

RESOLUTION #2008 - 46

A RESOLUTION AMENDING BY REFERENCE CERTAIN LANGUAGE IN THE MADISON COUNTY ZONING AND SUBDIVISION RESOLUTIONS UNDER THE AUTHORITY GRANTED BY SECTIONS 23-114.01 THROUGH 223-114.05 AND 23-165 OF THE REVISED STATUTES OF NEBRASKA, 1943.

WHEREAS, having received a recommendation for approval from the Madison County Joint Planning Commission and proper notice been given and public hearing held as provided by law.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Madison County, Nebraska, hereby amends the Madison County Zoning and Subdivision Resolution by inserting the following language into Article 4, Article 2 and the Land Use Matrix as described in detail below.

SECTION 410 WPO WELLHEAD PROTECTION OVERLAY DISTRICT 410: WPO Wellhead Protection Overlay

The intent of this Wellhead Protection Overlay District is to overlay any of the primary zoning districts herein established and described in Sections 402 through 409 of the Madison County Zoning Regulations in order to assist Norfolk's publicly owned water supply systems, as defined in Title 179, Nebraska Department of Health, Chapter 2, within Madison County, Nebraska which operates water wells in the County in providing protection from contamination of such wells through regulation of land uses which have the potential for contamination of the groundwater source(s) from which said wells derive water. The intent of this District is also to protect existing and future agricultural uses, which are in balance with the natural environment, which are compatible with existing agricultural uses and which will not present unacceptable potential for contamination of the publicly owned water supply system wells.

Prerequisite Requirements for Application of this Overlay District

Prior to the application of this District to any lands in the zoning jurisdiction of Madison County, the City of Norfolk, which maintains and operates water supply wells within the County shall make application to the Madison County Planning Commission and Madison County Board of Commissioners seeking application of this District to specified lands within the County. Prior to making such application and prior to approval of any application of this District to any lands within the County, the City of Norfolk shall have first complied with all other requirements of the Wellhead Protection Area Act (Neb. Rev. Stat. 46-1501 through 45-1509 and the additional requirements listed as follows:

1. Delineation of the wellhead protection area(s) based upon a twenty (20) year time of travel recharge zone, as defined by the Nebraska Department of Environmental Quality.
2. Completion and mapping of an inventory of potential contamination sources within the wellhead protection area(s), including identification of known abandoned wells and/or wells not in use.
3. Formulation, adoption and enforcement of land use control regulations for those portions of the wellhead area within the corporate limits and zoning jurisdiction area of the City of Norfolk which are appropriate to minimize the potential for contamination to the water supply of the Municipality
4. Formulation of emergency / contingency / long-range plans in the event of disruption of the supply of water from wells in the wellhead protection area(s).

5. Formulation and implementation of an on-going public involvement / education program to permit public comment in the establishment of a Wellhead Protection Plan (WHPP), including a plan to provide public information regarding the (WHPP) and voluntary cooperation with the same.
6. Development of a program to install and maintain Wellhead Protection Area signs on roadways around the wellhead protection area(s).

Limitation on Application of this Overlay District

This District may only be applied to lands within wellhead protection areas based upon a twenty (20) year time of travel recharge zone, as defined by the Nebraska Department of Environmental Quality. In the event the boundaries of any such wellhead protection area(s) do not follow easily identifiable boundaries such as roads, rivers, creeks, section, quarter section or quarter-quarter section lines, the boundaries of such areas shall be expanded to, but not beyond, the nearest such lines to avoid confusion and added administrative costs associated with in-the-field determination of such boundaries.

Amendment of Official County Zoning Map

Whenever the requirements of Article 9 of the Madison County Zoning Regulations have been complied with, and the County Planning Commission and County Board of Commissioners have conducted public hearings regarding application of this District and the County Board of Commissioners has acted to approve the application of a Wellhead Protection Overlay District, the boundaries of such District, defined in accordance with the limitations set forth immediately above, shall be indicated on the Madison County, Nebraska Official Zoning Map and such map shall be signed in accordance with the requirements of Article 9 of the Madison County Zoning Regulations.

