

PLANNING & DEVELOPMENT

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Timothy Huey
Director

To: Dee F Bruemmer, County Administrator

From: Timothy Huey, Planning Director

Date: October 18, 2011

Re: Discussion of Public Hearing on certain amendments to the text of the Revised Zoning Ordinance for unincorporated Scott County and a proposed addendum to the Scott County Comprehensive Plan Chapter 11.

At its October 4, 2011 meeting the Planning and Zoning Commission unanimously (all seven members in attendance) recommended approval of the amendments to the Zoning Ordinance and the addendum to the Comprehensive Plan. The consensus of the commission was that they wanted Scott County to remain as strict as possible, within the limits of the law, on when ag exemptions are granted. Also to be consistent and fair with the information that would need to be submitted to review such requests.

As discussed at the joint meeting September 28 the recommendation from the Planning Commission is to amend Section 6-3 of the Scott County Zoning Ordinance to exactly mirror the language of State Law 335.2 on ag exemptions. Also to amend the definition of farmer to remove any income requirements and just define it as "a person actively involved in farming" and finally to define farmland, farm buildings and farm houses as "primarily adapted and used for agricultural purposes."

The second recommendation of the Planning Commission is to approve a proposed addendum to Chapter 11 **Mechanisms for Plan Implementation** of the Scott County Comprehensive Plan. The addendum states the basis for determination of agricultural exemptions from the Scott County Zoning Ordinance and Building Code. It states that it is the intention of Scott County to strictly enforce its long established agricultural preservation land use policies and not allow any exemptions to be used to void or circumvent those policies inappropriately. It states, as clearly as possible, when an exemption will and will not be granted, what information needs to be submitted for a determination to be made and how any determination can be appealed to the Zoning Board of Adjustment. It states the criteria under which an agricultural exemption for a farm house will be granted and that it will not be granted to the owner of the farmland if the land owner is not actively involved in the farming operation nor will it be granted to family members or others who are not involved with farming the land. The criteria also discusses the basis on which a farm house or farmstead can be split from the surrounding farm land.

Notice of a Public Hearing for the October 27 Board meeting has been advertised for the Board to take public comments on these proposed changes. Since the zoning amendments and Comp Plan addendum are interrelated, comments for both will be taken at the public hearing.

Proposed amended language related to ag-exemptions from Scott County Zoning Ordinance

SEC. 6-3. ~~SPECIAL~~ AGRICULTURAL EXEMPTIONS

- A. Except to the extent required to implement Section 6.18, no regulation adopted under the provisions of this Chapter shall be construed to apply to farm land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area for use for agricultural purposes, while so used ~~by the farmer~~.
- (1) Agricultural buildings and land uses are not exempt from complying with Federal, State, or Local regulations concerning developing, depositing, or excavating in or on the designated Scott County flood plain.
 - (2) It shall be the responsibility of any person or group claiming that certain property or buildings are ~~is~~ entitled to exemption on the basis of this Section to demonstrate that the property and buildings are primarily adapted and used for agricultural purposes ~~by a farmer~~ in accordance with the policies for determining such exemption established by the Scott County Comprehensive Plan.

SEC. 6-5 DEFINITIONS

36. FARM: A tract of land ~~owned or rented by a farmer~~, primarily adapted and used for agricultural purposes, ~~forty (40) acres or greater in size and assessed as agricultural property by the Scott County Assessor. Tracts of land owned or rented by a farmer, less than forty (40) acres in size, assessed as agricultural property by the Scott County Assessor and claimed as exempt from Zoning regulations as being primarily adapted for agricultural purposes shall be reviewed by making application to the Zoning Board of Adjustment in accordance with the Board's procedures for Appeals of Interpretation. The Board of Adjustment shall make a determination on whether the level of existing or proposed agricultural activity on the property can be considered "primarily adapted for agricultural purposes" and therefore exempt from Zoning regulations.~~
- 36(a). FARMING: The science or art of producing agricultural products which involves cultivating the soil and producing crops for food, fiber, fuel or consumer products, or the raising of livestock for food or other consumer products. Farming does not include residential gardening or the raising of livestock for recreational or hobby purposes (See definition of "livestock", "kennel, commercial", "kennel, private", "stable, private", and "stable, public").
- 36(b) FARM BUILDING: An enclosed building or other structures primarily adapted and used for agricultural purposes located on a farm ~~and used by a farmer~~.
- 36(c) FARM HOUSE: A single-family residence located on a farm, ~~assessed as agricultural property~~ and occupied by a farmer.
37. FARMER: A person or persons actively engaged in farming ~~and deriving taxable income from such activity amounting to at least 50% or greater of the median household income for Scott County as established from the current decennial census by the US Census Bureau~~ or someone who is retired from farming when it relates to the land the farmer formerly farmed.

