneously into three or more parcels or lots after the effective date of this act; but does not include the division of land for the purpose of transfer to a governmental body for public highway, road, street, or right-of-way use.
43. **SUBDIVISION PLAT.** A graphical representation of the subdivision of a parcel of land, prepared by a registered professional land surveyor, having a number designation for each lot within the plat and a succinct name or title that is unique in Marshall County and containing the information required by this Ordinance for subdivision plats.
44. **SUBDIVISION TRIGGER DATE.** A subdivision trigger date is the date after which a parcel of land of record may be divided once without requiring a subdivision plat, and the date after which any parcel of land of record, divided by repeated divisions or simultaneous divisions into three or more parcels, shall be required to file a subdivision plat or seek a subdivision variance.
45. **SURVEYOR.** A registered professional land surveyor who engages in the practice of land surveying pursuant to Chapter 355, of the current Code of Iowa.
46. **TRACT.** Any aliquot part of a section, a lot within an official plat, a government lot, or any other area of land the description of which is on file in the County

Recorder's Office and in the County Auditor's plat books for taxation or assessment purposes.

47. **UTILITIES.** Any systems providing the following public services: water, gas, electricity, telephone, cable television transportation, wastewater collection, and stormwater collection.
48. **YARD.** An open space on the same lot with a building, unoccupied and unprotected by any portion of a structure from the ground upward, excepting as otherwise provided herein. In measuring a yard for the purpose of determining the depth of a front yard or the depth of a rear yard, the least distance between the public road or street or lot line and the main building shall be used.
49. **ZONING ADMINISTRATOR.** The administrative officer designated or appointed by the Board of Supervisors to administer and enforce the regulations contained in the Zoning Ordinance of Marshall County.
50. **ZONING DISTRICT.** A section or sections of the unincorporated area of any portion thereof of Marshall County, Iowa, for which the district regulations governing the use of buildings and land or lot area and height of buildings are uniform.
51. **ZONING PERMIT.** A written statement issued by the Zoning Administrator authorizing buildings, structures, or uses consistent with the terms of the Zoning Ordinance of Marshall County and for the purpose of carrying out and enforcing its provisions.

### **ARTICLE III. APPLICABILITY**

#### **Section 1. GENERAL APPLICATION OF THIS ORDINANCE.**

- A. Every grantor of land wherever located in Marshall County, Iowa, who shall hereafter divide said tract of land into two (2) or more parcels using a metes and bounds description, shall cause a plat of survey of such area to be made in the form, and containing the information, as hereinafter set forth by this Ordinance before transferring any parcel, lot, or portion of land therein contained.
- B. If a new subdivision plat, wherever located in Marshall County, includes a parcel of land in an existing recorded official plat, the Auditor may require a plat of survey for the parcel of the existing official plat not included in the new subdivision plat.

#### **Section 2. REQUIREMENTS FOR PLAT OF SURVEY.**

The grantor, or the surveyor, shall contact the County Auditor, who for the purpose of assessment and taxation, shall review the division to determine whether the survey shall include only the parcel being conveyed, or both the parcel being conveyed and the remaining parcel. The plat of survey shall be prepared in compliance with the provisions of Chapter 355 of the current Code of Iowa and this Ordinance.

#### **Section 3. SUBDIVISION PLAT REQUIRED.**

A subdivision plat shall be made when a parcel of land of record as of January 1, 2005, located in the unincorporated portion of the county is divided by repeated divisions or simultaneous divisions into three or more parcels. January 1, 2005, shall be known as the subdivision trigger date. The

subdivision trigger date shall be revised to be January 1 of every tenth year following the initial trigger date of January 1, 2005.

**Section 4. COVENANT OF WARRANTY.**

The duty to file for record an official plat as provided in Sections 1 through 3 attaches as a covenant of warranty in all conveyances by a grantor who divides land against all assessment, costs, and damages paid, lost, or incurred by a grantee or person claiming under a grantee, in consequence of the omission on the part of the grantor to file an official plat. A conveyance of land is deemed to be a warranty that the description contained in the conveyance is sufficiently certain and accurate for the purposes of assessment, taxation, and entry on the transfer books and plat books required to be kept by the Auditor. The description contained in a conveyance shall be sufficiently certain and accurate for assessment and taxation purposes if it provides sufficient information to allow all the boundaries to be accurately determined and does not overlap with or create a gap between adjoining land descriptions.

A recorded conveyance in violation of this section may be entered on the transfer books of the Auditor's Office. The Auditor shall notify the grantor and the grantee that the conveyance is in violation of this Ordinance and demand compliance as provided for in Article III, Sections 1, 2, and 3 of this Ordinance.

