

**SCOTT FISCAL COURT
ORDINANCE NO. 94-004**

**AN ORDINANCE RELATED TO THE ESTABLISHMENT OF
AGRICULTURAL CLUSTER REGULATIONS AND THE
REPEAL OF PRIOR AGRICULTURAL CLUSTER REGULATIONS**

WHEREAS, this matter was referred to the Georgetown-Scott County Planning and Zoning Commission by the Scott Fiscal Court by ordinance 94-01 adopted February 18, 1994; and

WHEREAS, the Planning Commission held public hearings which concluded April 29, 1994; and

WHEREAS, based upon the record made before the Commission at the public hearing, the Commission determined by vote taken May 12, 1994, that the cluster residential development regulations set out below will provide a reasonable alternative to rural residential development on five-acre tracts, while encouraging the preservation of agricultural land in and the rural character of Scott County; and

WHEREAS, the Georgetown-Scott County Planning and Zoning Commission held previous public meetings which concluded June 10, 1993 on whether the definition of Agricultural Uses provided in Article 5, General Regulations and Definitions of the Scott County Zoning Ordinance should be amended to eliminate obsolete language and to provide for alternative residential development; and

WHEREAS, based upon the record made before the Commission at those public hearings, the Commission determined by vote taken June 10, 1993, that the amended Agricultural Uses definition set

out below should be incorporated into the Scott County Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT FOR SCOTT COUNTY, KENTUCKY, THAT:

Section 1: Repeal of Private Street Regulations: Scott County Ordinance No. 92-C-08 adopting Subdivision Regulations is amended to effect the repeal of the following stricken sections related to the regulation of cluster residential development in A-1 zones. The following subdivision regulations related to cluster development are hereby amended as follows:

ARTICLE X, SECTION 1000 -

SECTION F. PRIVATE STREETS

1. Private residential streets.
2. For cluster subdivision developments where lots are 5 acres in size, a private street may be permitted to the following standards:
3. The private street shall serve no more than 30 dwelling units (2 clusters).
4. The private street shall be a minimum of 14 feet of gravel, with 2 foot shoulders either side, and ditches and cross drains designed by Manning Formula.
5. Private streets constructed in the Cluster Subdivision shall not be eligible for dedication to any governing body. A note to this effect shall be placed on the plat.
6. Owners of the Cluster lots shall be responsible for a pro-rata share of the maintenance and improvement of the private street. A note to this effect shall be placed on the plat.

ARTICLE X, SECTION 1000

SECTION Q. STREET ACCESS

1. Residential

b. Special street access requirements:

- iii. No lot in the cluster subdivision shall have direct access to any road other than a private street or driveway serving 3 or more lots.

ARTICLE X - SECTION 102: CLUSTER SUBDIVISION

This is an alternative to traditional 5 acre subdivision development for residential purposes. The following standards shall apply to all subdivisions of this type within A-1 zoned areas.

1. The total density for developments of this type shall not exceed 1 dwelling unit per 5 acres. This may be accomplished by having 4 acres of agricultural or open space reserve and a 1 acre minimum dwelling lot. The remaining 4 acres to meet density requirement for each tract, which is not required to be contiguous to that tract, must be preserved for open space or farmland in parcels of at least 250 feet in minimum dimension and so noted on the subdivision plat. This remaining area cannot be further subdivided for residential development or agricultural dwelling unit purposes.
2. An application for a cluster subdivision shall consist of a minimum of three (3) dwelling units.
3. The total number of units within one cluster of the subdivision shall be 25.
4. All buildings shall be set back 60 feet from the right-of-way of State or County roads, a minimum of 50 feet from the center line of a private drive, a minimum of 25 feet from side lot lines, and a minimum of 100 feet from rear lot lines.
5. All lots shall have a minimum width of 125 feet at the building line.
6. No cluster lot shall have a common rear property line with any other.

7. Lots shall be located to preserve viewshed from public roads by using existing trees, contours, or design to enhance views.

Section 2: Cluster Regulations: Cluster residential development in the Agricultural, A-1, zone shall be approved only upon compliance with the following:

A. Cluster development density shall be one unit for every 5 acres.

B. The minimum acreage for cluster subdivision is 20 acres.

C. The minimum size of a cluster lot is one acre.

D. The remaining 4 acres or less per cluster lot must be used for agriculture or open space. The minimum dimension of this preserved acreage shall be 500' in any direction. This dimension may be varied according to standards described below. A note shall be placed on the final plat restricting future subdivision of the reserved acreage.

