

## CHAPTER II – ADMINISTRATION AND ENFORCEMENT

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### §2.1 – ADMINISTRATION AND ENFORCEMENT

Pursuant to A.C.A. §14-17-203, the Benton County Planning Board was established in accordance with Ordinance No. 78-5 on June 21, 1978 with subsequent amendments by Ordinance 82-18 approved on September 7, 1982 and Ordinance 1978-05.

#### A. Administration

- i. The Benton County Planning Board shall be charged with the responsibility for the administration of this Ordinance. The Planning Board may adopt by-laws or internal rules and regulations as it deems necessary in order to ensure an orderly and systematic interpretation and administration of this Ordinance so as to serve the public health, safety, welfare, and general well-being of the citizens of Benton County.

ii. The Planning Board may develop a summarization of the Planning and Development regulations to make the recommendations more accessible to the owner/applicant. In their consideration of a development application, the Planning Board will take into account recommended 'Standard Conditions of Site Plan Approval' and additional project specific special conditions or amendments thereto attached to the Decision Letter and the approved site plan. The Planning Board shall have no authority to supersede the Planning and Development Regulations of Benton County.

ii-iii. In addition to the standards established by this Ordinance, all development shall comply with any other regulations or special requirements of the state, local or federal agencies.

iii-iv. Appeals to administrative or Planning Board decisions and land use interpretations shall be reviewed by the Board of Appeals.

iv-v. Any appeal concerning roads shall be appealed directly to circuit court in accordance with Arkansas State Code A.C.A. §14-17-209.

**BUILDING** – Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

**BUILDING LINES** – A line or lines designating the land area beyond which a structure is not permitted. (Also known as a Set Back Line).

**BUOYANCY** – The upward force exerted by water. Buoyancy can cause underground tanks to float free and can lift structures off foundations ♠

**“C” Definitions**

**CERTIFICATE OF ROAD MAINTENANCE ACCEPTANCE** – A county instrument to record acceptance of maintenance responsibility for roads in previously dedicated and accepted rights-of-way.

**CFR** – The acronym for the Code of Federal Regulations that is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation. The Federal regulations pertaining to the national Flood Insurance Program are found in title 44, Emergency Management and Assistance ♠

**CO** – An abbreviation for “Certificate of Occupancy”. This certificate is issued by the County and is required before anyone can occupy and live within a building. It is issued only after the County has made all inspections and all monies and fees have been paid.

**CO-LOCATION** – The placement of many different antenna arrays on the same support structure. Each antenna array may have a separate and distinct owner ■

**COLLECTOR ROAD:** A street that, in addition to serving abutting properties, intercepts minor streets, connects with community facilities and carries neighborhood traffic to major arterial street systems.

**COMMERCIAL, GENERAL** – Pertaining to any business, trade, industry, or other activity engaged in for profit

**COMMERCIAL, HEAVY** - Pertaining to any business, trade, or other activity engaged in for profit that during the operation of business uses has the potential to create nuisance due to heavy traffic, or use of noxious chemicals or odors or noise that may be detrimental to the neighboring properties. This may comprise of a grouping of buildings, of retail shops, and offices or automobile repair shop or public garages, cabinet and carpenter shops, and other similar uses.

**COMMON OWNERSHIP** – Ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockbroker, partner, or associate, or a member of their family owns an interest in each corporation, entity, or unincorporated association.

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**Key to Symbols:** ♠ Floodplain, ☼ Stormwater, ■ Telecommunications, ▲ Wind Energy

Note that symbols are associated with specific definitions that apply only to that category. For example, definitions that include the Floodplain Symbol ♠ are only applicable to floodplain provisions and not more broadly to other provisions of this Ordinance.

DWELLING – The building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

DWELLING UNIT – A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**“E” Definitions**

EARTHWORK – The disturbance of soils on a site associated with clearing, grading, or excavation activities.

EASEMENT – A formal contract that allows a party to use another party’s property for a specific purpose. E.g., a utility easement might allow one party to run utility line through a neighbor’s property.

ELEVATED BUILDING – A non-basement building:

1. Built, in zones AE, A, AO, AH, X and D, to have the top of the bottom floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and
2. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of one foot above the base flood. For zones AE, A, AO, AH, X and D, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

ELEVATION CERTIFICATE – This refers to FEMA form 81-31, which for the purposes of this article must be properly completed by a Professional Engineer, Surveyor or Architect licensed to practice in the State of Arkansas ♠

EMERGENCY GENERATOR – An engine that converts mechanical energy into electrical energy during times of electrical power outages or failure. Emergency generators are not regulated by this ordinance ⤴

ENGINEER – A registered professional engineer as required by Arkansas State Law.

ENVIRONMENTAL PROTECTION AGENCY (EPA) – The United States (U.S.) Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of the EPA or such successor agency.

ENVIRONMENTALLY SENSITIVE AREA - Areas of critical environmental concern include, among other things, aquifers and aquifer recharge areas, soils poorly suited to development, floodplains, wetlands, prime agricultural and forestlands, the natural habitat of rare or endangered species, areas with unique ecosystems, or areas recommended for protection in the Arkansas Natural Areas Plan.

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pro-rated share of expense of the association which may become a lien against the lot or other member interest. Also referred to as Property Owners Association or POA.

HOUSEHOLD HAZARDOUS WASTE (HHW) – Any material generated in a household (including single and multiple residences) that would be classified as hazardous ☼

HYDRODYNAMIC FORCES – The forces and stresses associated with moving water, including impacts from objects carried in the water ♠

HYDROSTATIC FLOOD FORCES – The forces and stresses associated with standing floodwaters ♠

**“I” Definitions**

IMPROVEMENTS – Any man-made structure including but not limited to grading and street surfacing, curbs and gutters, sidewalks, crosswalks, culverts, bridges, water lines, storm sewers, sanitary sewers, utilities, and any other feature that may be a part of the development process.

INDUSTRIAL DEVELOPMENT – see examples listed in Chapter VI, Table 6-4.

INDUSTRIAL, LIGHT - a Use that involves the manufacturing production, processing, fabrication, assembly, repair, or packaging of finished products, predominantly from previously prepared or refined materials (or from raw materials that do not need to be refined) Warehousing, wholesaling and distribution of the finished products produced on site.

INDUSTRIAL, HEAVY – A Use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of or manufacturing process using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM – A system for disposal of sewage by means of a septic tank or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.

INDIVIDUAL WATER SUPPLY – A supply other than an approved public water supply that serves one or more families.

**“J” Definitions**

Reserved

**“K” Definitions**

KEY BOX – A secure device with a lock operable only by a fire department master key, and containing building entry keys and other keys that may be required for access in an emergency.

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MIXED USE STRUCTURES – Structures with both a business and a residential component, but where the area used for business is less than 50% of the total floor area of the structure.

MOBILE HOME PARK DEVELOPER – The person, firm or corporation seeking to establish or to expand a Mobile Home Park. The term “Developer” used in this regulation means “Mobile Home Park Developer.”