**Section 5. SUCCESSFUL APPEAL DECISION TO BE RECORDED.**

Upon a final decision by the Board stating that an owner does not have to meet the requirements of Article III, Section 1, 2, or 3, the owner shall, at the owner's expense, have the decision recorded with the County Recorder. This recording shall include the proceedings of the Board stating that no plat of survey or subdivision plat is required.

**ARTICLE IV. APPLICABILITY TO CITIES**

**Section 1. PLAT OF SURVEY REQUIRED WITHIN THE CITY LIMITS OF ANY CITY.**

Only the requirements of this Ordinance relating to requiring and settling standards for a plat of survey as required by Article III, Section 2 of this Ordinance for land divisions shall apply to land within the city limits of all incorporated municipalities. No person, partnership, corporation or other entity shall submit any plat of survey, which is subject to the terms of this Ordinance, to the County Auditor or the County Recorder until such plat of survey has been reviewed and approved in accordance with the provisions of this Ordinance.

**Section 2. SUBDIVISION OF LAND WITHIN JURISDICTIONAL LIMITS OF CITIES.**

Subdivision of land within two miles, or less if a city has, by ordinance, limited the area subject to its subdivision ordinance to less than two miles, of any city having a subdivision ordinance adopted under the provisions of Chapter 354 of the current Code of Iowa shall be submitted to said city for approval in accordance with the requirements of that city's subdivision ordinance. A tract of land in said area if subdivided either by repeated division or simultaneous division into three (3) or more parcels shall be

subject to both the city's subdivision ordinance, if any, and the requirements of this Ordinance for subdivision plats.

## **ARTICLE V. RECORDING PROHIBITED UNTIL COMPLIANCE**

- Section 1.** No person, partnership, corporation, or other entity shall submit any final subdivision plat, re-subdivision or street dedication or transfer of ownership of any lot or parcel in any subdivision, re-subdivision, or street dedication, within the unincorporated portion of Marshall County, Iowa, which is subject to the terms of this Ordinance, to the County Recorder until such subdivision, re-subdivision, or street dedication has been reviewed and approved in accordance with the provisions of this Ordinance.
- Section 2.** Failure to comply with the procedures and requirements of this Ordinance, or failure to file and record an approved official plat within sixty (60) days after the date of approval by the Board, or approval by a municipality with a subdivision ordinance adopted under Chapter 354 of the current Code of Iowa shall render such plat, subdivision, re-subdivision or street dedication invalid.

## **ARTICLE VI. COMPLIANCE WITH ZONING ORDINANCE OF MARSHALL COUNTY**

- Section 1.** ZONING PERMITS PROHIBITED UNTIL COMPLIANCE.  
The Marshall County Zoning Administrator shall not issue a zoning permit for any use, building or structure located on a lot or parcel of land within the unincorporated areas of Marshall County which has been divided after the effective date of this Ordinance until the official plat, if required by this Ordinance, of such lot or parcel has been approved and recorded according to this Ordinance.
- Section 2.** PROHIBITED DIVISIONS OR PLATS.  
No owner of any tract of land in the unincorporated portion of Marshall County shall divide or plat said tract of land into two or more parcels, for the purpose of laying out an addition, subdivision, building lot or lots, acreage, suburban lots, or any other use, with the exception of a boundary adjustment, or for the potential future such uses if any resulting parcel would not comply with requirements for the size, shape, frontage, lot area, access, coverage setbacks, parking, use or yard requirements of the Zoning Ordinance of Marshall County in effect at the time of the division. Any boundary adjustment shall require a covenant of non-severability to be attached to the survey and conveyance instrument and for those to be recorded with the County Recorder. The covenant of non-severability shall state that the existing parcel and the boundary adjustment parcel will not be sold separately.

## **ARTICLE VII. REQUIREMENTS AND APPROVAL PROCESS FOR A PLAT OF SURVEY**

### **Section 1. FORM OF THE PLAT OF SURVEY.**

The plat of survey required to be submitted by Article III, Section 1, shall be prepared in compliance with Chapter 355 of the of the current Code of Iowa. The plat shall be clearly marked by the surveyor as a plat of survey and shall include the following information for each parcel included in the survey:

- A. A parcel letter or number designation approved by the Auditor.
- B. The name of the proprietors.
- C. An accurate description of each parcel.
- D. The total acreage of each parcel.
- E. The acreage of any portion lying within a public right-of-way.
- F. Attachment of the corner certificate(s) if required.
- G. The location of existing buildings and structures standing within five feet of minimum set-back distances from lot lines, and those that encroach upon the county or state right-of-way shall be shown on the plat of survey in relation to lot lines and right-of-way lines.
- H. All adjoining properties shall be labeled.
- I. An Index Legend will be placed in the upper left corner of the survey to aid the recorder with consistent state-wide indexing of plats of surveys and shall include: location including the parcel letter or lot number, section, township, range & aliquot part of the section, and/or subdivision name, lots or blocks; Proprietor; Survey requested by; field work completion date; and surveyors, name, company, address, phone and email”
- J. If a new parcel is being split from an existing parcel letter or lot number, the new parcel letter shall include the Previous Parcel designation (for example Parcel B of Parcel A). The intent however, is not to have more than two descriptions referred to, and shall be at the discretion of the Auditor’s Office on what is reasonable

### **Section 2. REVIEW OF THE PLAT OF SURVEY.**

The Recorder shall seek the review and comment on the plat from the Auditor, Zoning Administrator, County Engineer, GIS Department, County Sanitarian, and Assessor. These officials shall review the plat for completeness and correctness of form as required by this Ordinance.

