

Consent Agenda

December 21st, 2021

MET IN REGULAR SESSION

The Board of Supervisors met in regular session at 10:00 A.M. All members present. Chairman Belt presiding.

PLEDGE OF ALLEGIANCE

1. CONSENT AGENDA

After discussion was held by the Board, a Motion was made by Wichman, and second by Shea, to approve:

- A. December 14, 2021, Minutes as read.

UNANIMOUS VOTE Motion Carried.

2. SCHEDULED SESSIONS

Motion by Wichman, second by Schultz, to amend the agenda by adding a discussion with Jim Hughes Real Estate on Pioneer Meadows subdivision.

UNANIMOUS VOTE: Motion Carried.

Motion by Wichman, second by Grobe, to approve second consideration **Ordinance No. 2021-08**, an Ordinance to amend the Official Zoning Map of Pottawattamie County, Iowa, by changing the district designation of approximately 5 acres from a Class A-2 (Agricultural Production) to a Class I-2 (General Industrial) District, and to adopt said order into law.

**POTTAWATTAMIE COUNTY, IOWA
ORDINANCE NO. 2021-08**

AN ORDINANCE to amend the Official Zoning Map of Pottawattamie County, Iowa, by changing the district designation of approximately 5 acres from a Class A-2 (Agricultural Production) District to a Class I-2 (General Industrial) District.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, IOWA

SECTION 1 - AMENDMENTS: That the Official Zoning Map, as adopted by reference in Section 8.003.020 of the Pottawattamie County, Iowa, Zoning Ordinance, be and the same is hereby amended by changing the district designation from its present designation of a Class A-2 (Agricultural Production) District to a Class I-2 (General Industrial) District of certain real estate, as shown on the attached plat and which is legally described as follows:

A part of 20-76-42 & 21-76-42 EXC RR W OF HWY SE NE & NE SE W OF HWY & SW NE TRI SE COR & 21-76-42 WOF HWY SW NW (To be determined by a survey).

SECTION 2 - SEVERABILITY: That should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not effect that validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

SECTION 3 - REPEAL OF CONFLICTING ORDINANCES: That all ordinance or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4 - EFFECTIVE DATE: This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.

Dated this 21ST Day of December, 2021.

ROLL CALL VOTE

| | AYE | NAY | ABSTAIN | ABSENT |
|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| _____ Scott A. Belt, Chairman | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Tim Wichman | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Lynn Grobe | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Justin Schultz | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Brian Shea | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz. NAYS: Shea. Motion Carried.

Motion by Schultz, second by Shea, to approve and authorize Chairman to sign easement agreements on two HMGP buyout properties.

UNANIMOUS VOTE. Motion carried.

Jim Hughes Real Estate provided an update to the Board on Housing Development on Pioneer Trail 240th Street called Pioneer Meadows. Discussion only.

No action taken.

Motion by Wichman, second by Schultz, to approve tax suspension pursuant to Iowa Code Section 427.9, for property located at 3313 7th Ave, Council Bluffs, Iowa.

UNANIMOUS VOTE. Motion Carried.

Officials from Jennie Edmundson Hospital & Mercy Hospital appeared before the board to discuss County Contribution to local Hospitals. Discussion only.

No action taken.

Motion by Wichman, second by Shea, to set public hearing for December 28th at 10:30 A.M. to consider plans, specifications and form of contract and total estimated costs for the proposed Secondary Roads Operations Center project.

UNANIMOUS VOTE. Motion Carried.

Motion by Shea, second by Schultz, to approve, project pans and sign cover page for Project Number STBG-SWAP-C078(205)-FG-78 for M47 resurfacing from Highway 6 to G30.

UNANIMOUS VOTE. Motion Carried.

3. RECEIVED/FILED

A. Salary Actions

- 1) Sheriff – Payroll status change for Jaron Neumann.
- 2) Communications – Payroll status change for Logan Brown.

B. Reports

- 1) Recorder Fee Book for November 2021
- 2) Sheriff's Report of Fees Disbursed and Collected for November 2021

4. BUDGET STUDY SESSIONS

The Board held Budget Study Sessions with the following department heads: Nick Jedlicka / Veteran Affairs Director, Suzanne Watson / Community Service Director, Andy Brown / Sheriff, Jeff Thuhlen / Chief Deputy Sheriff, Bob Anderson / Communications, Mark Schoemaker / Conservation Director. Discussion only. No action taken.

5. CLOSED SESSION

Motion by Wichman, second by Schultz, to go into Closed Session pursuant Iowa Code 21.5(1)(j) for discussion and/or decision on the purchase or sale of particular real estate. Authorize Chairman Belt to sign agreement as discussed in closed session.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried

Motion by Wichman, second by Shea, to go out of Closed Session.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried

6. ADJOURN

Motion by Belt, second by Schultz, to adjourn meeting.

UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 3:30PM.

Scott A. Belt, Chairman

ATTEST: _____
Melvyn Houser, Pottawattamie County Auditor

APPROVED: December 21, 2021

PUBLISH: X

Scheduled Sessions

**Matt Wyant / Director, Planning &
Development**

Public Hearing and first consideration
of Ordinance No. 2021-10, An
Ordinance to amend Chapter 5.30,
Flood Plain Management.

RECORDER'S COVER SHEET

Prepared by:

Pottawattamie County Office of Planning and Development
223 South 6th Street, Suite 4
Council Bluffs, IA 51501-4245
(712) 328-5792

Return Document to:

Pottawattamie County Office of Planning and Development
223 South 6th Street, Suite 4
Council Bluffs, IA 51501-4245
(712) 328-5792

Document Title:

Pottawattamie County
Ordinance #2021-10

**POTTAWATTAMIE COUNTY, IOWA
ORDINANCE NO. 2021-10**

AN ORDINANCE to amend the following in Chapter 5.30, Flood Plain Management:

- * Section 5.30.031 by adding the following definitions: .01 FIVE HUNDRED (500) YEAR FLOOD – A flood, the magnitude of which has a two-tenths (0.2) percent chance of being equaled or exceeded in any given year or which, on average, will be equaled or exceeded at least once every five hundred (500) years, .02 APPURTENANT STRUCTURE – A structure which is on the same parcel of the property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.,.04 BASE FLOOD ELEVATION - The elevation floodwaters would reach at a particular site during the occurrence of a base flood event., .15 FLOOD INSURANCE STUDY – An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations., .21 HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure., and .24 MAXIMUM DAMAGE POTENTIAL DEVELOPMENT - Hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or other buildings or building complexes similar in nature or use., 34 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 damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair.
- * Renumber subsections in 5.30.031 to accommodate the definition additions.
- * Section 5.30.041.04 by adding subsection D. Maximum Damage Potential Development – All new or substantially improved maximum damage potential development shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the elevation of the 500-year flood, 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 500-year flood; and that the structure, below the 500-year flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator. Where 500-year flood elevation data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determinations.
- * Amend the Section 5.30.041.11 to provide:
 - .11 Accessory Structures to Residential Uses:
 - A. Detached garages, sheds, and similar structures that are incidental to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied.