MOBILE HOME DWELLING UNITS – Transportable dwelling units suitable for single-family year round occupancy and containing the same water supply, waste disposal and electrical convenience as immobile housing and shall be inclusive of the definition of “manufactured home” contained in A.C.A. 14-54-1602 (see also MANUFACTURED HOME above)

MOBILE HOME PARK – For the purpose of this regulation, a Mobile Home Park is a parcel of land located outside the corporate limits of cities in Benton County that is originally platted under single ownership or common promotional plan and planned, developed and improved for the commercial purpose of placement of two (2) or more Mobile Homes. Excluded from this definition are single parcels of land upon which are placed three (3) or fewer Mobile Homes for use by members of a family and/or employees of a farm or business. However, all Mobile Homes not located within Mobile Home Parks, as herein defined, shall be in compliance with the water and sanitation requirements of the State Health Department and of Benton County.

MODIFICATION – A specific request for relief from a non-dimensional provision of this Ordinance, specifically a modification would generally be a reduction in scope of a provision.

MULTIFAMILY -- Any parcel with three (3) or more dwelling units.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) – The system of conveyances, including roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the County and designed or used for collecting or conveying stormwater, and not used for collecting or conveying sanitary sewage ☼

#### “N” Definitions

NACELLE – Refers to the body of the propeller-type wind turbine ▲

NEIGHBORHOOD COMMERCIAL – Establishments primarily engaged in the provision of frequently or recurring needed goods for household consumption, such as prepackaged food and beverages and limited household supplies and hardware. Convenience stores shall not include fuel pumps or selling of fuel for motor vehicles. Typical uses include neighborhood markets and country stores.

NEW CONSTRUCTION – For floodplain management purposes, structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the county on September 12, 1991, and includes any subsequent improvements to such structures ☼

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**NO ADVERSE IMPACT PRINCIPLE** – A principle of restricting or prohibiting land development that does harm or “adversely affects” someone else’s property or land.

**NONCONFORMITY** – Nonconformity or nonconforming use is a term used in land use laws to refer to an existing structure or use of a property which is not permitted under the current regulations either as a development or use that is not permitted generally or a development or use that has not received development approval under the existing regulations. A use might become nonconforming through the adoption of new laws, or as the result of court case decisions. Lawfully established nonconforming uses are allowed to continue, but are subject to limitations. They may be “frozen” at the level of operation that existed at the time of implementation of a zone designation that made the use nonconforming.

**NONRESIDENTIAL STRUCTURES** – Structures used only for commercial or public purposes such as businesses, schools, churches, etc.

**NO-RISE CERTIFICATES** – Formal certifications signed and stamped by a Professional Engineer licensed to practice in the State of Arkansas, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase in flood levels within the community during the occurrence of a base flood event ♠

**NOTICE OF VIOLATION** – (1) A written notice detailing any violations of this [stormwater] program and any action expected of the violators ☼ (2) The formal noticing of any violation of the provisions of this Planning and Development Ordinance.

**NPDES** – The National Pollutant Discharge Elimination System. ☼

**NUISANCE** – Conduct within a municipality that unreasonably interferes with the use and enjoyment of lands of another, including conduct on property which disturbs the peaceful, quiet, and undisturbed use and enjoyment of nearby property, constitutes a common nuisance.

#### **“O” Definitions**

**OFF-SITE NUISANCES** – Include dust, smoke, odors, noise, vibration, light, glare, heat, etc. that affects property other than that on which it originates.

OFFICE, PROFESSIONAL- Administrative, executive, research or similar organizations and laboratories having only limited contact with the public, provided that no merchandise or merchandising services are sold on the premises, except such as are incidental or accessory to the principle permitted use.

**OPEN SPACE** – Open space shall be defined as an area of land or water that either remains in its natural state or is used for agriculture, recreational, or cultural use, free from intensive development for residential, commercial, industrial or institutional use. Open space can be publicly or privately owned. It includes agricultural and forest land, undeveloped lakeshore or riverbank lands, undeveloped scenic lands, and public parks and preserves. It also includes water bodies themselves such as lakes and bays. In an urban setting, a vacant lot, courtyard, plaza, or a small marsh can be open space. A small park or a narrow corridor for walking or bicycling is open space, though it may be surrounded by developed areas.

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1. **Minor Replat:** Consists of any lot split, recombination, or lot line adjustment that does not change the substantive extents or density of the approved subdivision and results in no more than one (1) additional lot that meets all of the dimensional requirements of the approved subdivision.
2. **Substantive Replat:** When a single owner or group of owners of an approved subdivision seeks to make a substantive modification to the extents or design of the subdivision. This could include but not necessarily be limited to:
  - a. Amending the subdivision by adding external lands not formerly a part of the subdivision.
  - b. Amending the subdivision by removing lands from the approved subdivision.
  - c. Seeking to convert common area, open space, or lands otherwise not specifically designated for development, into developable lots, or vice versa.
  - d. Modification to infrastructure requirements or design, amenities, landscaping, or other provision or stipulation of approval.

**RESIDENCE** – A dwelling which is either currently inhabited by one or more persons legally entitled to being there, or suitable for such habitation. It specifically does not include abandoned or other structures that are not suitable for human habitation.

**RESIDENCE, PRIMARY** – A residence occupied by the property owner or the largest residence on the property, whichever is applicable.

**RESIDENTIAL, LOW DENSITY** - comprises primarily of one dwelling unit per 5 acres with limited accessory structures.

**RESIDENTIAL, MEDIUM DENSITY** - comprises primarily of one dwelling unit per acre with limited accessory structures.

**RESIDENTIAL, HIGH DENSITY** - comprises of multifamily dwellings units as defined, condominiums, apartments, communal homes and other similar uses.

**RETAINING WALL** – A structure that holds back a slope and prevents erosion.

**RETENTION BASIN** – A facility that stores stormwater, but the storage of the stormwater would be on a more permanent basis than a **DETENTION BASIN** (see above). In fact, water often remains in a retention basin indefinitely, with the exception of the volume lost to evaporation and the volume absorbed into the soils. This differs greatly from a **DETENTION BASIN**, which typically drains after the peak of the storm flow has passed, sometimes while it is still raining. Additional uses for stormwater retention are to help recharge large underground water aquifers.

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- E. All setbacks shall be maintained as vegetated open space in accordance with the provisions of this Ordinance.

#### **§4.4- NON-COMPLIANCE CLAUSE**

All man-made structures existing on the effective date of this Ordinance in the prohibited setback areas as defined herein shall be allowed to be continued until the structure shall be destroyed or abandoned, except any such man-made structure which is listed on a state or national register of historical places may be rebuilt or restored on the same site following destruction or abandonment.

#### **§4.5- VARIATION PERMITTED**

The Planning Board may vary the requirements of this article if strict enforcement would cause undue hardship due to circumstances unique to the individual property under consideration and grant such variations only when it is demonstrated that such action will be in keeping with the spirit and intent of this article.

#### **§4.6 – GENERAL REQUIREMENTS OF DIVISION AND DEVELOPMENT OF LAND**

##### **1. FIRE AND SAFETY CODES**

All development and division of land must meet or exceed the current Arkansas Fire Prevention and Safety Codes.

##### **2. PUBLIC AND PRIVATE SERVICES**

Applicant shall document the anticipated impact to local services such as schools, roads and streets and other public infrastructure. A service agreement form from each service provider is required to verify the availability of utilities and services for the proposed development or division of land.