### **Section 3. APPROVAL OF THE PLAT OF SURVEY.**

The Auditor shall review all plats of survey required by this Ordinance for completeness and correctness of form as required by this Ordinance. After the review process is complete, the Auditor shall initial the plat of survey, approving the plat and the letter designation. The Auditor, when a permanent real estate index system is operational, may note a permanent real estate index number upon each parcel shown on a plat of survey for real estate tax purposes.



**Section 4. RECORDING THE PLAT OF SURVEY.**

Each approved plat of survey shall be recorded in the Office of the County Recorder after the approval of the Auditor. The survey shall be recorded within one year of the date the parcel letter designation was assigned by the Auditor.

**Section 5. DESCRIPTION AND CONVEYANCE ACCORDING TO PLAT OF SURVEY.**

A conveyance of a parcel shown on a recorded plat of survey shall describe the parcel by reference to the plat of survey, which reference shall include all of the following:

- A. The parcel letter.
- B. The Recorder's document identification number of the recorded plat of survey.
- C. The section, township, and range number and reference to the aliquot part of the section- if the parcel lies outside of an official plat or the lot number or letter and name of the official plat, if the parcel lies within an official plat.

**Section 6. CORNER CERTIFICATES REQUIRED.**

Any United States public land survey corner referenced in a legal description or shown on a plat of survey shall have a United States public land survey corner certificate prepared and recorded in the County Recorder's Office and the person preparing the certificate shall furnish a copy of the recorded certificate to the County Engineer.

**Section 7. RETRACEMENT PLAT OF SURVEY.**

A retracement plat of survey is not required to comply with this Article. A retracement plat of survey is required to be recorded in the Office of the County Recorder.

**ARTICLE VIII.  
PROCEDURE FOR SUBDIVISION PLAT APPROVAL**

**Section 1. BOARD APPROVAL REQUIRED.**

Final approval of the proposed subdivision plat shall be made by the Board. The subdivider shall submit a preliminary plat and final plat in accordance with the following order and procedure.

**Section 2.** Prior to the preparation and filing of the preliminary plat, the subdivider shall request a preliminary planning conference with the Zoning Administrator to discuss the nature of these requirements and the feasibility of the subdivision plan. Subsequent review and approval of the preliminary and final plats shall in no way be bound to this planning conference. The subdivider shall then prepare and file with the Zoning Administrator thirteen copies of a preliminary plat conforming in detail to the requirements set forth in this Ordinance.

**Section 3.** The Zoning Administrator shall seek the review and comment on the preliminary plat and any proposed restrictive covenants from the County Engineer, the County Sanitarian, the Assessor, the County Auditor, the

County Recorder, the Director of Geographical Information Systems (GIS), the Executive Director of County Conservation and others from whom the Administrator may request advice and comment. The Administrator shall review the preliminary plat for compliance with the laws and ordinances of Marshall County. This review shall not take longer than thirty days.

- Section 4.** The preliminary plat and the reviewers' comments shall then be submitted to the Commission at least two weeks before the Commission's next meeting.
- Section 5.** Before approving a preliminary plat, the Commission shall hold a public hearing on the proposed plat, notice of which shall be given by publication in an official newspaper of general distribution, and by posting notices on the tract, and by sending notices by mail to property owners within 500 feet of the area included within the preliminary plat. Such notice shall be given at least four (4) days but not more than twenty (20) days before the public hearing.
- Section 6.** The Commission shall study the preliminary plat for compliance with county laws and ordinances and review the comments submitted by the reviewers named in section 3. The Commission may confer with the subdivider on changes deemed advisable. The Commission shall approve or reject the preliminary plat within seven days after its meeting when it first considered the preliminary plat. If the Commission does not act within seven days, the preliminary plat shall be deemed to be approved, provided, however, that the subdivider may agree to an extension of time for a period not to exceed an additional sixty days. The approval of the preliminary plat shall be null and void unless the final plat is presented to the Commission within one year after the date of approval of the preliminary plat.
- Section 7.** Upon approval of the preliminary plat, the Commission shall forward its decision to the Board. The Board shall consider approval of the preliminary plat at its next meeting.
- Section 8.** Upon approval of the preliminary plat by the Board, the subdivider may proceed with the preparation of the final plat together with any detailed construction drawings and specifications for the improvements required under this Ordinance. If there are no changes required on the preliminary plat, the Board may consider the preliminary plat and the final plat, and may take action at the same meeting.
- Section 9.** Before the Commission shall consider the approval of the final plat, the subdivider shall file with the Administrator all required plans, covenants and the subdivision review fee. The Administrator shall review these plans and information and submit his/her recommendation to the Zoning Commission within thirty days of filing.
- Section 10.** Upon the determination of the Administrator that the final plat meets the requirements of this Ordinance, the final plat shall then be submitted to the Commission at least two weeks before the next meeting of the Commission.
- Section 11.** The Commission shall consider the final plat and shall submit their recommendation to the Board.