- (1) The structure shall be designed to have low flood damage potential. Its size shall not exceed 600 sq. ft. in size. Those portions of the structure located less than 1 foot above the 100-year flood elevation must be constructed of flood-resistant materials.
- (2) The structure shall be used solely for low flood damage potential purposes such as vehicle parking and limited storage. The structure shall not be used for human habitation.
- (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 resist flotation, collapse and lateral movement.
- (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 elevation.
- (6) The structure's walls shall include openings that satisfy the provisions of Section 4, 51.30.041.04A of this Ordinance.

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF POTTAWATTAMIE
COUNTY, IOWA**

SECTION 1 - REPEAL OF CONFLICTING ORDINANCES: That Section 3, 5.30.031, Definitions, is hereby repealed in its entirety. Furthermore, all other ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

SECTION 2 - AMENDMENTS: That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new Section, to be codified as Section 3, 5.30.031, Definitions, Flood Plain Management:

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

.01 FIVE HUNDRED (500) YEAR FLOOD – A flood, the magnitude of which has a two-tenths (0.2) percent chance of being equaled or exceeded in any given year or which, on average, will be equaled or exceeded at least once every five hundred (500) years.

.02 APPURTENANT STRUCTURE – A structure which is on the same parcel of the property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

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

.04 BASE FLOOD ELEVATION - The elevation floodwaters would reach at a particular site during the occurrence of a base flood event.

- .05 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."
- .06 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.
- .07 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".
- .08 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.
- .09 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).
- .10 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 Chapter 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.
- .11 FACTORY-BUILT HOME PARK - A parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.
- .12 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.
- .13 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.
- .14 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.
- .15 FLOOD INSURANCE STUDY – An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

- .16 FLOOD PLAIN - Any land area susceptible to being inundated by water as a result of a flood.
- .17 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.
- .18 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.
- .19 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.
- .20 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.
- .21 HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- .22 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.
- .23 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 5.30.041.04.A of this Chapter 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 (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.

- .24 MAXIMUM DAMAGE POTENTIAL DEVELOPMENT - Hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or other buildings or building complexes similar in nature or use.
- .25 MINOR PROJECTS – Small development activities (except for filling, grading and excavating) valued at less than \$500.
- .26 NEW CONSTRUCTION - (new buildings, factory-built home parks) - Those structures or development for which the start of construction commenced on or after April 4, 1983.
- .27 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.
- .28 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.
- .29 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.
- .30 ROUTINE MAINTENANCE OF EXISTING BUILDINGS AND FACILITIES. Repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building or floodplain development permit, provided they are not associated with a general improvement of the structure or repair of a damaged structure. Such repairs include:
- a. Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
 - b. Exterior and interior painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
 - c. Basement sealing;
 - d. Repairing or replacing damaged or broken window panes;
 - e. Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.
- .31 SPECIAL FLOOD HAZARD AREA - The land within a community subject to the "100-year flood". This land is identified as Zone A, AE, A1-A30, AO and AH on the community's Flood Insurance Rate Map.
- .32 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.
- .33 STRUCTURE - Anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.
- .34 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 damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for

which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair.

.35 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 April 4, 1983 shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

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

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

SECTION 3 - AMENDMENTS: That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new Subsection, to be codified as Section 5.30.041.04.D., Maximum Damage Potential Development, Flood Plain Management:

- D. Maximum Damage Potential Development – All new or substantially improved maximum damage potential development shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the elevation of the 500-year flood, 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 500-year flood; and that the structure, below the 500-year flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator. Where 500-year flood elevation data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determinations.

SECTION 4 - REPEAL OF CONFLICTING ORDINANCES: That Section 4, 5.30.041.11, Accessory Structures, is hereby repealed in its entirety. Furthermore, all other ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

SECTION 5 - AMENDMENTS: That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new Section, to be codified as Section 4, 5.30.041.11, Accessory Structures to Residential Uses:

.11 Accessory Structures to Residential Uses:

- A. Detached garages, sheds, and similar structures that are incidental to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied.
- (1) The structure shall be designed to have low flood damage potential. Its size shall not exceed 600 sq. ft. in size. Those portions of the structure located less than 1 foot above the 100-year flood elevation must be constructed of flood-resistant materials.
 - (2) The structure shall be used solely for low flood damage potential purposes such as vehicle parking and limited storage. The structure shall not be used for human habitation.
 - (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 resist flotation, collapse and lateral movement.
 - (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 elevation.
 - (6) The structure's walls shall include openings that satisfy the provisions of Section 4, 51.30.041.04A of this Ordinance.

SECTION 14 - SEVERABILITY: If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 15 - EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED January 3rd, 2022.

ROLL CALL VOTE

AYE NAY ABSTAIN ABSENT

Scott Belt, Chairman

Justin Schultz

Lynn Grobe

Brian Shea

Tim Wichman

Attest: _____
Melvyn Houser, County Auditor
Pottawattamie County, Iowa



| | |
|--------------------------------------|-------------------|
| NOTICE OF PUBLIC HEARING PUBLISHED: | December 23, 2021 |
| BOARD OF SUPERVISORS PUBLIC HEARING: | December 28, 2021 |
| FIRST CONSIDERATION: | December 28, 2021 |
| SECOND CONSIDERATION: | January 3, 2022 |
| PUBLICATION: | January 13, 2022 |
| RECORD: | January 14, 2022 |



Pottawattamie County Office of Planning and Development

TO: Pottawattamie County Board of Supervisors
FROM: Pam Kalstrup
DATE: December 24, 2021
RE: Ordinance #2021-10 – Flood Plain Management

Bill Cappuchio, Floodplain Management Engineer, Iowa DNR, conducted a Community Assistance Visit (CAV), which occurs every 5 years.

The CAV is a visit to a community by a FEMA staff member or staff of a State agency on behalf of FEMA that serves the dual purpose of providing technical assistance to the community and assuring that the community is adequately enforcing its floodplain management regulations. Generally, a CAV consists of a tour of the floodplain, an inspection of community permit files, and meetings with local staff.

Mr. Cappuchio reviewed the County's Flood Plain Management regulations and per his directive, the County is required to make some amendments.