Proposed Zoning Ordinance Definitions, as amended, of Farm, Farm Building, Farm House and Farmer

FARM: A tract of land primarily adapted and used for agricultural purposes.

FARM BUILDING: An enclosed building or other structures primarily adapted and used for agricultural purposes located on a farm.

FARM HOUSE: A single-family residence located on a farm and occupied by a farmer.

FARMER: A person or persons actively engaged in farming or someone who is retired from farming when it relates to the land the farmer formerly farmed.

FARMING: (Unchanged from current ordinance definition) The science or art of producing agricultural products which involves cultivating the soil and producing crops for food, fiber, fuel or consumer products, or the raising of livestock for food or other consumer products. Farming does not include residential gardening or the raising of livestock for recreational or hobby purposes (See definition of “livestock”, “kennel, commercial”, “kennel, private”, “stable, private”, and “stable, public”).

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CHAPTER 11: MECHANISMS FOR PLAN IMPLEMENTATION

ADDENDUM A

Criteria for determination of agricultural exemption to County Zoning Ordinance and Building Codes and explanation of farmsteads split in agricultural zoning districts.

This addendum is adopted to establish criteria to be used in making determinations of when land and buildings are exempt from Scott County Zoning and Building Codes. It is also intended to clarify when a farm house can be split from the adjacent farm land.

State Law

Iowa Code Chapter 335 County Zoning allows Counties to adopt and implement zoning regulations in the unincorporated areas of a County. However Section 335.2 states:

Except to the extent required to implement Section 335.27 (which deals with agricultural land preservation), no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

Iowa Code Chapter 331 County Home Rule Implementation allows Counties to adopt and implement building codes in the unincorporated areas of a County. However Section 331.304(3)(b) states:

A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so used or under construction for that use.

As stated in 332.2 farm land and farm structures are not exempt from the County Floodplain Development Ordinance. Additionally farm land and farm structures are not exempt from Scott County Health Codes related to the installation of wells and wastewater disposal systems such as septic tanks and drain fields nor are they exempt from any State regulations related to electrical, mechanical or plumbing codes that are deemed to apply to farm structures.

Background

Scott County, with the adoption of the original Development Plan in 1980, the Revised Zoning Ordinance in 1981 and the current Comprehensive Plan in 2008, continues to have the protection and preservation of prime farm land and farming operations as one of the primary land use goals of Scott County. One of the main tools used to implement these goals is the Scott County

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Zoning Ordinance and Subdivision Regulations. In order to help ensure that the State mandated exemption to County Zoning Ordinance is not used to void Scott County's agricultural preservation land use polices the following criteria are established to make determinations on when the above stated exemption to the County Zoning and Building Codes apply. Additionally, since agricultural land is not exempt from County Subdivision Regulations it is the intention of this addendum to clarify under what conditions a farm house and/or farmstead can be split from the farm land in agriculturally zoned areas of the County.

In order to qualify for an agricultural exemption from both Scott County Zoning and Building Codes an applicant must show how the land, building, structures or house are:

“Primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used”

Determination of Agricultural Purposes: The Scott County Zoning Ordinance defines Farming as:

The science or art of producing agricultural products which involves cultivating the soil and producing crops for food, fiber, fuel or consumer products, or the raising of livestock for food or other consumer products. Farming does not include residential gardening or the raising of livestock for recreational or hobby purposes.

Traditionally agricultural purposes in Scott County have involved the cultivation of corn, soybeans or other grains as well as the raising of beef & dairy cattle, hogs, and poultry. However agricultural purposes can also include the raising of fruits and vegetables, sheep and goats, even fish. Prior to 1963, Section 335.2 included a requirement that in order to be exempt from County Zoning the agricultural purposes had to be the primary livelihood of the individual claiming the exemption. However in 1963 the Section 335.2 was amended to delete that requirement and it currently reads as cited above. This broadened the exemption to include agricultural purposes that were not the primary livelihood of those claiming the exemption. However in order to enforce and apply the adopted land use policies related to agricultural preservation in Scott County, individuals claiming this exemption must show how the land and buildings are primarily adapted for agricultural purposes. Furthermore, in the case of farm houses, the occupant of the farm house must demonstrate how they are actively involved in farming the land where the house is located, mere ownership of agricultural land does not qualify the owners to be able to build a farm house on their farmland. Agricultural exemptions will not be approved in cases where the agricultural purposes are determined to be incidental to the primary use of the land. Such exemptions will also not be approved where the uses are commercial uses related to or in support of agricultural operations but not “agricultural” themselves.