Applicant is required to provide a separate service agreement from each public and private utility including water service, electricity, septic, landscape installation and maintenance including a statement indicating adequate capacity and agreement to serve the proposed development.

##### **3. ACCESS AND ADDRESSING**

**Access-** All parcels shall be accessed by a hard surface private or public road. Private roads will not be dedicated to the County nor maintained thereby.

All lots served by a private or public road must comply with the frontage and lot area requirements of this Ordinance.

In cases where the private road easement serves at least three (3) homes and is at least five hundred (500) feet in length (measured from the intersection of the County/Public Road ROW to the furthest existing or proposed residential structure) the following shall be applicable:

- i. The developer shall be responsible for paying the County road department for the purchase and installation of a sign indicating that the road is maintained by the property owners.
- ii. The developer shall file for public record a "Private Road Maintenance Disclosure Statement" stating the following, NOTICE: THIS ROAD IS NOT CONSTRUCTED TO THE COUNTY STANDARDS. THE MAINTENANCE OF THE ROAD IS THE RESPONSIBILITY OF THE CURRENT AND FUTURE PROPERTY OWNERS.

**Addressing** – New private road subdivisions must have their proposed private roads named according to 9-1-1 addressing prior to the final subdivision plat approval. The private road subdivision developer or applicant shall be responsible for erecting the street sign stating the name of the private road prior to final plat approval. All signs must be maintained by and replaced by the property owner. A replacement cost will be assessed if the County replaces it.

**Approved Street Names-** All proposed street names shall be verified and approved by the Benton County 911 Administration prior to final plat or plan approval by the County Planning Board.

#### 4. POSTING OF STREET ADDRESS

All improved commercial or residential buildings or properties shall be posted with a street address number assigned by E911. The street address number must meet the requirements of the Benton County Building Code, the provisions of Benton County Ordinance O-89-27 and the County 9-1-1 addressing requirements.

#### 5. EMERGENCY ACCESS

Access to all properties shall be provided to emergency service providers. Where possible, two means of emergency access shall be provided. Road improvements may be requested at the expense of the developer and subject to standards as set forth in County Ordinance 86-4 as amended. This shall include gated residential communities and non-residential properties that restrict access via gate or other security mechanism. The provision of access should be based on the type of entry system including but not restricted to the following:

- A. **Key Access:** Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official.
  - i. **Locks:** An approved lock shall be installed on gates or similar barriers when required by the fire code official.
  - ii. **Key Box:** Key boxes shall be located on the address side of the building to keep uniformity and shall be mounted no higher than five feet (5') above finished floor elevation.
- B. **Code Access:** Where access to or within a structure or an area is restricted because of electronically secured openings or where immediate access is necessary for life-saving or fire-

- B. The area occupied by structures (excluding structures used for recreational purposes);
- C. Any lot intended for private ownership;
- D. Street surface area.

The maintenance of all private open space shall be the responsibility of the developer or of a property owners association and the method for maintenance and a maintenance fund shall be established in the PUD covenants by an escrow fund, property owner's association, or other such means.

## 16. LANDSCAPING AND BUFFERS

- A. **Landscaping** – Benton County has developed a comprehensive set of landscaping guidelines for commercial and other non-residential development that is based on a native plan regime (see Appendix C-List of suggested native vegetation). This list has been established as a service to developers and property owners so that selected plant materials will be optimally suited to the soils and climate of Northwest Arkansas. This should minimize cost of acquisition, installation, and maintenance and reduce the need for supplemental watering and the cost associated with water use for landscaping.

All required setbacks are required to be maintained as landscaped open space. All parking areas require a minimum five-foot landscaped setback to provide screening along the perimeter of off-street parking. Landscape setbacks and other peripheral green areas are usually defined by a barrier curb. Wheel stops or breaks in the barrier curb may be provided in order to allow for drainage into peripheral green areas designed to accommodate the stormwater discharge directed to them. Setback areas that are to be used for stormwater management will need to be designed for both stormwater discharge and screen requirements. No drainage may be directed onto the public way.

Existing healthy trees shall be preserved wherever possible. If a tree is removed, mitigation trees of at least equal value as that of the removed tree shall be provided as determined by a landscape professional. New trees that are part of a new development project and infill plantings shall be at least 1.5 to 2-inch caliper.

- B. **Native Vegetation** – Which can include grasses, forbes (wild flowers), shrubs, and trees are an excellent choice for landscaping and are encouraged as they have adapted to the area to survive a wide range of conditions ranging from hot and dry to moist. Densely rooted native plants are tolerant to the native conditions and once established, require less maintenance and watering. ~~they~~They also trap and use nutrients such as nitrates and phosphates that otherwise would become run off and pollute nearby streams. ~~Following table list Appendix C- Suggested list of Native Vegetation includes s-~~some of the native vegetation that may be used in a development. ~~See Appendix C-Suggested list of Native Vegetation.~~
- C. **Buffering and Screening** – All parking, loading, refuse enclosure outdoor storage and other service areas shall be screened from adjoining public or private roads or residential or other sensitive land uses.

- K. **Safety and Security:** No use shall result in the creation of an unmitigated security or safety risk resulting from a resident population, visitor population, the externalization of projectiles, debris, or other material leaving the property, or any other phenomenon that results in an increased safety or security risk to others outside of the property where the activity is taking place. Mitigation measures may include but not be limited to prevention of any projectiles leaving the property and shall result in elimination of risk to external properties.
- L. **Wastewater:** Any parcel or tract of land subject to the uses of land listed in §4.2-.C shall have suitable provisions for adequate wastewater removal. This shall include either a connection to a sewer system with adequate capacity to add the new land use or a septic system adequate to service the planned needs of the use. For any septic system, the parcel or tract must be able to perc and provide a primary and secondary septic field as per the requirements of the County Health Department.
- M. **Other Uses:** All other nuisance as applicable or specific to the proposed development may require appropriate mitigation to the satisfaction of the Planning Board.

#### §4.8 – PUBLIC HEARINGS

##### A. Applicability

A public hearing shall be required of all applications for the following development review cases:

1. Major subdivision – Preliminary subdivision plat and Final subdivision plat
2. Telecommunications facilities (as applicable)
3. Mobile home park
4. Planned Unit Development
5. Development Master Plan
6. Site plan review (as applicable)
7. Variance and/or Waivers
- 6-8. Other proposals requiring a public hearing

Public hearings may not be applicable to the following:

1. Minor subdivision
2. Lot line adjustment or lot recombination
3. Any other application subject to administrative approval as per this Ordinance.

##### B. Procedures

Public hearings shall adhere to the procedures established as follows:

1. Notice for Public Hearing:
  - a. Notice to Adjacent and Proximal Properties: Notice shall be sent by the applicant to all property owners within a 500 feet radius from the property line, based on current records of the Assessor's database, via certified mail with return receipt. Such notice shall be sent

- ii. Only one (1) manufactured home or mobile home may be placed on a lot.
- iii. For family subdivision, the parent tract shall be owned by the subdivider for at least for at least one (1) year prior to filing an application for a Family Property Division.

A minor subdivision that does not meet the minimum requirements or criteria shall be reviewed as a major subdivision.