CHAPTER 5.30
FLOOD PLAIN MANAGEMENT

SECTION 1 – STATUTORY AUTHORITY, FINDINGS OF FACT AND PURPOSE

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- 5.30.011 **STATUTORY AUTHORIZATION:** The Legislature of the State of Iowa has in Chapter 331, Code of Iowa, as amended, delegated the power to counties to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents.
- 5.30.012 **FINDINGS OF FACT:**
- .01 The flood hazard areas of Pottawattamie County, Iowa 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.
- .02 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.
- 5.30.013 **STATEMENT OF PURPOSE:**
It is the purpose of this Chapter to protect and preserve the rights, privileges and property of Pottawattamie County, Iowa 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 5.30.012.01 of this Chapter with provisions designed to:
- .01 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.
- .02 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.
- .03 Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
- .04 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

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- 5.30.021 **LANDS TO WHICH CHAPTER APPLY:** The provisions of this Chapter shall apply to all lands and uses which have significant flood hazards. The Flood Insurance Rate Maps (FIRM), dated April 16, 2013 which were prepared as part of the Pottawattamie County, Iowa, Flood Insurance Study, shall be used to identify such flood hazard areas and all areas shown thereon to be within the boundaries of the 100-year flood shall be considered as having significant flood hazards. Where uncertainty exists with respect to the precise location of the 100-year flood boundary, the location shall be determined on the basis of the 100-year flood elevation at the particular site in question. The Pottawattamie County, Iowa, Insurance Study is hereby adopted by reference and is made a part of this Chapter for the purpose of administering flood plain management regulations.

- 5.30.022 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 Chapter and other applicable regulations which apply to uses within the jurisdiction of this Chapter.
- 5.30.023 ABROGATION AND GREATER RESTRICTIONS: It is not intended by this Chapter to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this Chapter imposes greater restrictions, the provision of this Chapter shall prevail. All other ordinances inconsistent with this Chapter are hereby repealed to the extent of the inconsistency only.
- 5.30.024 INTERPRETATION: In their interpretation and application, the provisions of this Chapter 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.
- 5.30.025 WARNING AND DISCLAIMER OF LIABILITY: The standards required by this Chapter are considered reasonable for regulatory purposes. This Chapter does not imply that areas outside the designated areas of significant flood hazard will be free from flooding or flood damages. This Chapter shall not create liability on the part of Pottawattamie County, Iowa, or any officer or employee thereof for any flood damages that from reliance on this Chapter or any administrative decision lawfully made there under.
- 5.30.026 SEVERABILITY: If any section, clause, provision or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

SECTION 3 - DEFINITIONS

- 5.30.031 Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.
- .01 FIVE HUNDRED (500) YEAR FLOOD – A flood, the magnitude of which has a two-tenths (0.2) percent chance of being equaled or exceeded in any given year or which, on average, will be equaled or exceeded at least once every five hundred (500) years. (Ordinance #2021-10/01-03-2022)
- .02 APPURTENANT STRUCTURE – A structure which is on the same parcel of the property as the principal structure to be insured and the use of which is incidental to the use of the principal structure. (Ordinance #2021-10/01-03-2022)
- .03 BASE FLOOD - The flood having one (1) percent chance of being equaled or exceeded in any given year. (See 100-year flood).
- .04 BASE FLOOD ELEVATION - The elevation floodwaters would reach at a particular site during the occurrence of a base flood event. (Ordinance #2021-10/01-03-2022)
- .05 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."
- .06 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.

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- .07 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".
- .08 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.
- .09 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).
- .10 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 Chapter 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.
- .11 FACTORY-BUILT HOME PARK - A parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.
- .12 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.
- .13 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.
- .14 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.
- .15 FLOOD INSURANCE STUDY – An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations. (Ordinance #2021-10/01-03-2022)
- .16 FLOOD PLAIN - Any land area susceptible to being inundated by water as a result of a flood.
- .17 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.
- .18 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.
- .19 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.

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.20 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.

.21 HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. (Ordinance #2021-10/01-03-2022)

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.22 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.

.23 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 5.30.041.04.A of this Chapter 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 (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.

.24 MAXIMUM DAMAGE POTENTIAL DEVELOPMENT - Hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or other buildings or building complexes similar in nature or use. (Ordinance #2021-10/01-03-2022)

.25 MINOR PROJECTS – Small development activities (except for filling, grading and excavating) valued at less than \$500.

.26 NEW CONSTRUCTION - (new buildings, factory-built home parks) - Those structures or development for which the start of construction commenced on or after April 4, 1983.

- .27 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.
- .28 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.
- .29 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.
- .30 ROUTINE MAINTENANCE OF EXISTING BUILDINGS AND FACILITIES. Repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building or floodplain development permit, provided they are not associated with a general improvement of the structure or repair of a damaged structure. Such repairs include:
- a. Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
 - b. Exterior and interior painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
 - c. Basement sealing;
 - d. Repairing or replacing damaged or broken window panes;
 - e. Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.
- .31 SPECIAL FLOOD HAZARD AREA - The land within a community subject to the "100-year flood". This land is identified as Zone A, AE, A1-A30, AO and AH on the community's Flood Insurance Rate Map.
- .32 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.

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

.34 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 damage also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair. (Ordinance #2021-10/01-03-2022)

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.35 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 April 4, 1983 shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

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

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

SECTION 4 – FLOOD PLAIN MANAGEMENT STANDARDS

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5.30.041 **GENERAL FLOOD PLAIN STANDARDS:** All uses must be consistent with the need to minimize flood damage and meet the following applicable performance standards. Where 100-year flood data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted 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 will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination.

.01 All development within the areas of significant flood hazard 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.
- D. Obtain all other necessary permits from federal, state and local governmental agencies including approval when required from the Iowa Department of Natural Resources.

.02 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 County Board of Supervisors, 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 and substantially improved residential structures shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.

.03 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 North American Vertical Datum) to which any structures are floodproofed shall be maintained by the Administrator.

.04 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.

The enclosed areas below the "lowest floor" (not including basements) shall be used solely for parking vehicles, limited low damage storage and/or access to the building.

The property owner shall complete, sign and record with the Pottawattamie County Recorder's Office, the Pottawattamie County Non-Conversion Agreement furnished by the Administrator.

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 (including ductwork) elevated or floorproofed to at least one (1) foot above the 100-year flood level.

D. Maximum Damage Potential Development – All new or substantially improved maximum damage potential development shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the elevation of the 500-year flood, 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 500-year flood; and that the structure, below the 500-year flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator. Where 500-year flood elevation data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determinations. (Ordinance #2021-10/01-03-2022)

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.05 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.

.06 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.

.07 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.

- .08 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.
- .09 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 Chapter. 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 area of significant flood hazard.

.11 Accessory Structures to Residential Uses (Ordinance #2021-10/01-03-2022):

A. Detached garages, sheds, and similar structures that are incidental accessory to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied.