Primary Zoning Districts

To remain consistent with the Madison County Comprehensive Development Plan of 2003, the primary zoning districts to be allowed in the Wellhead Protection Area are AT – Agricultural Transition District and RR - Rural Residential District. The MUDD Overlay District may be applied to the base zoning district in addition to the Wellhead Protection Overlay District. The Wellhead Protection Overlay District shall assign a housing density in AT District as no more than seven (7) non-farm houses and one (1) farmstead per quarter. This overlay district shall also affix a housing density in the RR District as no more than fourteen (14) non-farm houses and one (1) farmstead per quarter. The minimum lot size of forty (40) acres and three (3) acres with a Conditional Use Permit is changed only in the overlay district to three (3) acres with no Conditional Use Permit being necessary in either underlying zoning district.

Permitted Uses and Accessory Uses

Any use or structure indicated as a permitted use or accessory use in the primary zoning district(s) on which this District is overlain, shall be permitted in accordance with the zoning permit requirements set forth in such primary zoning district(s), except when specifically prohibited in Prohibited Uses in this District as set forth below and except when an otherwise permitted or accessory use is listed as a conditional use in the Permitted Conditional Uses in this District as set forth below. All such permitted and accessory uses shall comply with the additional wellhead protection restrictions set forth in Wellhead Area Protection Requirements set forth below and be consistent the land use matrix of these regulations.

Permitted Conditional Uses

Any use listed as a conditional use in the primary zoning district(s) and consistent with the land use matrix of these regulations on which this District is overlain, except the uses specifically prohibited in Prohibited Uses in this District set forth below, may be authorized as a conditional use in accordance with the requirements and procedures specified in Article 5 of this Madison County Zoning Regulations, provided the authorization of any conditional use shall include at least the condition that any use so authorized shall comply with all applicable requirements and restrictions of Wellhead Area Protection Requirements as set forth below.

Prohibited Uses

Uses and structures, which are prohibited in the primary zoning district(s) on which this District is overlain, shall be prohibited and, regardless of whether prohibited in the primary zoning district(s), the following uses and structures shall be specifically prohibited on any land area on which this District is applied:

1. Medium or Large Animal Feeding Operations and Concentrated Animal Feeding Operations as defined in Article Two of these regulations, and associated waste handling facility uses,
2. Stockpiling of livestock manure, paunch, or sludge.
3. Containment of liquid livestock waste, manure, paunch, or sludge.
4. Landfills and refuse recycling centers.
5. Sand, gravel, or limestone mining operations.
6. Chemical reclamation facilities.
7. Hazardous waste impoundment facilities.
8. Salvage (junk) yards of all types.
9. Non-residential septic and/or On-Site Wastewater Treatment systems without a Conditional Use Permit.

Any of the above Prohibited Uses currently operating under a valid Conditional Use Permit or as a permitted use under current regulations may continue the use until the expiration of the Conditional Use Permit. All other prohibited uses shall cease within 30 days of the adoption of these regulations.

Wellhead Area Protection Requirements

The following restrictions shall apply to all uses within any land areas on which this District is applied:

1. Storage of gasoline, diesel fuel, fuel oil or other similar fuels, whether on a farm or ranch or in association with any other use, shall comply with the rules and regulations of Titles 126 (Rules and Regulations Pertaining to the Management of Waste), Title 159 (Underground Fuel Storage Tanks), and the National Fire Prevention Association Code 30, administered by the Nebraska Department of Environmental Quality or other responsible agency or department. In addition, storage of gasoline, diesel fuel, fuel oil or other similar fuels in excess of one hundred forty (140) gallons within two hundred (200) feet of any well, whether on a farm or ranch or in association with another land use and whether or not such fuels or stored on, above or below ground, shall include an impervious liner or shall include double wall construction. Non-approved storage containers shall become non-compliant five (5) years following the date of approval of this WHPP by the Board of County Commissioners.