10. No waivers or variances from these regulations can be requested.

**§5.4.2** Benton County and the Benton County Planning Board reserve the right to deny, modify, or apply existing subdivision procedures to all minor or family subdivisions. Any provision in this section is subject to waivers and/or variances on approval from the Benton County Planning Board.

#### **§5.4.3 REVIEW PROCEDURE**

1. Pre Consultation – Applicant shall pre-consult with planning staff to determine if the proposal is deemed a minor or major subdivision.
2. File Application – Applicant files application for minor subdivision along with four (4) copies of a minor subdivision plat, fees, and other supporting documents.
3. Administrative Approval – Minor subdivision shall be reviewed administratively by the Planning staff. The presentation of a preliminary plat or a final plat as required for a major subdivision is usually not necessary.
4. Recording – Once approved, the applicant shall record the approved minor subdivision and provide one (1) endorsed and recorded copy to the County Planning Office within 120 days. If such plan is not recorded within said time, the approval shall expire.

#### **§5.4.4 MINIMUM INFORMATION TO BE INCLUDED ON A MINOR PLAT**

The following information is required on a Plat showing a minor subdivision:

1. **Size:** The plat shall be of sufficient size to clearly include and read all plan elements. No plan shall be smaller than 11" x 17," nor larger than 18" x 24".
2. **Administrative Elements:** Plans shall include a north arrow, scale, legend, title block with project name, applicant/owner information, designer information, date and version number, address and parcel number of site; and an endorsement stamp for the Planning Board which shall read: "The Planning Board, based on an approval granted to the applicant on [date] hereby endorses this plan as meeting all of the requirements of a Tract Split."
3. **Signed by a Registered Surveyor:** The survey plat of a tract split must be signed by a licensed registered Arkansas surveyor ~~or engineer~~.

3.4. Reference to Deed of Record: Reference to the parent tract deed of record shall be provided on the plat.

4.5. **Size of Parent Tract**: When the parent tract of a proposed tract split exceeds fifteen (15) acres, the survey of the remainder of the parent parcel may be omitted from tract split plat instrument provided the following is located and shown on the plat:

a. ~~A correct legal description of the parent tract in addition to any other legal descriptions required by the ordinance.~~

b.a. An established boundary line (i.e. a section line, quarter section line, quarter-quarter section line, etc.).

e.b. An inset map that illustrates the relationship of the parent tract to the smaller tract (s).

5.6. **Area or Vicinity Map**: The plat must contain a small area or vicinity location map of the property to be divided sufficient to identify the general area and location of the tract split. For plans that do not provide the full extents of the parent tract, the area map shall also serve as the map that shows each lot split as part of the parent tract.

6.7. **Relation of Smaller/Larger Tracts Shown on Survey**: All tracts must be shown on the same survey or plat instrument. The relationship of the smaller to the larger tracts must be shown and each of the tracts must be clearly identified by separate legal description.

7.8. **Setbacks**: The plat must show all applicable setbacks. The plat and both tracts shown therein must additionally show a 25-foot building setback from the road right-of-way.

8.9. **Site Improvements**: The survey tract or plat must show all applicable site improvements including building, structures, and site elements such as property line fences, walls, well houses, proposed easements, utility easements and all other matters of record.

9.10. **Existing lateral Line Fields and septic information, Water Wells, and Utility Easements Shown**: The survey tract or plat must identify the location of existing lateral line fields to the extent plotable, septic tank location, clean out, alternate field ~~where indicated~~ indicated by permit from Arkansas Health Department, existing water wells, well houses, existing easements, and all other utility easements ~~to the extent plotable~~. Where health department permits are not available, perc-test State ~~aceepable~~ acceptable methods of testing and verification may be required to confirm the viability and adequacy of septic system for current and future usage.

10.11. **Statement of Non-Assurance from Department of Health**: All tract splits must contain a statement that approval of the plat does not carry any assurances that the tract or tracts will qualify for a septic system permit from the Arkansas Health Department.

11.12. **Statement of Non-Buildability**: Plans shall include the following statement: "Approval of this plan does not in any way indicate that any of the lots on this plan are buildable according to the

3. Road Design Generally: Streets shall be designed to efficiently connect into the existing County street and road system and shall not create excessive traffic, dangerous intersections or sight distances, or excessive paved area. Design should ideally minimize the length of streets, provide for interconnection, and avoid lengthy dead-end streets in order to maximize the efficiency and minimize the maintenance load for such streets. Collector streets are encouraged to be designed as boulevards to facilitate good design and pervious cover.
4. Alignments: Street alignment should discourage sharp curves and the resulting traffic hazards, and permit proper intersection of streets. Paralleled streets (except frontage streets) with less than 126 feet between centerlines shall be avoided.
5. Intersections: Streets shall be designed to intersect as nearly as possible at right angles provided that no street shall intersect any other at less than seventy (70°) degrees. Pavement of streets shall have a minimum corner radius of twenty-five (25') feet at the outside of the pavement or curb line. All corner radii shall be on the street plans. There shall be at least a 125-foot centerline offset between streets that do not intersect opposite one another.
6. Roadbed: The roadbed shall be appropriately designed and constructed for the intended land use based on minimum County standards for road construction.
7. Master Road Plan and Street Specifications: Roads shall be developed in accordance with the Benton County Master Road Plan, area needs, and all other relevant factors (see [table 5.3 for Appendix F - road design criteria](#)).
8. Gated Access: Gated restricted access to a private subdivision shall meet requirements of the fire district for access. Entrance to gated communities shall allow for sufficient stacking of at least four (4) cars on private property so that local traffic is not backed-up.
9. Separation Features and Limited Access: Where a subdivision abuts or includes a U.S. or State highway or other major arterial, access permit from Arkansas Highway and Transportation Department (AHTD) is required in order to determine the use of a frontage street for limited access.
10. Dead-End or Stub Street: Temporary dead-end or stub streets designed to provide future connections with adjoining undeveloped areas shall provide a temporary turn-around easement and shall be designed to prevent excessive accumulation of run-off water at the dead-end.
11. Cul-De-Sac: Cul-de-sacs should not exceed six hundred feet (600') in length measured from the entrance to the center of the turn-around, and shall be provided with a turn-around having a radius of not less than thirty (30') feet at the pavement center line and not less than fifty (50') feet at the property line. Exceptions may be granted due to topographical features.
12. Sight Distance Triangle:
  - i. The intersection sight distance provisions contained in 'A Policy on Geometric Design of Highways and Streets' published by the American Association of State Highway and

the County with surety for project infrastructure as per the provisions of §5.6 below. In the event of denial, the Board shall note all deficiencies by item on the plat and may note other reasons for denial. One copy of the approved or denied plat, with conditions noted thereon, shall be returned to the applicant, signed, and dated by the Board. Approval of the plat shall be deemed to be approval of the planning requirements of these regulations only, and the County Court or other official having jurisdiction may modify improvement details in accord with their adopted rules as may be necessary for the protection of the public interest and well-being. The grounds for not approving any proposal or planned physical development, or the regulations violated by the plat or application, shall also be stated in the record of the meeting and kept open for public inspection according to statute.

4. Project Infrastructure: Upon preliminary approval, the developer may proceed to install all the improvements and for this purpose may secure from the appropriate authorities the necessary permits. Once project infrastructure has been installed and a Certificate of Completion submitted to the Board, the applicant is eligible for and may proceed to final plat application.