- (1) The structure shall be designed to have low flood damage potential. Its size shall not exceed 600 sq. ft. in size. Those portions of the structure located less than 1 foot above the 100-year flood elevation must be constructed of flood-resistant materials.
- (2) The structure shall be used solely for low flood damage potential purposes such as vehicle parking and limited storage. The structure shall not be used for human habitation.
- (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 resist flotation, collapse and lateral movement.
- (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 elevation.
- (6) The structure's walls shall include openings that satisfy the provisions of Section 4, 51.30.041.04A of this Ordinance.

- ~~(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.~~

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~~(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 5.30.041.05 of this Chapter 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 5.30.041.05 of this Chapter 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.

5.30.042 **SPECIAL FLOODWAY PROVISIONS:** In addition to the General Flood Plain Standards, uses within the floodway must meet the following applicable standards. The floodway is that portion of the flood plain which must be protected from developmental encroachment to allow the free flow of flood waters. Where floodway data has been provided in the Flood Insurance Study, such data shall be used to define the floodway. Where no floodway data has been provided, the Department of Natural Resources shall be contacted to provide a floodway delineation. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination.

.01 No use shall be permitted in the floodway 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.

.02 All uses within the floodway 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.

- .03 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.
- .04 Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable General Flood Plain standards and shall be constructed or aligned to present the minimum possible resistance to flood flows.
- .05 Buildings, if permitted, shall have a low flood damage potential and shall not be for human habitation.
- .06 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 within the time available after flood warning.
- .07 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.
- .08 Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.
- .09 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.

5.30.043 SPECIAL PROVISIONS FOR SHALLOW FLOODING AREAS: In addition to the General Flood Plain Standards, uses within shallow flooding areas must meet the following applicable standards.

- .01 In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map (FIRM), 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.
- .02 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.
- .03 In shallow flooding areas designated as either an AO or AH on the Flood Insurance Rate Map, drainage paths are required around structures on slopes to adequately guide water away from structures.

SECTION 5 - ADMINISTRATION

5.30.051 APPOINTMENT, DUTIES AND RESPONSIBILITIES OF FLOOD PLAIN ADMINISTRATOR:

- .01 The Director of Planning and Development of Pottawattamie County, Iowa, is hereby appointed to implement and administer the provisions of this Chapter and will herein be referred to as the Administrator.
- .02 Duties 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 Chapter will be satisfied.

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- 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 the elevation (in relation to North American Vertical Datum) of the lowest floor (including basement) of all new or substantially improved structures.
- D. Record and maintain a record of the elevation (in relation to North American Vertical datum) to which all new or substantially improved structures have been floodproofed.
- E. 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.
- F. Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this Chapter.

5.30.052 FLOOD PLAIN DEVELOPMENT PERMIT:

- .01 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.
- .02 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 North American 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 Chapter.
- .03 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 Chapter 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 Supervisors.

- .04 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 Chapter. 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 Chapter, prior to the use or occupancy of any structure.

5.30.053 Variance

- .01 The County Board of Supervisors may authorize upon request in specific cases such variances from the terms of this Chapter that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Chapter 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 Chapter, 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.
- .02 Factors Upon Which the Decision of the Board of Supervisors Shall be Based - In passing upon applications for Variances, the Board shall consider all relevant factors specified in other sections of this Chapter 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 floodwater 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 Chapter.
- .03 Conditions Attached to Variances - Upon consideration of the factors listed above, the Board of Supervisors may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Chapter. 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 Chapter.
 - E. Floodproofing measures.

SECTION 6 – NONCONFORMING USES

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5.30.061 A structure or the use of a structure or premises which was lawful before August 9, 1993 or amendment of this Chapter, but which is not in conformity with the provisions of this Chapter, may be continued subject to the following conditions:

- .01 If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this Chapter.

.02 Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

5.30.062 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 Chapter. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

SECTION 7 – PENALTIES FOR VIOLATION

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5.30.071 The penalty for violating the provisions of this Chapter shall be as set forth in Chapter 1.75.

SECTION 8 - AMENDMENTS

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5.30.081 The regulations and standards set forth in this Chapter 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.

**Discussion and/or decision to approve
and authorize Board to sign Resolution
No. 123-2021 entitled: Resolution
Authorizing tax increment financing
extension for the City of Underwood.**

RESOLUTION NO. 123-2021

**RESOLUTION AUTHORIZING TAX INCREMENT
FINANCING EXTENSION FOR THE CITY OF UNDERWOOD**

WHEREAS, the City of Underwood, Iowa (the “City”) is in the process of establishing the Fieldcrest Phase 4 Urban Renewal Area (the “Urban Renewal Area”), pursuant to Chapter 403 of the Code of Iowa which includes the real property described on Exhibit A hereto (the “Property”); and

WHEREAS, project development needs with respect to the Property will require that the City use incremental property tax revenues, as provided for in Section 403.19 of the code of Iowa, received with respect to the Property to pay the costs of the construction of public infrastructure improvements thereon necessary for the development of a housing subdivision in the Urban Renewal Area; and

WHEREAS, Section 403.22 of the Code of Iowa prohibits cities from collecting incremental property tax revenues for this type of project for more than eleven years without the express consent of any affected county and school district; and

WHEREAS, the City Council of the City has requested that the Board of Supervisors of Pottawattamie County, Iowa approve this resolution in order to allow the City to use incremental property tax revenues from the Property for five additional fiscal years, as provided by law;

NOW, THEREFORE, it is resolved by the Board of Supervisors of Pottawattamie County, Iowa, as follows:

Section 1. Pursuant to Section 403.22 of the Code of Iowa, this Board of Supervisors hereby approves the use by the City of Underwood, Iowa, of future incremental property tax revenues produced with respect to the Property, for a total period of up to sixteen fiscal years.

Section 2. The County Auditor is hereby directed to forward an executed copy of this Resolution to the City Council of the City of Underwood.

Dated this 28th day of December, 2021.

ROLL CALL VOTE

| | AYE | NAY | ABSTAIN | ABSENT |
|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| _____ Scott A. Belt, Chairman | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Tim Wichman | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Lynn Grobe | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Justin Schultz | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Brian Shea | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

ATTEST: _____
Melvyn Houser, County Auditor

RESOLUTION _____

WHEREAS, the City of Underwood, Iowa (the "City") is in the process of establishing the Fieldcrest Phase 4 Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa which includes the real property described on Exhibit A hereto (the "Property"); and

WHEREAS, project development needs with respect to the Property will require that the City use incremental property tax revenues, as provided for in Section 403.19 of the code of Iowa, received with respect to the Property to pay the costs of the construction of public infrastructure improvements thereon necessary for the development of a housing subdivision in the Urban Renewal Area; and

WHEREAS, Section 403.22 of the Code of Iowa prohibits cities from collecting incremental property tax revenues for this type of project for more than eleven years without the express consent of any affected county and school district; and

WHEREAS, the City Council of the City has requested that the Board of Supervisors of Pottawattamie County, Iowa approve this resolution in order to allow the City to use incremental property tax revenues from the Property for five additional fiscal years, as provided by law;

NOW, THEREFORE, it is resolved by the Board of Supervisors of Pottawattamie County, Iowa, as follows:

Section 1. Pursuant to Section 403.22 of the Code of Iowa, this Board of Supervisors hereby approves the use by the City of Underwood, Iowa, of future incremental property tax revenues produced with respect to the Property, for a total period of up to sixteen fiscal years.