**Section 12.** The Board shall consider the plat and if it is acceptable and in accordance with this Ordinance, the Board shall accept the final plat. If the plat is disapproved by the Board, the reasons for such disapproval shall be conveyed in writing to the subdivider. The Board shall place a stamp of approval or disapproval on the plat.

**Section 13.** The passage of a resolution by the Board accepting the plat shall constitute final approval of the platting of the area shown on the final plat. The subdivider shall cause such plat and all required attachments to be recorded in the Office of the County Recorder of Marshall County, Iowa, before Marshall County shall recognize the plat as being in full force and effect. Recording fees shall be paid by the subdivider. Approval of the final plat shall be null and void unless the final plat is recorded within sixty days of the date of approval by the Board.

**Section 14.** Dedication of any street, alley, or other improvement and the land used for such street, alley, or other improvement to the county shall require approval of a separate resolution by the Board. No land shall transfer to the county except upon an affirmative action of approval by resolution of the Board. No title of any parcel or tract of land shall be recorded in the name of Marshall County unless the requirements of this section are met.

## **ARTICLE IX. INFORMATION AND FORM REQUIREMENTS FOR SUBDIVISION PLATS**

**Section 1.** The principles and standards set forth in this Article are held to be the minimum requirements unless specifically noted otherwise. Approval of preliminary plats and final plats shall be predicated on the conformance of such plats to the provisions of this Article and to such other requirements as are prescribed in this Ordinance and pertaining to the land to be subdivided.

**Section 2.** The Commission shall have the right to agree or disagree with the subdivider regarding the type and character of development that will be permitted in the subdivision, and may require that certain minimum regulations regarding this matter be incorporated in the deed restrictions. Such regulations shall be intended to protect the character and value of the surrounding area and shall also tend to secure the most appropriate character of development in the property which is subdivided.

**Section 3.** The preliminary plat shall be clearly marked "Preliminary Plat", shall be drawn at a scale of not less than one hundred feet to the inch, unless otherwise approved by the Administrator, and shall include the following.

- A. All of the requirements in Chapter 355, of the current Code of Iowa, not inconsistent with the specific provisions contained in this Article.
- B. The scale of the plat together with a north point and date.
- C. The proposed name of the subdivision, which shall not duplicate or too closely resemble names of existing subdivisions, unless similarity in name is desirable to denote proximity to existing related subdivisions.
- D. The name, address and signed consent of the owner(s) and the name and address of the registered professional land surveyor preparing the plat.

- E. The boundary of the area being platted, shown as a dark line, with the approximate length of boundary lines and the approximate location of the property in reference to known sections lines.
- F. The location, width, and names of each existing or platted street, highway, railroad, or other utility right-of-way; parks and other public open spaces within, or adjacent to the proposed subdivision.
- G. All existing utility easements, storm and sanitary sewer lines, water lines, gas lines, culvert, or other underground installations within the proposed subdivision or immediately adjacent thereto, with pipe size if available and locations shown.
- H. Names of all adjoining subdivisions and owners of adjacent parcels of unsubdivided land.
- I. If a public or private road is being created, or a lot size variance has been granted, the plat must include topography with contour intervals of not more than five (5) feet, referred to United States Geological Survey (USGS) datum or an assumed datum approved by the County Engineer. The location and size of existing buildings and structures shall be shown on the plat in relation to lot lines, other buildings and structures, and right-of-way. However, the County Engineer, in conjunction with the County Zoning Administrator, may waive these requirements when there is no identifiable reason for these requirements.
- J. The showing of the approximate boundaries of areas of known flood levels or storm water overflow, areas covered by water, wetlands, and wooded areas. The showing of the boundaries of flood plain, flood hazard area or floodway lines for areas that have been included in any official floodplain reports from the Iowa Department of Natural Resources, or the National Flood Insurance Program of the Federal Emergency Management Agency.
- K. The location, names, and widths of proposed streets, roadways, alleys pedestrian ways, and easements.
- L. The layout, lot number, and scaled dimension of each lot in each block of their proposed subdivision.
- M. The showing of existing and proposed zoning district classification for all land within the proposed subdivision and existing zoning in adjacent areas within five hundred (500) feet of the proposed subdivision.
- N. The location and size of proposed parks, playgrounds, churches, school sites, or special uses of land to be considered for dedication to public use or to be reserved by deed or covenant for the use of all property owners in the subdivision and any conditions of such dedication or reservations.
- O. A vicinity map showing the general location of the plat in relationship to surrounding property and road systems shall be attached to each copy of the preliminary plat.