2. Fuel storage associated with any irrigation engine, including any portable fuel storage tanks shall be equipped with a containment area in accordance with Chapter 34 of the International Fire Code, 2006 edition, the National Fire Protection Association Code 30 and with Title 126 (Rules and Regulations Pertaining to the Management of Waste), administered by the Nebraska Department of Environmental Quality, in the event of a release. Non-approved storage containers shall become non-compliant five (5) years following the date of approval of this WHPP by the Board of County Commissioners.
3. Fuel storage in excess of one hundred forty (140) gallons shall not be permitted within one thousand (1,000) feet of any municipal well.
4. Bulk storage of fertilizers, herbicides, pesticides and other materials other than fuels, determined by the United States Environmental Protection Agency to be hazardous materials, shall be prohibited, except when a conditional use for such use is authorized and such authorization includes a condition that all such uses shall comply with the applicable rules and regulations of Title 118 (Groundwater Quality Standards and Use Classification), Title 119 (NPDS Permits), Title 126 (Rules and Regulations Pertaining to the Management of Waste), Title 128 (Nebraska Hazardous Waste Regulations), Title 159 (Underground Fuel Storage Tanks) and Title 198 (Rules and Regulations pertaining to Agricultural Chemical Containment), administered by the Nebraska Department of Environmental Quality and other agencies.
5. Any industrial and commercial process that includes more than 1,000 lb. of materials, determined by the United States Environmental Protection Agency to be hazardous materials, shall be prohibited, except when a conditional use for such use is authorized and such authorization includes a condition that all such uses shall comply with the applicable rules and regulations of Title 118 (Groundwater Quality Standards), Title 119 (NPDS Permits), Title 126 (Rules and Regulations Pertaining to the Management of Waste), Title 128 (Hazardous Waste Regulations), Title 159 (Underground Fuel Storage Tanks) and Title 198 (Rules and Regulations pertaining to Agricultural Chemical Containment), administered by the Nebraska Department of Environmental Quality and other agencies.
6. Prior to the development of any permitted land use, any well that has not been closed and sealed in accordance with the requirements Title 178. Chapter 12 and the requirements of the applicable Natural Resource District(s) guidelines shall be so closed and sealed.
7. No septic tank, tile field or other On-Site Wastewater Treatment system, associated with any residential, commercial, or other type of land use, shall be located within one thousand (1,000) feet of any Municipal well protected under this District, provided that if an undeveloped lot of record, as defined in Article 2 of these Zoning Regulations, exists as of the effective date of application of this District and the entirety of said lot of record lies within the land area on which this District is applied, and provided said lot does not exceed a density limit of 4 homes including non-farm homes and a farmstead per 40 acres, and a public sewer is not available to serve such lot of record, one septic tank and tile field or other On-Site Wastewater Treatment system may be established, provided such tank, tile field or other system complies with the requirements of Title 124 (On-site Wastewater Treatment Systems) of the Nebraska Department of Environmental Quality.

8. Domestic, irrigation and any other water wells, other than Municipal water wells shall be prohibited within a wellhead protection area on which this District has been applied. Any existing irrigation well may be replaced with the same capacity well if said existing well no longer functions. A new irrigation well may be established on a non-irrigated parcel of land eighty (80) acres in area or larger provided such well shall not be located closer than one thousand (1,000) feet of any well protected under this District. Further that if a parcel to be developed complies with the density regulations of the underlying zoning district and lies within the land area on which this District is applied and a public water supply is not available to serve such parcel, one (1) four (4) inch domestic well may be established, provided such well shall be constructed in accordance with the rules and requirements of Title 178.
9. Any application of agricultural crop fertilizers, livestock manure, pesticides, or herbicides to the land or crops through an irrigation system (chemigation) shall comply with the rules and requirements of Title 195 (Rules and Regulations Pertaining to Chemigation). Further, when such fertilizers and/or livestock manure is applied, the amount of such fertilizers and / or livestock manure shall be at agronomic rates. Written verification of amounts of such fertilizers and / or livestock manure shall be provided upon request, to the County Zoning Administrator or the County Board of Commissioners by the owner of any land within this District. The County Zoning Administrator or the County Board of Commissioners shall provide copies of said verifications to the City of Norfolk.
10. If any land area contained within a Wellhead Protection Overlay District is also part of a special protection area or ground water management area, established under the Groundwater Management Protection Act, all uses within such areas, including agricultural uses, shall comply with the action plan and best management practices established for such areas by the applicable Natural Resource District(s).

Minimum Lot Development Requirements.