Section 2. The County Auditor is hereby directed to forward an executed copy of this Resolution to the City Council of the City of Underwood.

Passed and approved the _____ day of _____, 2021.

Chairperson

Attest:

County Auditor

Present: _____

Absent: _____

Ayes: _____

Nays: _____

**EXHIBIT A
LEGAL DESCRIPTION
FIELDCREST PHASE 4 URBAN RENEWAL AREA**

A PARCEL OF LAND BEING A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER (SE 1/4, SW 1/4) OF SECTION 9, TOWNSHIP 76 NORTH, RANGE 42 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF UNDERWOOD, POTTAWATTAMIE COUNTY, IOWA, MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER (SE 1/4, SW 1/4), NORTH 0 DEGREES 14 MINUTES 44 SECOND EAST, 336.62 FEET;

THENCE NORTH 89 DEGREES 56 MINUTES 31 SECONDS WEST, 33.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 56 MINUTES 31 SECONDS WEST, 239.35 FEET;

THENCE SOUTH 0 DEGREES 14 MINUTES 44 SECONDS WEST, 163.62 FEET;

THENCE NORTH 89 DEGREES 56 MINUTES 31 SECONDS WEST, 239.51 FEET;

THENCE NORTH 0 DEGREES 21 MINUTES 28 SECONDS EAST, 269.62 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 31 SECONDS EAST, 46.17 FEET;

THENCE NORTH 0 DEGREES 27 MINUTES 47 SECONDS EAST, 178.00 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 31 SECONDS EAST, 431.48 FEET;

THENCE SOUTH 0 DEGREES 14 MINUTES 41 SECONDS WEST, 283.99 FEET TO THE TRUE POINT OF THE BEGINNING;

SAID PARCEL CONTAINS AN AREA OF 3.38 ACRES, MORE OR LESS SUBJECT OT EASEMENTS OF RECORD.

Discussion and/or decision to approve and authorize Board to sign Resolution No. 124-2021 entitled: Resolution declaring Pottawattamie County, Iowa to be a second amendment County.

RESOLUTION NO. 124-2021

**RESOLUTION DECLARING POTTAWATTAMIE COUNTY,
IOWA TO BE A SECOND AMENDMENT COUNTY**

WHEREAS, the right of the people to keep and bear arms is guaranteed as an individual right under the Second Amendment of the United States Constitution, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.”; and

WHEREAS, the right of the people to keep and bear arms for the defense of life, liberty, and property is regarded as an inalienable right by the people of Pottawattamie County, Iowa; and

WHEREAS, the people of Pottawattamie County, Iowa derive economic benefit from all safe forms of firearms recreation, hunting, and shooting conducted within Pottawattamie County using all types of firearms allowable under the United States Constitution and the laws of the State of Iowa; and

WHEREAS, the Pottawattamie County Board of Supervisors was elected to represent the citizens of Pottawattamie County, and have sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of Iowa; and

WHEREAS, Iowa State Senators and State Representatives have also sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of Iowa; and

WHEREAS, legislation is currently being considered and expected to be proposed by both the Iowa State Legislature and the Federal Legislature that potentially seeks to infringe on the constitutionally protected right of citizens to keep and bear arms; and

WHEREAS, it is desirable to declare that Pottawattamie County is a Second Amendment County, as Pottawattamie County opposes the enactment of any legislation that would infringe upon the constitutional right of the people of Pottawattamie County to keep and bear arms.

NOW, THEREFORE, BE IT RESOLVED that the Pottawattamie County Board of Supervisors, State of Iowa, hereby declares Pottawattamie County to be a Second Amendment County, and hereby states its opposition to the enactment of any legislation that would infringe upon the constitutional right of the people of Pottawattamie County to keep and bear arms.

Dated this 28th day of December, 2021.

ROLL CALL VOTE

| | AYE | NAY | ABSTAIN | ABSENT |
|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| _____ Scott A. Belt, Chairman | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Tim Wichman | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Lynn Grobe | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Justin Schultz | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| _____ Brian Shea | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

ATTEST: _____
Melvyn Houser, County Auditor

John Rasmussen/County Engineer

**Discussion and/or decision to approve
and authorize Board Chairman to sign,
the STBG-SWAP-CO78(205)—FG-78
DOT funding agreement.**

**IOWA DEPARTMENT OF TRANSPORTATION
Agreement for a Surface Transportation Block Grant Program Federal-aid Swap Project**

Recipient: Pottawattamie County

Project No.: STBG-SWAP-C078(205)—FG-78

Iowa DOT Agreement No.: 4-21-STBG-SWAP-014

This is an agreement between the Pottawattamie County, Iowa (hereinafter referred to as the Recipient) and the Iowa Department of Transportation (hereinafter referred to as the Department) for Surface Transportation Block Grant (STBG) Program Federal-aid Swap funds under 761 Iowa Administrative Code (IAC) Chapter 162. Iowa Code Section 306A.7 provides for the Recipient and the Department to enter into agreements with each other for the purpose of financing transportation improvement projects on streets and highways in Iowa.

Pursuant to the terms of this agreement, applicable statutes, and administrative rules, the Department agrees to provide STBG Federal-aid Swap funding to the Recipient for the authorized and approved costs for eligible items associated with the project.

Under this agreement, the parties further agree as follows:

1. The Recipient shall be the lead local governmental agency for carrying out the provisions of this agreement.
2. All notices required under this agreement shall be made in writing to the appropriate contact person. The Department's contact persons will be the Local Systems Project Development Engineer, Christy VanBuskirk, and Western Region Local Systems Field Engineer, Zachary A. Gunsolley. The Recipient's contact person shall be the County Engineer.
3. The Recipient shall be responsible for the development and completion of the following described STBG project:

On M47 from Highway 6 North 5 miles to G30 HMA Resurfacing with Milling.
4. Eligible project activities will be limited to the following: construction, engineering, inspection, and right-of-way acquisition. Under certain circumstances, eligible activities may also include utility relocation or railroad work that is required for construction of the project.
5. The Recipient shall receive reimbursement for costs of authorized and approved eligible project activities from STBG Federal-aid Swap funds. The portion of the project costs reimbursed by STBG Federal-aid Swap funds shall be up to \$1,000,000 for the following phases of work as stipulated by the MAPA Rural Transportation Planning Affiliation :
 - Preliminary Engineering
 - Construction Engineering
 - Right-of-Way
 - X Construction
 - Other (please specify) _____.
6. The Recipient shall pay for all project costs not reimbursed with STBG Federal-aid Swap funds.
7. If the project described in Section 3 drops out of the MAPA Rural Transportation Planning Affiliation current TIP or the approved current STIP prior to obligation of funds, and the Recipient fails to reprogram the project in the appropriate TIP and STIP within 3 years, this agreement shall become null and void.
8. The Recipient shall let the project for bids through the Department.
9. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.
10. It is the intent of both parties that no third party beneficiaries be created by this agreement.