5. Completion of Improvements- The improvements required by the Planning Board shall be completed within two (2) years from and after the date of approval of the preliminary plat unless good cause is shown for granting an extension. Construction of improvements shall be inspected by the engineer at the at the developer's expense. "As built" plans of the improvements shall be filed with the Planning Board within sixty (60) days of completion. Certificate of completion will be made by the proper officials to the Benton County Planning Board for release of construction bond in accordance with §4.11. Evidence of completion of required improvements or satisfactory construction bond shall be submitted with the application for the final approval of the plat prior to filing for record.

#### D. Final Subdivision Plat Application Process

1. Eligibility for Final Approval: Upon approval of the preliminary plat and the receipt of a Certificate of Completion by the Planning Board, the developer shall file a final plat of the subdivision with the Planning Board. Final plat approval may be granted by the Planning Board when the plat contains the information required for final application and complies with the conditions, if any, of preliminary approval. Upon receipt of the final plat and application for approval, the case manager shall check for conformance to the requirements for a final plat. When all requirements for the application have been met and the Planning Board votes in the affirmative, a stamped certificate will be affixed to the plat for Planning Board endorsement, and copies will be furnished to members of the Board as required.

2. Submit Application Packet: Applicant shall submit an application packet for a final subdivision plat that includes the following:

e.a. A plat of the proposed subdivision that that is in conformance with the requirements.

e.b. Completed application.

e.c. Application fee (non-refundable).

g-d. Other applicable documents or information.

3. Completeness Review/Notice to Proceed: Upon receipt of an application for a final plat, planning staff shall follow procedures consistent with the Preliminary Plat.

4. Technical Review and Public Hearing: Same as required for a Preliminary Plat

Interagency Review: Same as required for a Preliminary Plat

Staff Technical Review: Same as required for a Preliminary Plat

5. Final Plat Approval:

Technical Review: Same as required for a Preliminary Plat

a. Procedures for Public Hearing: The Planning Board shall follow the procedures for a public hearing as provided in §4.8.

b. Planning Board Decision: The Planning Board decision on the application may be denial, approval, or approval with conditions. As part of the approval, the developer shall provide the County with surety for project infrastructure as per the provisions of §5.6 below. Approval of the plat shall be deemed to be approval of the planning requirements of these regulations only, and the County Court or other official having jurisdiction may modify improvement details in accord with their adopted rules as may be necessary for the protection of the public interest and well-being. In the event of denial, the Board shall note all deficiencies by item on the plat and may note other reasons for denial. One copy of the approved or denied plat, with conditions noted thereon, shall be returned to the applicant, signed, and dated by the Board. The grounds for not approving any proposal or planned physical development, or the regulations violated by the plat or application, shall also be stated in the record of the meeting and kept open for public inspection according to statute.

E. Pre-Construction Conference: Prior to construction, the developer and the contractor must meet with the Road Department Director and the Planning Director or designee to review the subdivision approval and associated conditions. The applicant must provide evidence that all required documents have been recorded. Subsequent to said recording and prior to any building permit being issued, the applicant shall file within seven (7) days one (1) print of the Final Plat with the Building Official. Further, in accordance with the statute, where approval of covenant is noted thereon, the Building Official shall issue no permit for the construction of a building on any lot within the subdivision, except upon receipt from the Planning Board of a copy of the Certificate of Performance releasing the lot in question.

F. Completion of Construction: The improvements required by the Planning Board shall be completed within two (2) years from and after the date of approval of the preliminary plan unless good cause is shown for granting an extension. Construction of improvements shall be inspected by the engineer at the developer's expense. "As built" plans of the improvements shall be filed with the Planning

neighbor's lot, require a replat as well. A replat affecting no more than two lots can be approved administratively by planning staff and can be submitted as a Minor Boundary Adjustment replat.

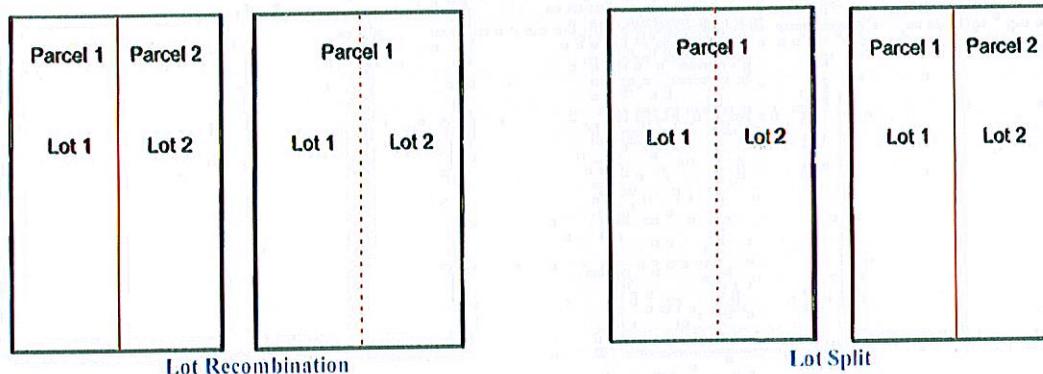
Creation of new plats or replats affecting three-five or more lots requires approval of the Planning Board.

#### A. MINOR BOUNDARY ADJUSTMENT--LOT SPLIT OR COMBINATION – UP TO FIVE PLATS ONLY

The process of splitting a single lot in an approved subdivision constitutes a Lot Split. Similarly, combining two (2) lots in the approved subdivision results in a lot combination.

1. Any lot split within an approved platted subdivision involving up to five plats shall be considered a minor replat.
2. Lot combination shall be administratively approved except if the combination conflicts with a specific provision of the subdivision plat approval or the approved covenants.

Figure 5.3 – Examples of Minor Boundary adjustment



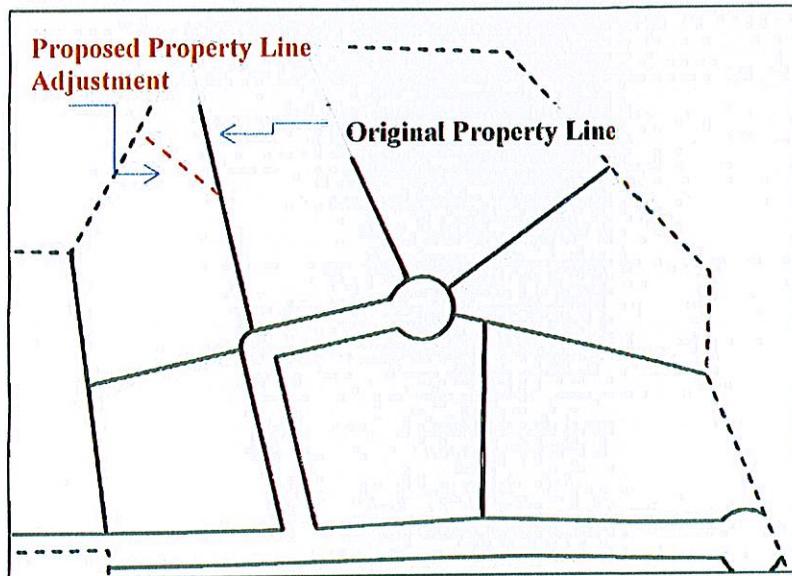
#### B. PROPERTY LINE ADJUSTMENT

The process of adjusting the property line either within an approved subdivision or for tract land, which does not create any additional lot.