The minimum lot area, width, yard / setback, building height and other requirements for any parcel in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain.

AMEND ARTICLE 2 OF THE MADISON COUNTY ZONING REGULATIONS TO INCLUDE THE FOLLOWING DEFINITIONS:

Agronomic Rates: The application of plant nutrients, from all sources, to meet, but not exceed, the estimated annual nutrient needs of the crop being produced, based upon past or projected yields, so as to avoid build-up of nutrients including, but not limited to, nitrate, chloride, ammonia and phosphorus. Determination of the agronomic rate shall include the available nutrients in the soil, the nitrogen content of any irrigation water, and the nutrient content of any animal wastes, sludges and commercial fertilizer to be applied.

Bulk Storage: Is the storage of materials for distribution to other locations and not for use or consumption of such materials on the premises.

Fuel Storage: The storage of fuel including propane, gasoline, diesel, kerosene, or derivatives thereof stored on-site or in portable containers with said containers equipped to deliver fuel to vehicle fuel tank. Fuel Storage does not include primary fuel tanks on board tractors, combines, semi-tractor or other farm or road legal vehicles.

Water Well: Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from the underground water reservoir. Water well includes any excavation made for any purpose if groundwater flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation (commonly called 'Pit' wells). For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water well does not include;

1. any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to re-pressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission
2. any excavation that is used to inject fluid as defined in Nebraska Revised Statutes §81-1502 into the underground water reservoir, or
3. any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation. [Neb. Rev. Stat. §46-601.01(1)]

Zoning Matrix

Use Types	AG1	AG2	AT	R R	M H	C 3	I	WHP P*	E C
Agricultural Uses									
Horticulture (Greenhouses)	P	P	P			C		C	
Feed Mills	P	P				C	P		
Crop Production	P	P	P	P	P	P	P	P	P
Livestock (<300 HE)	P/L	P/L	P/ L					P/L	
Livestock (> 300 HE <5,000)	C	C							
Livestock (> 5,000)	C								
Livestock Sales	P	P	P			C		No	
Produce Stands	C	C	C			C		P	
Seed and Feed Sales	C	C	C			P		C	
Residential Uses									
Single-Family Detached (Farm)	P	P	P	P	P			P	
Single-Family Detached (Non-Farm)	C	C	C	P	P			P	
Single-Family Attached				C	C			C	
Duplex				C	C			C	
Two-Family				C	C			C	
Townhouse				C	C			C	
Multiple Family Residential				C	C			C	
Group Residential			C	C				No	
Manufactured Home Res	P/L	P/L	P/ L		P			P/L	
Mobile Home Park					C				
Mobile Home Subdivision				C	C			C	
Retirement Residential			C	C	C			No	
Civic Use Types									
Administration	P	P	P	C	P	P	P	P/L	
Cemetery	C	C	P	C	C	C	C	C	
College and Universities			C	C		C		C	
Convalescent Services			C	C				No	
Cultural Services			C	C				No	
Day Care Services Limited	P	P	P	P	P	P	C	P	
Day Care Services General	C	C	C	C	C	C	P	C	
Detention Facilities			C			C	C	No	
Emergency Residential Services	C	C	C	C				C	
Group Care Facility			C	C				No	
Group Home			C	C				No	
Guidance Services			C	C				C	
Health Care			C	C		P		C	

Hospital			C	C		P		No	
Maintenance Facilities	C	C	C			C	P	No	
Parks and Recreation	P	P	P	P	P	P	P	P/L	P/L
Postal Facilities			C	P	P	P	P	C	
Primary Education Facilities	C	C	C	P	P	C		No	
Public Assembly	C	C	C	P	C	C		No	
Religious Assembly	C	C	P	P	P	P	C	C	
Safety Services			C	C	C	P		C	
Secondary Education Facilities	C	C	C	P	P	C		No	
Utilities	P	P	P	C	C	P	P	No	P/L
Office Use Types									
General Offices			C	C	C	P	C	C	
Financial Services						P			
Medical Offices			C	C	C	P		C	
Commercial Use Types									
Adult Entertainment						C			
Agricultural Sales & Services	C	C	C			P	P	No	
Auction Yards and Barns	P	P	P			C	P	No	
Auto Rental/Sales Services						C			
Auto Services						C	C		
Bed & Breakfast	C	C	C	P/L				C	
Body Repair						C	C		
Business Support Services	C	C	C	C		C		C	
Equipment Rental/Sales	C	C	C			C		No	
Equipment Repair Services	C	C				C			

*The WHPP column only applies when public water/sewer is not available.