11. This agreement and the attached Exhibit 1 (& 2 if appropriate) constitute the entire agreement between the Department and the Recipient concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement shall be made in the form of an addendum to this agreement. The addendum shall become effective only upon written acceptance of the Department and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed this agreement as of the date shown opposite its signature below.

County Signature Block

This agreement was approved by official action of the Pottawattamie County Board of Supervisors in official session on the ____ day of _____, 20____.

County Auditor

Chair, County Board of Supervisors

**IOWA DEPARTMENT OF TRANSPORTATION
Highway Administration**

By _____ Date _____, 20____
Zachary A. Gunsolley, P.E.
Local Systems Field Engineer
Western Region

EXHIBIT 1
General Agreement Provisions for use of Federal-aid Swap Funds on Non-primary Projects

Unless otherwise specified in this agreement, the Recipient shall be responsible for the following:

1. General Requirements.

- a. The Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the Recipient, the Department has provided guidance in the Instructional Memorandums to Local Public Agencies (I.M.s), available on-line at: https://iowadot.gov/local_systems/publications/im/lpa_ims. The Recipient shall follow the applicable procedures and guidelines contained in the I.M.s in effect at the time project activities are conducted.
- b. In accordance with Iowa Code Chapter 216 and associated subsequent nondiscrimination laws and regulations, the Recipient shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability.
- c. The Recipient shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the associated Code of Federal Regulations (CFR) that implement these laws, and the guidance provided in I.M. 1.080, ADA Requirements. When pedestrian facilities are constructed, reconstructed, or altered, the Recipient shall make such facilities compliant with the ADA and Section 504.
- d. The Recipient agrees to indemnify, defend, and hold the Department harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the Department's application review and acceptance process, plan and construction reviews, and funding participation.
- e. Termination of funds. Notwithstanding anything in this agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this agreement without penalty and without any advance notice as a result of any of the following: 1) The Federal government, legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this agreement or to operate as required and to fulfill its obligations under this agreement; or 2) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or 3) If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this agreement is withdrawn or materially altered or modified. The Department shall provide the Recipient with written notice of termination pursuant to this section.

2. Programming

- a. The Recipient shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The Recipient shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the Department, includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, funds cannot be obligated.
- b. Before beginning any work for which funding reimbursement will be requested, the Recipient shall submit a written request for acceptance to the Department. The Department will notify the Recipient when acceptance is granted. The cost of work performed prior to acceptance will not be reimbursed. The turning in of plans for letting by the Department's administering bureau shall be considered acceptance for construction. The Department will notify the Recipient when acceptance is granted.

3. Design and Consultant Services

- a. The Recipient shall be responsible for the design of the project, including all necessary plans, specifications, and estimates (PS&E). The project shall be designed in accordance with the design guidelines provided or referenced by the Department in the Guide and applicable I.M.s.

4. Environmental Requirements and other Agreements or Permits.

- a. The Recipient shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the Department, or other agencies as required. The Recipient shall follow the applicable procedures in the Instructional Memorandums to Local Public Agencies Table of Contents, Chapter 4 – Environmental Regulations.

5. Right-of-Way, Railroads, and Utilities.

- a. The Recipient shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in I.M. 3.600, Right-of-Way Acquisition, and the Department's Right of Way Bureau Local Public Agency Manual. The Recipient shall contact the Department for assistance, as necessary, to ensure compliance with the required procedures.
- b. If a railroad crossing or railroad tracks are within or adjacent to the project limits, the Recipient shall obtain agreements, easements, or permits as needed from the railroad. The Recipient shall follow the procedures in I.M. 3.670, Work on Railroad Right-of-Way.
- c. The Recipient shall obtain agreements from utility companies as needed. The Recipient shall comply with the "Policy for Accommodating Utilities on the County and City a Non-Primary Federal-aid Road System" for projects on non-primary Federal-aid highways. For projects connecting to or involving some work inside the right-of-way for a primary highway, the Recipient shall follow the Department's "Policy for Accommodating and Adjustment of Utilities on the Primary Road System" The Recipient should also use the procedures outlined in I.M. 3.640, Utility Accommodation and Coordination, as a guide to coordinating with utilities.

6. Contract Procurement.

- a. The following provisions apply only to projects involving physical construction or improvements to transportation facilities:
- b. The project plans, specifications, and cost estimate (PS&E) shall be prepared and certified by a professional engineer or architect, as applicable, licensed in the State of Iowa.
- c. The Recipient shall be responsible for the following:
 - i. Prepare and submit the PS&E and other contract documents to the Department for review and acceptance in accordance with I.M. 3.700, Check and Final Plans and I.M. 3.500, Bridge or Culvert Plans, as applicable.
 - ii. The contract documents shall use the Department's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the Department.
 - iii. Follow the procedures in I.M. 5.030, Iowa DOT Letting Process, to analyze the bids received; make a decision to either award a contract to the lowest responsive bidder or reject all bids; and if a contract is awarded, execute the contract documents and return to Department.

Note: The Department may not be able to allow a project to be let in the scheduled letting due to possible issues with cash flow availability.

- d. The Recipient shall forward a completed Project Development Certification (Form 730002) to the Department in accordance with I.M. 5.050, Project Development Certification Instructions. The project will not be turned in for bid letting until the Department has reviewed and accepted the Project Development Certification.
- e. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 26.12.

- f. The Recipient shall not provide the contractor with notice to proceed until after receiving written notice that the Department has concurred in the contract award.

7. Construction.

- a. The Recipient shall follow the procedures in I.M. 6.000, Construction Inspection, and the Department's Construction Manual, as applicable, for conducting construction inspection activities. The Recipient's engineer shall at all times be responsible for inspection of the project.
- b. A full-time employee of the Recipient shall serve as the person in responsible charge of the project. For cities that do not have any full time employees, the mayor or city clerk will serve as the person in responsible charge, with assistance from the Department.
- c. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. Proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as needed.
- d. The project shall be constructed under the Department's Standard Specifications for Highway and Bridge Construction and the Recipient shall comply with the procedures and responsibilities for materials testing according to the Department's Materials I.M.s. Available on-line at: <https://www.iowadot.gov/erl/index.html>.
- e. If the Department provides any materials testing services to the Recipient, the Department will bill the Recipient for such testing services according to its normal policy as per Materials I.M. 103.