1. Criteria for Administrative Approval: Minor revisions to lot lines to facilitate the meeting of setbacks, to eliminate the encroachment of structures, and to enable *de minimis* or ~~limited~~ land transfers between adjacent lot owners may be approved administratively as long as:
  - a. The resulting lots meet all of the requirements of these regulations for setbacks, minimum lot size, or any other dimensional attribute as may be applicable. No subdivision covenant restricts such adjustment.

- b. Such adjustment shall not involve the relocation or alteration of streets, easements for public passage, or other public areas; and no easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interests herein.
- c. Such adjustment shall not result in any new violation of the area or other dimensional requirements of this Ordinance, provided however, that any existing violation of minimum yard requirements or any existing non-conformity in any non-conforming lot (as so defined in this Ordinance) shall be permitted to continue so long as such yard violation or non-conformity is not enlarged, expanded, or extended.

**Figure 5.4 Property Line Adjustment**



- 2. Review Process: The administrative review process for Minor Boundary Adjustments shall be as follows:
  - a. Applicant shall file a complete application packet including a stamped survey, an application, and a fee.
  - b. Staff shall review the plans and conduct the necessary background research and analysis.
  - c. Staff shall, within thirty (30) days, render a decision as per the lot line adjustment request by means of a decision letter.
- 3. Any property line adjustment not meeting the criteria in Sections 1. ~~And~~ and 2. ~~Above~~ must be heard by the Planning Board as a replat.

**C. MAJOR REPLAT – MORE THAN FIVE PLATS**

A Major replat shall generally follow the same procedure as a preliminary and final plat based upon the specific criteria sought to be modified. The Planning Board shall determine whether the final or

6. Creation of an outdoor material storage area, automobile salvage yard, junkyard, automobile graveyard as defined by Benton County Ordinance No. O-2004-33.
7. Outdoor sales areas including boat sales and service, auto and RV sales, marine repair services.
8. Any other land use or operation that would generate heavy traffic, including but not limited to dirt pits, gravel pits, quarries, asphalt plants, concrete and cement plants.
9. Any development or improvement within or abutting an environmentally sensitive area, Special Flood Hazard Area (SFHA), MS4 boundary may also require site plan approval.
10. Any existing use of land that has a history or potential for environmental concerns including but not limited to drainage issues, erosion, noise, vibration, glare, fumes, electromagnetic interference, odors, or air and water pollution or any environmental concerns due to the development activity on-site.
11. Home and Rural family occupations and Agritourism operations that meet the minor-site plan review criteria.
- 11.12. All adult oriented business, retail liquor establishments and sports shooting ranges & sports facilities.

Site Plan review may require additional analysis due to the scale, scope, or anticipated impact of the project or use. For example, this may include trip generation, water usage or wastewater generation, anticipated nuisances, and other criteria. Projects of regional impact are high impact projects whose influence may extend to a regional scope.

### §6.3 – CUMULATIVE IMPROVEMENTS

While a single building or site addition may not have significant impacts to surrounding properties, the cumulative effect of multiple additions over time may create a substantive or noticeable impact and create nuisances that one isolated addition might not have. Review thresholds for projects developing in phases or cumulatively shall be as follows:

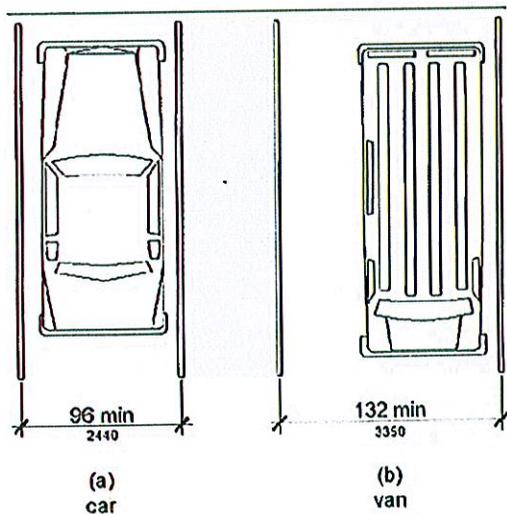
- A. **Developments or Uses Passing a Threshold:** Any project by nature of cumulative development passes a threshold level of review shall be required to be reviewed under the requirements of the higher threshold even though the development proposed triggering the threshold crossing may only be minor in scope.
- B. **Phasing:** Projects proposing to phase the development shall be reviewed at a scale appropriate to the full proposed build-out of the development.

### §6.4 – AMENDMENTS TO APPROVED SITE PLANS

Table 6.1 – Number of required accessible spaces

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 space for each 100 spaces over 1000

Fig. 6.1 Typical size of accessible parking spaces



Accessible parking spaces shall be at least 96 in (2440 mm) wide. Two accessible parking spaces may share a common access aisle as shown in figure 6.1. The length of the accessible parking space shall be consistent with Figure 6.2. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall ADA requirements. ~~Two accessible parking spaces may share a common~~

Proposed Land Use	Minimum Parking Requirements
Warehouse or storage facilities	1 space for every employee/shift + 1 space for each company owned vehicle + (or) 5 spaces per 2,000 s.f. of Gross Floor Area (GFA), up to 50,000 sq. ft., after which, in addition, 1 space per 10,000 sq.ft. <u>whichever is greater.</u> <u>Site must have adequate loading areas and holding areas for vehicles loading or unloading.</u>
<b>OTHER</b>	
Mixed uses	Parking requirements shall be the sum total of the requirements of the individual uses, but shared reduced parking requirements may be allowed between uses with a shared parking plan. <u>Example:</u> A building containing 2000 s.f. of retail uses on ground floor (2000/200=10) + 2000 s.f. of office uses on 2 <sup>nd</sup> floor (2000/.333=6) + 2 units of residential use on 3 <sup>rd</sup> floor (2 spaces each=4) would require 20 parking spaces unless reduced through a shared parking plan.
<p><b>Note 1:</b> The square footage used to determine parking space requirements will be the gross square footage devoted to a user's principal function. Service and support spaces, like restrooms, boiler rooms, and closets will not be included.</p> <p><b>Note 2:</b> Stacking space shall have the same dimensional requirement as a parking space. Further, stacking lanes shall not interfere with parking spaces, parking aisles, internal site circulation, or points of ingress and egress and shall not stack into any Public Road.</p> <p>In case joint parking facility is proposed, 50% of the required spaces may be shared with adjoining business, institutions and agencies that do not have a time conflict in parking demand.</p>	

### 56.6 LAND USES AND SPECIAL REVIEW CRITERIA

An exhaustive list of land uses is provided in the table below along with special review criteria for certain uses that warrant additional design considerations ranging from setbacks, provision of adequate screening and buffering as well as licensing.

