

SIoux COUNTY ATTORNEY'S OFFICE

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TO: Jim Raymond, Zoning Administration
FROM: Melissa O'Rourke, Sioux County Attorney
DATE: May 3, 2006
RE: Zoning – Construction of New Single-Family Dwellings in Agricultural Districts

You have requested my opinion regarding the following factual situation and the application of the Sioux County Zoning Ordinance (adopted 1979).

Summary of Facts: A property owner approached your office regarding the construction of a new single family dwelling in an Agricultural District. The original parcel (located at 4087 Ironwood Avenue) was approximately 8.75 acres, and has now been subdivided between two brothers. There is an existing single family dwelling on the property. The property owner wishes to build a new second home on the property. The property owners are not engaged in farming.

Applicable Zoning Ordinance Provisions and Discussion:

Article 5, Section 2.5 outlines "Permitted Residential Uses" in an Agricultural District which include lots of record, existing residential acreages, and abandoned farmsteads. Subsection 2.5-b provides that "Single Family dwellings" are permitted on "Existing Residential Acreages, defined as a small parcel not under cultivation which is recorded as a separate parcel and has historical residential use in excess of five years."

Article 5, Section 2.6 provides for the circumstances allowing "Permitted Construction." Essentially, there are three such circumstances: To replace an existing dwelling; to remodel or add to an existing dwelling; or to build on an abandoned farmstead. Subsection 2.6-c provides: "New construction of a single family dwelling on an **abandoned farmstead**, providing that said new construction will not result in more than two single family dwellings on one **abandoned farmstead**, and that both new and existing dwellings meet the minimum requirements of Section 5 of Article 7 [lot size and height restrictions]."

Article 3, Section 1 -1.3 defines **abandoned farmstead**: "A tract of land which has at one time constituted a farm dwelling and related outbuildings. To be considered an abandoned farmstead for the purposes of these regulations, the tract of land must not have been reclaimed for intensive agricultural (row crop) production."

The Zoning Ordinance does not provide for new construction of a second, single family dwelling on an existing residential acreage. Rather, Article 5, Section 2.6 specifically provides that an existing single family dwelling may be replaced, remodeled or enlarged. Subsection 3.2 provides that there may be “two (2) single family dwellings . . . if owned by the **farm owner or operator**, member of immediate family, or an employee working on the premises.” A “farm” is defined in Article 3, section 1.34:

A parcel of land which is used for agricultural purposes, such as the growing of the usual feed grains, the raising and feeding of usual livestock and poultry, and the storage or shelter of such grain and livestock, wherein any two (2) of the following conditions are met; 1) The Agricultural products are produced for sale, 2) The production of such products is considered as a primary occupation of the person or persons owning or leasing such land, and 3) The parcel of land is or will be taxed as agricultural property under the rules of the Iowa Department of Revenue and/or the Sioux County Assessor's office.

The facts as outlined above do not indicate that the subject property is a “farm” as that term is defined in the Zoning Ordinance. Rather, subsection 3.2 exists to allow family farm operations to add a second single family dwelling at the farm site – for either a family member or employee working on the premises.

Finally, it should be noted that the Zoning Ordinance provides for a minimum lot area of thirty-five (35) acres. Article 5, Section 5(5.1).

Summary and Conclusions:

The Sioux County Zoning Ordinance does not provide for new construction of a second, single family dwelling on an existing residential acreage. The Zoning Ordinance does not provide that an existing residential acreage may be subdivided to make two or more residential acreages. A person wishing to construct a new single-family dwelling in an Agricultural District in Sioux County has three (3) available options:

- (1) Purchase an “Existing Residential Acreage” and replace the present dwelling.
- (2) Purchase an “Abandoned Farmstead” and construct a new dwelling.
- (3) Purchase a lot with a minimum size of thirty-five (35) acres and construct a new dwelling.

The Zoning Ordinance provides in Article 5, Subsection 2.6-d that an adverse determination by the Administrator denying a permit for construction on the basis of the requirements of Article 7, Section 5 (lot size and height restrictions) may be appealed for variance. *See* Article 3, Subsection 1.85 (defining Variance).