Use Types	AG1	AG2	AT	RR	M H	C 3	I	WHP P*	EC
Commercial Use Types Cont'd									
Business or Trade Schools	C	C				P			
Campground	C	C	C		C			C	C
Cocktail Lounge						P			
Commercial Recreation Indoor						C			
Commercial Recreation Outdoor			C			C		C	P/ L
Communications Services	C	C	C	C	C	C	C	C	C
Construction Sales & Services	C	C	C			C	C	C	
Consumer Services						P	C		
Convenience Storage						C	P		
Convenience Stores						P/ L			
Dry Cleaning						C	C		
Food Sales (Grocery Stores)						P			
Funeral & Mortuaries Services	C	C	P			P		C	
Gaming Facilities						P			
Golf Courses	C	C	C	P/L				No	
Industrial Equipment Sales	C	C				P	P		
Kennels	C	C	C					C	
Laundry Services						C	P		
Liquor Sales						P			
Lodging (Not Bed & Breakfast)						P			
Mobile Home/RV Sales and Service			C		P	P		C	
Pet Services	P/L	P/L	P/L			P/ L		C	
Research Services	C	C	C			C	C	C	
Restaurants Fast Food						P			
Restaurants General						P			
Retail Services						P			
Stables or Riding Schools	P/L	P/L	P/L					P/L	
Surplus Sales						P	P		
Trade Services						P	P		
Vehicle Storage (short- term)	C	C				P	C		
Vehicle Storage (long- term)	C	C				C	C		
Veterinary Services	P	P	P			P	C	C	

Parking Use Types									
Off-Street Parking						P	P	C	
Industrial Use Types									
Agricultural Industries	P/L	P/L	P/L				P/L	C	
Construction Yards							C		
Custom Manufacturing	C	C					P		
Light Industry	C	C					P		
General Industry							C		
Heavy Industry							C		
Recycling Collection	C	C	C			C	P	C	
Recycling Processing	C	C	C				P	C	
Resource Extraction	C	C	C					C	C
Salvage Services	C	C				C	C		
Warehousing (Enclosed)	C	C	C			P/L	P/L	C	
Warehousing (Open)	C	C	C			P/L	P/L	No	
Transportation Use Types									
Aviation Facilities (Airports)	C	C	C					No	
Railroad Facilities	C	C				P/L	P		
Passenger Transportation	C	C				P			
Truck Terminal	C	C				C	P		
Miscellaneous Types Uses									
Alternative Energy Production	C	C	C				C	C	
Amateur Radio Tower	P/L	P/L	P/L	P/L	P/L	C	C	C	C
Broadcasting Tower	C	C	C	C	C	C	C	C	C
Construction Batch Plant	C	C	C	C	C	C	C	No	C
Home Occupations	C	C	C	C	C			C	
Landfill (non-putrescible)	C	C	C					No	
Landfill (putrescible)	C	C	C					No	
Wind Energy Conservation	C	C	C	P/L		C	P	C	C
Wireless Communication Tower	C	C	C	C	C	C	C	C	C

P = Permitted Use

C = Conditional Use Permit Required

L = Allowed with some Limitations

*The WHPP column only applies when public water/sewer is not available.

A duly advertised hearing has been held by the Madison County Joint Planning Commission and the Madison County Board of Commissioners after a recommendation for approval by the said Joint Planning Commission.

NOW, THEREFORE, LET IT BE FURTHER RESOLVED, that this Resolution shall take effect and be in force no sooner than the 22nd day of July, 2008.

ADOPTED at Madison, Nebraska this 22nd day of July, 2008.

BOARD OF COMMISSIONERS
MADISON COUNTY, NEBRASKA

Chairman

ATTEST:

Commissioner

Madison County Clerk

Commissioner

Issued this 22nd day of July, 2008

Madison County Zoning Administrator