Table 6.4 – List of Uses and Use Specific Criteria

Use Group and Category	Special Criteria
Exempt Uses	

Use Group and Category	Special Criteria
department store, florist, furniture store, grocery store or supermarket, hardware store, jewelry or notion, lodge hall, meat market, medical facility, messenger or telegraph service, musical instrument sales, newspaper or magazine sales, optical sales and service, package liquor store, paint and decorating shop, pharmacy, radio and television sales and service, restaurant, self-service laundry or dry cleaning, sewing machine sales, sporting goods sales, shoe store or repair shop, tailor shop, toy store, variety store (6, 7, 9)	
Auditorium, theater, stadia and open-air theaters (8)	Outdoor venues require minimum 200 foot setbacks from property lines plus sufficient screening, buffers, and noise reduction.
Amusement and recreation including bowling alleys, amusement arcades, mini-golf, and go-cart tracks (7, 9)	Outdoor venues require minimum 100 foot setbacks from property lines plus sufficient screening, buffers, and noise reduction.
Taverns, bars, night clubs, adult entertainment and other membership clubs (7, 9)	<p>7. Facilities serving alcoholic beverages shall meet the requirements of the Alcoholic Beverage Control Laws and Rules and Regulations of the State of Arkansas. Refer to §7.8 of this Ordinance.</p> <p>8. Facilities using an amplified sound system shall not exceed reasonable noise levels external to the building and may be restricted regarding the time of day that such amplified noise may be permitted.</p>
Restaurants, drive through establishments, etc. (7, 8)	
Hotels, motels, or motor hotels (7)	
Airports and air transportation (8, 9, 10)	Require minimum 300 foot setbacks from property lines plus sufficient screening, buffers, and noise reduction mitigation measures.
<del>Warehousing and storage, cold</del> Cold-storage units, food storage lockers, mini-storage units, transportation and associated uses (8, 9)	
Farm machinery sales and services, including storage yard, parking lots operated as a business; plumbing and heating shops; trailer and mobile home sales area (9)	
Special events facilities (8)	<p>Review based on scale. Larger facilities will have a greater impact and may be reviewed as a Level III site plan.</p> <p>At minimum require limits on hours of operation, potential noise reduction, provision of overflow parking, ingress-egress, and location criteria.</p>
Retail sale of alcoholic liquor (7, 9)	All retail establishments selling must adhere to the Arkansas Rules and Regulations of the Department of Finance and Administration, Alcoholic Beverage Control (ABC) Division, as may be amended from time to time. Applicants proposing to develop or otherwise establish a liquor retail facility shall

include a site visit and other research in order to conduct a thorough review of the proposal.

Decision: Staff shall, within fifteen (15) working days, make a decision regarding the application and shall provide the applicant with a Letter of Decision within this time frame. The staff may request an extension in writing from the applicant to this time frame in order to conduct additional research. If no extension is granted, the application shall be adjudicated with the information available.

## B. Planning Board Review Process

### 1. Pre Consultation and Development Review Committee

- a. Prior to submission, applicants are encouraged to pre-consult with planning staff to review the documents/ drawings required for the submission and applicable design guidelines.
- b. All ~~Major~~-site plan projects shall be reviewed prior to application submittal to the Benton County Development Review Committee (DRC). Refer to the provisions of §4.9 of this Ordinance for DRC procedures.

### 2. Preparation of Application Packet: It is highly recommended that in order to make a complete and substantive application for review, the applicant should pay close attention to the following steps:

- a. Conduct a compatibility analysis as described in §6.7 of this Ordinance.
- b. Consult with staff if any criteria, measure, or provision is unclear or ambiguous.

### 3. File Application: ~~Two (2) submit required number of copies of the hardpaper~~ copies of the site plan at 24" x 36" 18" x 24" and an electronic copy (.pdf file) of the proposed application shall be submitted to the Benton County Planning Office.

### 4. Fees: Applicant shall submit required fees.

### 5. Subdivision: When the tract is to be subdivided the developer shall further abide by the preliminary platting and final platting requirements as set forth in Chapter V of this Ordinance.

### 6. Notice: The Planning staff and the applicant shall give notice for public hearing agenda as provided in §4.8 of this Ordinance.

### 7. Planning Board Review: Site plans shall be reviewed by the Planning Board at regular meetings including a technical Advisory Committee and a separate public hearing. The action of the Board shall take place within sixty (60) days from and after the date the application is received by the Case Manager for the plan approval, unless the applicant agrees in writing to an extension of time. The Planning Board will vote to approve, to approve with conditions, or to reject the plan.

8. Public Comment: Public comments concerning a specified proposed development can be made at regularly scheduled Planning Board meeting(s).
9. Plan Acceptance or Rejection: The Planning Board will approve site plans only where there is full compliance with the provision of this Ordinance or where any deviation from the Ordinance is explicitly waived or modified by the Board after a formal request by the applicant. The developer shall receive written notice in the form of a Letter of Decision of the approval or denial of the application for an approved site plan. One (1) copy of the approved or rejected plan, with conditions noted thereon, shall be returned to the developer/owner address on the application, approved by signature and dated by the Chair of the Planning Board. In the event of rejection, the Planning Board shall note all deficiencies/conditions by item on the plan and Letter of Decision. Site plans that have been denied by the Planning Board reapply for approval as a new application. The revised plan, addressing the changes required by the Board, shall be reviewed as a new plan.
10. Reasons for Rejection: The Planning Board may deny the application because of noncompliance with items addressed in these regulations, incompatible development, protecting the public safety and health, or any violation of an existing state and/or county law, regulation, or ordinance.
11. Recording Approved Site Plan: The approved site plan shall be recorded with the County Recorder's office within 30 days of approval by the County Planning Board otherwise the approval is null and void.

§6.9 – RESERVED

- 3) Construction detail of the new equipment to be installed. Planning staff will accept a product information sheet in place of a detailed drawing if specific enough.
  - 4) Meet all of the requirements for a standard site plan as per Chapter VI of this ordinance.
  - c. A cover letter that includes a complete written description of all new equipment being erected on an existing tower.
  - d. A notarized owner's affidavit for both the property and the owner/operator of the easement and tower structure subject of the application.
  - e. Engineering report or statement verifying that the addition of an antenna array will not compromise the load capacity of the existing tower.
  - f. Review fee
3. Procedures for Administrative Review of Telecommunication Facilities. The following procedures shall be followed for applications for administrative review of telecommunications facilities:
- a. Application: Submit application materials as per Section B. above.
  - b. Staff Review: If the application submittal is complete and the proposed improvement complies with the terms of this section, the staff shall review and approve the application without the necessity for review by the full Planning Board. Approval may be with or without conditions as applicable.
  - c. Variance from Regulations: Administrative review shall not be applicable if any variance from these regulations is requested. Such items shall be scheduled for the Planning Board.
  - d. Decision: The staff shall make a decision on any administrative review application within fifteen (15) business days after date stamping unless the applicant approves an extension of time.