Specifically the following criteria are established to evaluate requests for agricultural exemptions:

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Farm Land: An individual must show that the land and buildings are primarily adapted and used or intended to be used for agricultural purposes. This would include the production and storage of agricultural products on the land or the raising of livestock on the land. This would not include conservation areas, wildlife preserves, forest land, parks or recreation areas.

Farm Buildings: An individual must show that the buildings would be primarily adapted and used for agricultural purposes, which would include but not be limited to the storage and maintenance of vehicles and equipment used on the farm, the storage of materials grown on the farm or for the shelter and care of livestock raised on the farm. Commercial operations not directly part of the farming operation such as trucking and excavation, vehicle and equipment repair for others, seed or fertilizer sales, commercial dog kennels and commercial horse stables, or other commercial operations not related to the operation of the farm would not be considered exempt. Such uses may very well be permitted as primary, secondary or special uses under the zoning ordinance and allowed to be conducted on the property but be required to meet all County Code requirements.

Farm House: An individual must show that the house or dwelling would be or is occupied by the individual farming the land on which the residence is located. The ownership of the farm land, which is rented to others who conduct the farming of the property, does not qualify the owner of the property to have a residence on the property considered a farm house and exempt from Scott County Zoning and Building Codes. Residences solely occupied by family members not actively involved in the farm operation would also not qualify to be considered a farm house. However the agricultural exemption would apply to someone who is retired from farming when it relates to a farm house on the land the retired farmer formerly farmed.

Sufficient information required for determination of Ag exemption

It is the responsibility of the individual claiming an agricultural exemption to submit sufficient information and documentation to the Scott County Planning Director that the land, farm buildings and/or farm house are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. Such information should include number of acres farmed, type of crops, livestock or agricultural products produced, inventory of farming equipment used in farming the land, amount of time devoted to such farming practices, if income is derived from such farming practices and any additional information deemed necessary to make a determination of agricultural exemption. The Board of Adjustment will hear any appeal of the Planning Director's determination filed in accordance with the requirements of the Zoning Ordinance.

Subdivision Regulations

Even though State Code exempts farm land and farm buildings from County Zoning and Building Codes it does not exempt farm land from subdivision regulations. All subdivisions of land must be reviewed by the Scott County Planning and Zoning Commission for compliance with the Scott County Subdivision Code and approved by the Scott County Board of Supervisors prior to being recorded with the Scott County Recorder's Office.

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Scott County Code Chapter 9 Subdivisions defines subdivision as the repeated or simultaneous division of a lot, tract or parcel of land into three or more lots or tracts, for immediate or future sale, transfer or building development. The following shall also be considered subdivisions within the meaning of this ordinance: (1) divisions of property via probate procedures; and (2) divisions of property upon applications for court orders, including but not limited to judgments of foreclosure and equitable distributions of property pursuant to dissolution of marriage proceedings. The term includes re-subdivision and when appropriate to the context shall relate to the process of subdividing or the land subdivided.

Scott County has established its agricultural preservation land use policies, along with its zoning and subdivision regulations to limit the encroachment of non-agriculturally related development in the areas of prime farm land. Subdivisions for the purposes of residential or commercial development in the agriculturally zoned areas of the County would not comply with these land use policies or the zoning regulations.

Splitting the farmstead from the surrounding farm land

When an individual wishes to split a farmstead from the surrounding farm land in agriculturally zoned areas of rural Scott County for mortgage, estate planning or other purposes it can be done only if no other splits from the aliquot part have been made since the adoption of the Scott County Development Plan; December 23, 1980. Following approval of a Plat of Survey for the initial split of a farmstead from the farm parcel, any subsequent split of land would have to be approved as a subdivision plat. Such a plat would only be approved if it was determined to meet Scott County land use policies. This allows a onetime split of a farm house from the farm land but not the repeated subdivision of other farm houses on the same farm parcel.