**Section 4. CORNER SECTION CERTIFICATES.**

Any United States public land survey corner referenced in a subdivision plat shall have a United States public land survey corner certificate prepared and

recorded in the in the Office of the County Recorder and the person preparing the certificate shall furnish a copy of the recorded certificate, or a statement of the existence, accuracy and last date visited of all recorded United States public land survey corner certificates used in the preparation of the subdivision plat to the County Engineer.

**Section 5.** The final plat shall consist of three (3) identical originals and shall be on an approved drafting media film drawn to scale of not more than one hundred (100) feet to one (1) inch in compliance with the provisions of Chapter 354, of the current Code of Iowa, and shall show the following:

- A. The name of the subdivision.
- B. Name and address of the owner and subdivider.
- C. The scale, and graphic bar scale, north arrow and date on each sheet.
- D. All monuments to be of record as required by Chapter 354, of the current Code of Iowa.
- E. Sufficient survey data to positively describe the bounds of every lot, block, street, easement, or other areas shown on the plat, as well as the outer boundaries of the subdivided lands.
- F. All distances, bearing curves and other survey data as set forth in Chapter 354, of the current Code of Iowa.
- G. All adjoining properties shall be identified, and where such adjoining properties are a part of a recorded subdivision, the name of that subdivision shall be shown. If the subdivision platted is a re-subdivision of a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to controlling lines appearing on the earlier plat to permit an overlay to be made. Re-subdivisions shall be labeled as such in a subtitle following the name of the subdivision wherever the name appears on the plat.
- H. Street names and clear designation of public alleys.
- I. Block and lot numbers.
- J. Accurate dimensions for any property to be dedicated or reserved for public use, and the purpose for which such property is dedicated or reserved for public use.
- K. The purpose of any easement shown on the plat shall be clearly stated and shall be continued to only those easements pertaining to public utilities including gas, power, telephone, cable television, water, sewer, easements for ingress and egress, and such drainage easements as are necessary for the orderly development of the land encompassed within the plat.
- L. All interior excepted parcels, clearly indicated and labeled, “not a part of this plat”.
- M. A strip of land shall not be reserved by the subdivider unless the land is of sufficient size and shape to be of some practical use as determined by the Board.

N. Legal description.

O. The minimum unadjusted acceptable error of closure for all subdivision boundaries shall be 1:10,000 and shall be 1:5,000 for any individual lot.

P. A statement by a registered professional land surveyor that the plat was prepared by the surveyor or under the surveyor's direct personal supervision, signed and dated by the surveyor and bearing the surveyor's Iowa registration number and seal.

**Section 6.** ATTACHMENTS TO THE FINAL PLAT. The following shall be attached to, and accompany, any final plat:

A. A certificate by the owner and spouse, if any, that the subdivision is with their free consent, and is in accordance with the desire of the owner and spouse. This certificate must be signed and acknowledged by the owner and spouse before some officer authorized to take the acknowledgments of deeds.

B. An attorney's opinion showing that the fee title to the subdivision is in the name of the owner and spouse, if any, free from encumbrances other than those secured by an encumbrance bond, or that the statement required by subsection J. hereof has been filed.

C. The encumbrance bond, if any.

D. A certificate by the County Engineer and County Sanitarian that all required improvements have been satisfactorily completed in accordance with the construction plans as approved, and in substantial compliance with the preliminary plat. In lieu thereof, the County Auditor may certify that an acceptable financial surety guaranteeing completion as defined in Article XII, Section 1, has been approved by the County Attorney and is on file with the Auditor. The bond or escrow account be in an amount of one hundred thirty percent of the county's estimated cost of completion of the improvements. The subdivider shall provide whatever information the county may require to determine the amount of the bond or escrow account.

E. Where any improvements are to become the property of the county, a resolution accepting and approving such improvements.

F. A resolution and certificate for approval by the Board, and the signature of the chairperson.

G. The correct legal description of the subdivision.

H. A statement from the mortgage holders or lienholders, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. When a mortgagor or lienholder consents to the subdivision, a release of the mortgage or lien shall be recorded for any areas conveyed to the governing body or dedicated to the public.

I. A certificate of the Marshall County Treasurer that the land is free from certified taxes and certified special assessments or that the land is free from certified taxes and that the certified special assessments are secured

by bond in compliance with Iowa Code Section 354.12. A subdivision plat which includes no land set apart for streets, alleys, parks, open areas, school property, or public use other than utility easements shall be accompanied by a certificate from the County Treasurer that the land is free from certified taxes other than certified special assessments.