8. Reimbursements.

- a. The Recipient will be initially responsible for all project costs. After costs have been incurred, the Recipient shall submit to the Department periodic itemized claims for reimbursement for eligible project costs. Requests for reimbursement shall be made at least semi-annually but not more than bi-weekly.
- b. To ensure proper accounting of costs, reimbursement requests for costs incurred prior to June 30 shall be submitted to the Department by August 1, if possible, but no later than August 15.
- c. Reimbursement claims shall include a certification that all eligible project costs, for which reimbursement is requested, have been reviewed by an official or governing board of the Recipient, are reasonable and proper, have been paid in full, and were completed in substantial compliance with the terms of this agreement.
- d. The Department will reimburse the Recipient for properly documented and certified claims for eligible project costs. The Department may withhold up to 5% of the total funds available for the project. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final review or audit selected by the Administering Bureau, the Department determines the Recipient has been overpaid, the Recipient shall reimburse the overpaid amount to the Department. After the final review is complete and after the Recipient has provided all required paperwork, the Department will release the funds withheld.
- e. The total funds collected by the Recipient for this project shall not exceed the total project costs. The total funds collected shall include any funds received; for example, Federal funds not received through FHWA, any special assessments made by the Recipient (exclusive of any associated interest or penalties) pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties), proceeds from the sale of excess right-of-way, and any other revenues generated by the project. The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the Recipient do exceed the total project costs, the Recipient shall either:
 - i. in the case of special assessments, refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or
 - ii. refund to the Department all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds.

9. Project Close-out.

- a. Acceptance of the completed construction shall be with the concurrence of the Department. Within 30 days of completion of construction or other activities authorized by this agreement, the Recipient shall provide written notification to the Department. The Recipient shall follow and request a final review, in accordance with the procedures in I.M. 6.110, Final Review, Audit, and Close-out Procedures for Federal-aid, Federal-aid Swap, and Farm-to-Market Projects. Failure to comply with the procedures may result in loss of funds and the ability to let future projects through the Department; reimbursed funds shall be returned and a possible suspension may be placed on the Recipient from receiving funds from the Department on future projects until the Recipient has demonstrated responsible management of funds on roadway projects.
- b. For construction projects, the Recipient shall provide a certification by a professional engineer, architect, or landscape architect as applicable, licensed in the State of Iowa, indicating the construction was completed in substantial compliance with the project plans and specifications.
- c. Final reimbursement of funds shall be made only after the Department accepts the project as complete.
- d. The Recipient shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The Recipient shall also make this documentation available at all reasonable times for review by the Department. Copies of this documentation shall be furnished by the Recipient if requested. Such documentation shall be retained for at least 3 years from the date of the Department's signature of the Department's Final Payment Form (Form 830436) or the bottom part of the Certificate of Completion and Final Acceptance of Agreement Work (Form 640003).
- e. The Recipient shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the Department.

John Rasmussen/County Engineer

Public Hearing to consider plan specifications and form of contract and total estimated costs for the proposed Secondary Roads Operations Center project.

**Discussion and/or decision to accept
resignation letters of Veteran Affairs
Commissioners William Dooley and Ellen
Fritz.**

**Discussion and/or decision to appoint
Brad Powell and David Hazelwood as
full members of the Veteran Affairs
Commission to serve the remainder of
the vacated terms ending June 30,
2022.**

**Discussion and/or decision to approve
28E Agreement between
Pottawattamie County, Iowa; West
Pottawattamie soil and water
conservation district, and East
Pottawattamie soil and water
conservation district for the funding,
Administration, and implementation of
the Full-time Conservation Education
Coordinator Position.**

Prepared by MATTHEW WILBER, Pottawattamie County Attorney
Return to: Pottawattamie County Board of Supervisors, 227 South 6th Street, Council Bluffs, Iowa

28E AGREEMENT BETWEEN POTTAWATTAMIE COUNTY, IOWA; WEST POTTAWATTAMIE SOIL AND WATER CONSERVATION DISTRICT; and EAST POTTAWATTAMIE SOIL AND WATER CONSERVATION DISTRICT for the FUNDING, ADMINISTRATION, and IMPLEMENTATION of the FULL-TIME CONSERVATION EDUCATION COORDINATOR POSITION.

This Agreement by and between Pottawattamie County Board of Supervisors (hereinafter “COUNTY”), located at 227 South 6th Street, Council Bluffs, IA; West Pottawattamie Soil and Water Conservation District (hereinafter “WEST DISTRICT”) 305 McKenzie Avenue, Council Bluffs, IA; and East Pottawattamie Soil and Water Conservation District (hereinafter “EAST DISTRICT”) 16 Main Street, Oakland, IA, becomes fully executed on the date signed by COUNTY. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa and Iowa Code section 161A.7(1)(d).

I. PURPOSE

This Agreement is entered into by all parties for the purpose of employing a full-time Conservation Education Coordinator for educating the county population about conservation needs and solutions.

II. TERM

This Agreement shall begin on January 1, 2022, and terminate on July 31, 2027, unless extended by the written agreement of all parties on terms stated therein. Annual reviews are to take place in January of each year through 2027.

III. ADMINISTRATION

The EAST DISTRICT shall be responsible for administering the terms of this Agreement. No separate legal entity is created.

IV. HOLDING OF PROPERTY UNDER THIS AGREEMENT

This Agreement does not permit the Parties to hold any real property. All work product, work-related materials, and other personal property purchased, created, or otherwise obtained by any of the Parties or any of their employees, agents, affiliates, contractors, or other third parties operating on behalf of the Parties, directly or indirectly, in the performance of this Agreement or otherwise in furtherance of this Agreement's purpose, shall belong jointly to all the Parties and shall remain in the physical possession of any of the Parties available for use and inspection by the other Parties upon reasonable notice unless otherwise agreed to by the Parties.

V. WEST DISTRICT and EAST DISTRICT RESPONSIBILITIES

WEST DISTRICT and EAST DISTRICT shall jointly be responsible for the following:

1. Employ a full-time Conservation Education Coordinator for the purpose of educating the county population to conservation needs and solutions.
2. Provide the names and any insurance enrollment forms to the COUNTY Payroll/Benefits Department at least thirty (30) days before the start of the month that coverage is scheduled to begin.
3. Immediately notify the COUNTY Payroll/Benefits Department of any changes in employment that may impact an employee being covered under the COUNTY's group insurance policies. This includes, but is not limited to, reduction of hours to lower than thirty (30) hours per week and/or termination. Group insurance coverage ends on the last day of the month in which employment is terminated or hours worked are reduced to lower than thirty (30) hours per week.
4. Notify the COUNTY of termination or reduction so that Consolidated Omnibus Budget Reconciliation Act (COBRA) documents can be appropriately sent out.
5. Conduct an internal review upon this Agreement going into effect and promptly notify the COUNTY of any employees who may be eligible under the terms of the Affordable Care Act.