**G. Planning Board Review for Major Telecommunication Facilities**

- 1. Projects Subject to Planning Board Review. If a telecommunications facility may not be approved administratively, pursuant to Subsection F, then a Planning Board approval pursuant to the requirements and process below shall be required before placement of such facilities.
- 2. Planning Board Review Application Submittal. A project which is subject to Planning Board review pursuant to the terms of this section shall be submitted to the Staff of the Benton County Planning Office. A complete application submittal shall consist of the following:
  - a. A completed application

- b. An engineered site plan set of at least 11" x 17" depicting the proposed location of the antenna array. The site plan shall include:
    - 1) A plan for the entire parcel identifying the location of the tower.
    - 2) A detail showing a dimensioned layout of the tower including the easement on which it is located.
    - 3) Construction detail of the facility and associated structures and equipment to be installed including, a cross section of the tower structure, detail on guy wire and anchorage and foundation, lighting, fencing and security, elevation of tower and buildings.
    - 4) Meet all of the requirements for a standard site plan as per Chapter VI of this Ordinance.
  - c. Written Narrative: A written report is to be submitted including information describing the tower and associated structures and equipment including tower height and design, engineering specifications detailing construction of the tower, base and guy wire anchorage. Information describing the proposed painting and lighting schemes, the tower's capacity, including the number and type of antennas that it can accommodate as part of a co-location determination (see Subsection H below).
  - d. Owner Affidavit: A notarized owner's affidavit for both the property and the owner/operator of the easement and tower structure subject of the application.
  - e. Engineering Report: Engineering report or statement verifying that the addition of an antenna array will not compromise the load capacity of the existing tower.
3. Procedures for Planning Board Review of Telecommunications Facilities. The following procedures shall be followed on applications for Planning Board review of telecommunications facilities. The Planning Board shall conduct a public hearing on each such application:
- a. Application: Submit application materials as per Section B. above.
  - b. Staff Review: If the application submittal is complete, the staff shall conduct a technical review of the application and prepare a report for the Planning Board.
  - c. Notification: ~~Property owners within 500 feet 0.5 miles of~~ The proposed telecommunications facility shall be notified of the public hearing in which the Planning Board shall consider action on the application as per the notification requirements for public hearing in Chapter IV, §4.8.
  - d. Decision: The Planning Board, within a duly noticed public hearing, shall make a decision on telecommunications facilities within sixty (60) days after date stamping of complete application unless the applicant approves an extension of time. The Planning Board shall approve, approve with conditions, or deny any such application.

3. Setback from Residences. Towers subject to this section will be located so that there will be no occupiable residences ~~where the nearest part of such residence is within~~ a distance of height of the tower plus fifty (50) feet, fifteen hundred feet (1500 feet) or twice the height of the tower, whichever is greater.
4. Mitigation of Visual Impact. In minimizing any aesthetic problems with a proposed tower or antenna array, applicants agree to take the following steps:
  - a. Signage at the site is limited to non-illuminated warning and equipment identification signs.
  - b. Unless specifically required by law or a regulatory authority or because there is no technologically feasible alternative, no tower shall be equipped with strobe lights that operate at night.
5. Precautions Against Excessive Noise. Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generators used in emergency situations where the regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.
6. Precautions Against Trespassers. The base of every tower must be surrounded with a fence at least six (6') feet in height and topped with either barbed wire or razor wire. The gate for such fence shall be kept locked except when authorized personnel are working on or around the tower. The fence must be posted with signs warning against trespass and providing a number to call in case of an emergency. With the exception of towers constructed in such a way that it is not reasonably practicable to do so, any ladder or other apparatus designed to aid in the climbing of a tower shall be constructed so that the bottom twelve (12') feet of such ladder or apparatus in not readily accessible except when it is in use by construction, maintenance, repair or other authorized personnel.
7. Tower Illumination. If required, the tower lighting must conform to the FCC regulations for both day (strobe) and night (blinking red) lighting at the appropriate locations on the tower.

#### I. Maintenance of Towers and Facilities

By making an application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and functional manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the County. The applicant further agrees to conduct inspections of all such facilities not less frequently than every twelve (12) months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities. The staff of the Planning Department may request in writing from the applicant documentation regarding such inspections and maintenance activities at any such facilities. Such requests by staff for documentation shall not be made more than two (2) times per year on any given tower. The applicant agrees to provide the documentation within thirty (30) days after the mailing of any such request from the staff. Said

Temporary uses include special events, parades, carnivals, seasonal businesses including Christmas Tree sale, firework stands, pumpkin patch, mazes, public health and safety activities such as emergency clinics and temporary inoculation centers etc.

A. **Purpose and Scope:** A Temporary Use Permit (TUP) is intended to allow for the short-term placement of activities and any associated structure or improvement that are commercial in nature. Temporary uses are classified as exempt, minor and major based on the nature and impact of the temporary activity.

It is the intent of this regulation:

1. To serve and protect the health, safety and welfare of the general public;
2. To establish equitable standards for temporary uses

B. **Exemptions:** The following uses shall be exempted from the provisions of this Section if they meet all of the following criteria:

1. The use and/or structure shall not exceed ~~three~~ 30 days in a calendar year.
2. The use and structure shall be located on private property and shall demonstrate provision of adequate off street parking to serve the use. The temporary use shall not displace the required off-street parking spaces or loading areas of the principal use on-site.
3. The temporary structure shall not exceed 120 square feet in size and shall not accommodate explosives or flammable material.
4. The use and/or structure shall not involve the sale or display of any toxic or hazardous or flammable materials on-site. Examples of exempt temporary uses include but is not limited to the following:
  - Religious or nonprofit events conducted entirely on a lot occupied by their primary facility.
  - Special events and activities conducted on public property, such as school sites and public parks, and public events on private property, such as, public health and safety activities such as emergency clinics and temporary inoculation centers.
  - Residential garage and rummage sales.
  - Revivals or family gatherings.
  - Agritourism activities as defined in Chapter III of this Ordinance.

C. Exempt fireworks stands and commercial fireworks display- The fireworks stands and commercial fireworks displays that meet the following criteria shall be EXEMPT from Planning Board Review:

- Have obtained State Fireworks Permit from the State Fire Marshal;

- Have obtained a temporary 911 address from Benton County 911 Administration;
- Have obtained a temporary electrical permit from Benton County Building Official, if required;
- Have contacted Benton County Fire Marshal for scheduling an inspection and comply with the Fireworks Inspection checklist;

C.D. **Temporary Use Requiring a Permit:** All temporary uses that do not meet the exemption criteria require review and approval by the Planning Board. Examples of temporary uses requiring review may include but not be limited to:

- outdoor sales or display of merchandise sold on the premises of an established business such as sidewalk sales or other temporary commercial promotions provided that such activities use public right-of-way or other area dedicated to a specific site plan purpose such as required parking or required loading. Such activities may include non-mobile or mobile vendor stands such as for seasonal sale of agricultural produce, seasonal garden center, sports paraphernalia, agricultural tourism activities etc.
- Off-site religious events in a tent or other temporary structures
- Real estate offices and model homes within approved development projects
- Contractors' construction yards, trailers, coaches or mobile homes as a Temporary residence during construction of a dwelling
- Explosive materials storage, temporary
- Fairs, festivals, events, and concerts
- Special amusement operations
- Tents and canopies
- Outdoor temporary swap meets or auctions
- Outdoor vending anticipated to have a greater impact such as fireworks stands, large farmers markets, or vehicle/boat events.
- Commercial fireworks displays are considered a temporary use and are required to obtain a ~~Major~~-Temporary Permit.

Applications for TUP must be submitted a minimum of fifteen (15) days prior to the event date. A Temporary Use Permit Application Packet can be downloaded or picked up at the Planning Department during counter hours. Submittals shall require the following information:

1. Completed application and fee
2. Cover letter describing the temporary use including scale and duration