- J. A copy of all recorded United States public land survey corner certificates used in the preparation of the subdivision plat.
- K. A check made payable to the County Recorder for the total recording fees necessary to record the plat and attachments.

## **ARTICLE X. UNINCORPORATED AREAS SUBDIVISION IMPROVEMENTS REQUIRED**

### **Section 1. GENERAL REQUIREMENTS.**

- A. Any subdivider of land within the unincorporated portion of the county required by this Ordinance to prepare a subdivision plat shall, at the subdivider's expense, install and construct all improvements required by this Ordinance or shall post either a bond, surety bond, or cash escrow before the final plat is approved by the Board. The bond company, financial institution, or other company providing the bond or escrow must be approved by the County Attorney and County Treasurer. The bond, or escrow shall be security for the completion of said improvements by the subdivider. The amount of the surety shall be one hundred thirty percent of the estimated cost of the uncompleted improvements, said estimate to be approved by the county. The bond or escrow account shall remain in effect at the subdivider's expense until the improvements are completed and approved by the county, at which time any excess escrow funds shall be returned to the subdivider. All required improvements shall be installed and constructed as shown on the approved preliminary plat, and in accordance with design standards for such improvements which shall be established by resolution of the Board.
- B. The subdivider shall be deemed in default if the improvements are not completed within a time specified by the Board of Supervisors, or an approved extension thereto. Default shall be declared by majority vote of the Board and the credited fund drawn upon by written notice to the financial institution involved.
- C. In the event that the subdivider defaults on the obligation and the Board draws on the credited funds to complete said improvements, said funds may also be used to pay the county's cost of administering the completion of improvements in addition to paying for the improvements themselves.
- D. All required improvements shall be installed and constructed as shown on approved construction plans, and in accordance with design standards for such improvements which shall be established by resolution of the Board or applicable state standards.

**Section 2. WAIVER OF COMPLETION OR BONDING REQUIREMENTS.**

For plats located in unincorporated areas within two miles of the corporate limits of cities and towns with subdivision ordinances of their own, the Commission and Board may waive the requirements of this Article provided they are satisfied that the subdivision regulations of the cities and towns governing the areas within which the subdivision is located are sufficient to ensure adequate conformance with these regulations.

**Section 3. SUBDIVISION DESIGN STANDARDS.**

The standards and details of design herein contained, or contained in resolutions adopted by the Board after the effective date of this Ordinance and hereby made a part of this Ordinance as if set out here in full, are intended only as the minimum requirements so that the general arrangement and layout of a subdivision may be adjusted to a wide variety of circumstances. However, in the design and development of the plat, the subdivider shall use standards consistent with the site conditions so as to assure an economical, pleasant and durable neighborhood.

**Section 4. INSPECTION.**

All improvements shall be inspected by the County Engineer, except water supply and wastewater treatment and disposal improvements shall be approved by the County Sanitarian, to insure compliance with the requirements of this Ordinance. The cost of such inspection shall be borne by the subdivider, and shall be determined by resolution of the Board.

**Section 5. MINOR SUBDIVISIONS.**

Any subdivision of land into no more than three (3) lots, all fronting on an existing public road or street, provided safe access is approved by the County Engineer, shall be classified as a minor subdivision and no other improvements shall be required. However any building site within five hundred (500) feet of a public water supply system may be required to hook up to such public water supply system to provide a water supply for all uses.

**Section 6. OTHER SUBDIVISIONS.**

All other subdivisions within the unincorporated portion of the county which require a subdivision plat under this Ordinance shall be required to install the following minimum improvements necessary to protect the public health, safety and welfare:

A. Streets. All roads or streets shall be constructed as to meet the standards of the county as set by Board resolution.

B. Sanitary Sewer System.

1. The subdivider of the land being platted shall make adequate provision for the disposal of sanitary sewage from the platted area with due regard being given to present or reasonably foreseeable needs. Where connection to an existing public sanitary sewer system is not available, or the construction of a central sewage collection and treatment system cannot be accomplished, the subdivider shall construct a system or systems for appropriate disposal of sewage from the platted area, conforming with all applicable rules and regulations of the Iowa Department of Natural Resources, Chapter 567-69 of the



Iowa Administrative Code, and all applicable state rules on waste water treatment facilities. All systems must be approved by the County Sanitarian. The County Sanitarian shall not approve a proposed system without the approval of the Iowa Department of Natural Resources, if approval by that Department is required under its rules and regulations.