VI. COUNTY RESPONSIBILITIES

The COUNTY shall be responsible for the following:

1. Provide group health insurance (medical coverage with the possibility of vision and dental coverage) to the abovementioned employee under the same terms and conditions as other COUNTY employees with reimbursement for premiums by WEST DISTRICT and EAST DISTRICT equally.
2. Provide access to the Summary Plan Design (SPD) and any required notices to the employee and/or WEST DISTRICT and EAST DISTRICT as appropriate.
3. Send invoices/billing to WEST DISTRICT and EAST DISTRICT Conservation Assistants for reimbursement of any premiums. The full premiums for coverage shall be due on the first day of each month for the month of the desired coverage. Premiums are billed one month in advance. If the COUNTY does not receive payment by the 15th of the month, said group insurance coverage shall be considered terminated effective the last day of the preceding month.
4. Notify the insurance recipient no later than June 1 (or as soon as said information is available) each year of any change in the group insurance monthly rate for the following calendar year.
5. This Agreement guarantees annual funding by the COUNTY for the Conservation Education Coordinator position of \$80,000 per year for the duration of this 28E Agreement. After each annual review as discussed in Section II, the COUNTY may adjust the annual payment for the next year to account for any unspent balance remaining in the DISTRICTS' education account from the prior year's funding.

VII. COMMUNICATIONS

1. Each Party shall designate an individual to represent their Party's interest to Agreement. Unless otherwise designated in writing, the below signees shall constitute each Party's designee and primary contact.

VIII. PARTNERSHIP OR JOINT VENTURE

The Parties to this Agreement acknowledge that they have no duties or responsibilities to each other, financial or otherwise, except as described herein. The Parties remain independent, with this Agreement not forming a partnership or joint venture, and no party has authority to execute agreements or take action on the other parties' behalf.

IX. ENTIRE AGREEMENT

1. This Agreement contains the entire Agreement and integrates all of the terms and conditions contained in and incidental to such agreement and supersedes all prior negotiations and communications concerning this Agreement, oral or written, between the parties, their agents, employees and representatives. No modifications or waiver of any provision in this Agreement shall be valid unless in writing and signed by all of the parties. If, for any reason, any provisions of

this Agreement shall be inoperative, the validity and effect of the other provisions shall not be affected thereby.

2. If any provisions of this Agreement are found to be invalid by any court, administrative agency, or tribunal of competent jurisdiction, the invalidity of any such provision shall not affect the validity of the remaining provisions hereof.
3. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Parties agree that neither the COUNTY nor the WEST DISTRICT nor the EAST DISTRICT shall have the right to assign their rights and obligations hereunder to any party without prior written consent of the other parties. Such consent shall not be unreasonably withheld.

X. WARRANTIES AND SPECIAL COVENANT

1. Subject to the express rights and limitations set forth herein, the Parties warrant and represent that they are duly authorized to enter into this Agreement and can enter into the Agreement on behalf of their entity.
2. The Parties warrant and represent they have the money and ability to carry out their obligations hereunder. They have the power and authority to enter into the transactions contemplated by this Agreement.
3. The Parties agree that when this Agreement is duly executed and delivered, by the Parties hereto, this Agreement will be the valid and binding obligation of WEST DISTRICT, EAST DISTRICT, and COUNTY in accordance with its terms.

XI. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Iowa.

XII. AMENDMENTS

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by all parties, and filed in an electronic format with the Iowa Secretary of State as required by Iowa Code section 28E.8(1)(b) (2020).

XIII. TERMINATION

Any party may terminate this Agreement at any time upon ninety days written notice to the other parties if the Party determines the responsibilities are not being met as described and listed in this Agreement or for lack of funding for the position, and the Party votes to terminate by a majority vote.

XIV. LIABILITY

COUNTY shall, only to the extent consistent with and permitted by the Iowa Constitution and Iowa Code Chapter 670, indemnify WEST DISTRICT and EAST DISTRICT from and against any claim based on a statutory or regulatory requirement of the COUNTY not met, or any claim caused directly by the negligent or wrongful acts or omissions of any employee of the COUNTY, while acting within the scope of the employee's office or employment in connection with the performance of this Agreement.

WEST DISTRICT and EAST DISTRICT shall, only to the extent consistent with and permitted by Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify the COUNTY from and against any claim, as defined in Iowa Code §669.2, caused directly by the negligent or wrongful acts or omissions of any employee of the WEST DISTRICT or EAST DISTRICT, as defined in Iowa Code §669.2, while acting within the scope of the employee's office or employment in connection with the performance of this Agreement. COUNTY agrees that any claim for which indemnification is sought pursuant to this section will be subject to the provisions of Iowa Code Chapter 669 and 543 Iowa Admin. Code 1 including, without limitation, those provisions which address the making and filing of claims.

XV. FILING AND RECORDING

It is agreed that the EAST DISTRICT will file this Agreement in an electronic format with the Iowa Secretary of State as required by Iowa Code section 28E.8 (2020).

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

APPROVED BY: POTTAWATTAMIE COUNTY BOARD OF SUPERVISORS

Scott Belt, Chairperson

Date: _____, 2021

STATE OF IOWA; POTTAWATTAMIE COUNTY, ss: This instrument was acknowledged before me on _____, 2021 by Scott Belt as Chair of the Pottawattamie County Board of Supervisors.

NOTARY PUBLIC FOR THE STATE OF IOWA

APPROVED BY: EAST POTTAWATTAMIE SOIL AND WATER CONSERVATION DISTRICT

_____ **Date:** _____, 2021
Kami Willett, Chairperson

STATE OF IOWA; POTTAWATTAMIE COUNTY, ss This instrument was acknowledged before me on _____, 2021 by Kami Willett as Chairperson of the East Pottawattamie Soil and Water Conservation District.

NOTARY PUBLIC FOR THE STATE OF IOWA

APPROVED BY: WEST POTTAWATTAMIE SOIL AND WATER CONSERVATION DISTRICT

_____ **Date:** _____, 2021
Don Dilts, Chairperson

STATE OF IOWA; POTTAWATTAMIE COUNTY, ss: This instrument was acknowledged before me on _____, 2021 by Don Dilts, as Chairperson of the West Pottawattamie Soil and Water Conservation District.

NOTARY PUBLIC FOR THE STATE OF IOWA

BUDGET STUDY SESSIONS

- A. Medical Examiner**
- B. WIC**
- C. County Attorney**
- D. Roads**
- E. Public Health**
- F. Animal Control**
- G. Environmental Health**
- H. Planning**

Closed Session