2. No subdivision shall be approved until and unless percolation tests have been performed for each lot, if the proposed system requires such a test. No variances in the minimum lot size will be accepted unless the approved lot size is adequate for wastewater disposal and adequate to accommodate the proposed sanitary system. The County Sanitarian may require that the siting of the proposed sanitary system be done prior to the siting of all proposed buildings, driveways, roads, and/or streets on each lot of the subdivision, if any lot or lots are of such size and shape as to make it difficult to place a system without such requirements.
- C. Storm Sewer System. The subdivider shall install and construct a storm water drainage and/or storm sewer system adequate to serve the area, including anticipated extension of use to serve additional areas, so as to prevent undue runoff onto adjacent lands.
- D. Water System. The subdivider shall make appropriate provision for a suitable water supply for each platted lot or parcel with due regard being given to present or reasonably foreseeable needs. If a public water supply system is available within one (1) mile, then the subdivider may be required to provide the subdivision from that public water supply system. No subdivision shall be approved until and unless the proposed system for providing water has been approved by the County Sanitarian.
- E. Other improvements. The subdivider shall be responsible for the installation of grading and seeding or sodding of all lots and all necessary soil erosion control measures during construction, the planting of any required trees, and the installation of street signs and street lighting as required.
- F. Streams and Watercourses: Wherever any stream or surface watercourse is located in an area that is being subdivided, the subdivider shall, at the subdivider's expense, make provisions for drainage of surface water.

**Section 7. EASEMENTS REQUIRED.**

- A. Utility Easements: Where required for the placement of present or future utilities, easements of not less than ten (10) feet in width shall be granted by the owner along the rear, and where necessary along side lot lines for public utility requirements. Except where prohibited by topography, such easements shall be centered on lot lines. Easements of greater width may be required along lot lines, or across lots when necessary for the placement and maintenance of utilities. No building or structures, except as necessary for utilities, shall be permitted on such easements. Any improvements, including but not limited to landscaping or fence, constructed upon a utility easement which interferes with the operation or maintenance of the utility shall be so placed at the owner's liability.

B. Utility and drainage easements, as recorded, shall not be changed or vacated without the approval of the Board, by resolution upon recommendation of the Administrator.

**Section 8. MAINTENANCE OF IMPROVEMENTS.**

Unless otherwise approved by the Board, improvements required to be installed shall remain the property and responsibility of the subdivider, or successors in interest to the lands being subdivided. No subdivision shall be approved until and unless legal covenants, running with the land, sufficient to ensure that the county will not need to assume maintenance responsibility for any such improvement, have been approved by the County Attorney and the Board.

**ARTICLE XI. VARIANCES**

**Section 1. APPEAL**

Whenever a proposed division is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in this Ordinance would result in real difficulties and substantial hardships or injustices, the applicant can file an appeal with the Zoning Administrator. The Zoning Commission will consider the appeal at a public hearing, and forward their recommendation to the Board. At a regular meeting, the Board, after receiving the recommendation of the Commission, may vary, modify, or waive such requirements so that the applicant is allowed to develop the property in a reasonable manner, but so at the same time, the public welfare and interest of the county and the surrounding area are protected and the general intent and spirit of these regulations are preserved. Nothing in this Article shall allow the Zoning Ordinance of Marshall County to be changed except as allowed in the Zoning Ordinance. Any party aggrieved by the decision of the Board may appeal the decision to District Court within thirty (30) days of notice of the Board decision.

**Section 2. APPEAL FEE.**

The Board shall set, by resolution, a fee to be paid by any person filing an appeal of the platting requirement allowed in Section 1.

**ARTICLE XII.**

**VACATION OF OFFICIAL PLATS AND STREETS  
OR OTHER PUBLIC LANDS; ERRORS ON RECORDED PLATS;  
SURVEY AND REPLAT OF OFFICIAL PLAT;  
CORRECTIONS OR CHANGES TO PLATS**

The vacation of official plats and streets or other public lands, the response to errors detected on recorded official plats, the survey and replat of official plats, and the corrections or changes to official plats shall be accomplished by the procedures outlined in Sections 354.22 through 354.26 of the Iowa Code.

### **ARTICLE XIII. FEES**

The Board shall, from time to time, establish by resolution fees for the review of plats. No plat of survey, retracement, acquisition plat, DOT disposition plat or any subdivision plat shall be reviewed prior to consideration for approval unless and until said application for review and approval of the plat is accompanied by the fee, as established by resolution of the Board and as required by these regulations.

### **ARTICLE XIV. ENFORCEMENT**

#### **Section 1. ENFORCEMENT BY COUNTY AUDITOR.**

It shall be the duty of the County Auditor to enforce this Ordinance with its provisions. All departments, officials and public employees of Marshall County who are vested with the duty or authority to issue permits shall ensure conformance to the provisions of this Ordinance and shall issue no permit for any reason if the same would be in conflict with the provisions of this Ordinance.

#### **Section 2. COUNTY AUDITOR TO REQUIRE COMPLIANCE.**

If a tract is divided or subdivided in violation of Chapter 354, of the current Code of Iowa or this Ordinance, or the descriptions of one or more parcels within a tract are not sufficiently certain and accurate for the purposes of assessment and taxation under the guidelines of Chapter 354, of the current Code of Iowa, the Auditor shall notify the proprietors of the parcels within the tract for which no plat has been recorded as required by this Ordinance. The Auditor shall follow the procedures in Sections 13 through 17 of Chapter 354, of the current Code of Iowa, to carry out the duties of this section. Sections 13, 14, 15, 16 and 17 of Chapter 354, 1993 Code Iowa, are hereby adopted by this reference in full as if set out here in their entirety.

#### **Section 3. VIOLATIONS AND PENALTIES.**

Failure of any person, firm, or corporation to comply with any regulation in or any provision of this Ordinance or of any amendment or supplement thereto, shall be deemed to have committed a county infraction. A county infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty dollars for each violation or if the infraction is a repeat offense a civil penalty not to exceed one thousand dollars for each repeat offense. Each and every day during which the defendant fails to comply with the provisions of this Ordinance may be deemed a separate offense. A county infraction is not punishable by imprisonment.

When judgment has been entered against a defendant for a county infraction, the court may impose a civil penalty or may grant appropriate relief to require the compliance with the requirements and provisions of this Ordinance or to abate or halt the violation, or both, and the court may direct that payment of the civil penalty be suspended or deferred under conditions established by the court. If a defendant willfully fails to pay the civil penalty or violates the terms of any other order imposed by the court, the failure is contempt.

Seeking a civil penalty as authorized in this Section, does not preclude a county from seeking alternative relief from the court in the same action.

**Section 4. NOTICE OF COUNTY INFRACTION.**

The County Auditor or other officer authorized by the county to enforce a county code or regulation may issue a civil citation to a person who commits a county infraction. The citation may be served by personal service or by certified mail return receipt requested and must be so served at least 20 days prior to the date set for the hearing. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the Clerk of the District Court. The citation shall serve as notification that is alleged that a civil offense has been committed and shall contain the following information.

- A. The name and address of the defendant
- B. The name or description of the infraction attested to by the officer issuing the citation.
- C. The location and time of the infraction.
- D. The amount of civil penalty sought to be assessed or the alternate relief sought, or both.
- E. The manner, location, and time in which the penalty may be paid.
- F. The time and place of court appearance.
- G. The penalty for failure to appear in court.

**Section 5. COURT PROCEDURE.**

In proceedings before the court for a county infraction:

- A. The county has the burden of proof that the county infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.
- B. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the county and produce evidence or witnesses on the defendant's behalf.
- C. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.
- D. The defendant may answer by admitting or denying the infraction.
- E. If a county infraction is proven, the court shall enter judgment against the defendant. If the infraction is not proven, the court shall dismiss it. Notwithstanding 1993 Iowa Code, Section 602.8106, Subsection 3, penalties or forfeitures collected by the court for county infractions shall be remitted to the county in the same manner as fines and forfeitures are remitted to cities for criminal violations under Section 602.8106. If the person named in the citation is served as provided in Section Three (3) and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.
- F. A person against whom judgment is entered, shall pay the court costs and fees as in small claims under Iowa Code Chapter 631. If the action is dismissed, the county is liable for the court costs and court fees. Where the action is disposed of without payment or provision for assessment of

court costs, the Clerk shall at once enter judgment for costs against the county.

- G. A defendant who has judgment entered against him or her may file a motion for a new trial or a motion for a reversal of a judgment as provided by law or rule, of civil procedure.

**Section 6. IMMUNITY.**

The issuance of a civil citation for a county infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or prosecution.

**ARTICLE XV. AMENDMENTS TO THIS ORDINANCE**

Any provision of this Ordinance may be amended from time to time by the Board, provided, however, that such Board action shall be proceeded by a public hearing, public notice of which shall have been given in a newspaper of general circulation in Marshall County at least four (4) but not more than twenty (20) days prior to such hearing.

**ARTICLE XVI. IMMUNITY**

The approval and recording of any plat of survey or subdivision plat does not create any liability on the part of Marshall County or any officer or employee thereof for any damages from reliance on this Ordinance or any administrative review made thereunder.

**ARTICLE XVII. VALIDITY**

If any article, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this Ordinance.

**ARTICLE XVIII. CONFLICTING PROVISIONS REPEALED**

All regulations, rules, resolutions or ordinances or parts thereof, in conflict with these regulations are hereby repealed except any regulation, rule, resolution or ordinance that imposes more restrictive provisions than are imposed herein.

**ARTICLE XIX. EFFECTIVE DATE**

The Ordinance, after its final passage and publication as provided by law, shall be in full force and effect on January 1, 2005.

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