E. The maximum cluster size shall be 15 units.

F. The maximum number of cluster lots per property is 45 units.

Individual lot standards are:

a. 1 acre minimum (outside floodplains)

b. 125' minimum lot width

c. 50' front yard setback

d. 100' rear yard setback

e. 25' side yard setback

G. Agricultural preservation being the intent of these regulations, the premature subdivision of land shall not be encouraged. There shall be a maximum of 15 cluster units within one cluster approved in any 12 month period. No subsequent cluster shall be permitted until at least 1/2 of the cluster lots previously approved have been sold. The time limitations may be varied only upon showing of need based upon insufficient availability of sewer service.

H. a. No cluster lot shall share a common rear lot line with any other.

b. No cluster lot line shall be allowed within 500' of adjacent property lines and public rights-of-way. This dimension may be varied if preserving existing property owner approval or the nature of existing development of surrounding properties justifies the variance.

I. Sufficiency of infrastructure - The Planning Commission shall deny approval of any proposed development for which infrastructure sufficient to serve the needs generated by the proposed development is neither available nor planned for construction as part of the development or as part of the capital improvement program of the providing agency. The developer shall demonstrate the adequacy of infrastructure, drainage, septic systems and other physical impact controls. The Health Department shall approve each lot prior to final plat approval. Failure to demonstrate the above adequacy shall result in denial of the application.

J. a. New road construction is required at the following standards:

1. 50' right-of-way
2. 18' pavement
3. 2' shoulders each side
4. appropriate ditches and cross drains available for either public dedication or private use.

b. This street shall serve up to 45 units.

c. If the street is intended for private use, a homeowners association must be created for road maintenance and improvements, using a mandatory membership, lien-based assessment system and recorded in the County courthouse.

K. Clusters that propose mobile homes shall be located within 5 minutes response time of a fire station and have adequate water pressure for fire protection. Those clusters that propose mobile homes must meet Landscape and Land Use Buffer Ordinance, Section 6.12, A-1 in addition to all other requirements.

L. All cluster lots shall have "city" water. Those areas in far northern Scott County will be reviewed as to the necessity of meeting this requirement. This requirement may be waived only in areas where this "city water" cannot be reasonably provided.

M. In order to minimize visibility of cluster lots from adjacent property or public rights-of-way, all cluster lots shall take advantage of natural screening from roads and adjacent property where feasible. The Planning Commission may determine that adequate screening has not been provided and may require redesign of the lot layout or additional berming or vegetation.

N. Each cluster pod shall be fenced at its edges prior to final plat approval, with 8' woven wire mesh or equivalent, and post spacing 12' on center maximum.

O. One dwelling credit must remain with the preserved acreage.

P. Notice of this application shall be given to adjacent property owners by both certified mail and by sign on the property at least 14 days before the 21 days prior to the Planning Commission meeting at which the cluster proposal is to be considered. The sign and notice shall inform the recipient of the nature of the proposal and the address and phone number of the Planning Office where further information is available.

O. Entrance improvements on county/state roads shall include 55' radii at intersections and 100' taper for new street back to edge of public road.

R. All applicable standards of the Subdivision and Development Regulations including but not limited to erosion control and stormwater drainage.

S. The plat of a cluster subdivision and the deed, if any, conveying the acreage reserved for agricultural use or open space shall provide a covenant which runs with the land restricting the use of the reserved acreage to agricultural use or open space. This covenant shall terminate at such time as the property is annexed into a city and approved by the legislative body of that city for a zoning classification change to an urban use.

T. Prospective purchasers of residential lots in cluster subdivisions shall be informed of accepted agricultural practices which are common and legal practices in the Agricultural A-1 zone and adjacent developments in and around agricultural residential cluster developments. These practices, if conducted within accepted safety guidelines, shall not constitute a nuisance within the meaning of K.R.S. 401.500 et seq.

U. The developer shall display by note upon the preliminary and final subdivision plats the types of dwellings, e.g. mobile homes, conventional frame construction, manufactured homes, which shall be permitted within an agricultural residential cluster development. This requirement shall avoid potential buyer misunderstanding of the consequences of his or her investment.

Section 3: Customary Agricultural Practices Within Cluster Residential Developments in the Agricultural, A-1 Zone Shall Not Constitute a Nuisance as Codified in K.R.S. 411.500 et seq.: The preservation of agriculture in and the rural character of Scott County is the purpose of the cluster development regulations. In order to realize this purpose, customary farming practices must thrive in Scott County. In order to thrive, customary agricultural practices must not be subject to claims of nuisance from owners or residents of rural residential development. Customary agricultural practices, including, but not limited to, the following, are expected and encouraged in and around rural residential developments:

Plowing, spraying, mowing, irrigation, forage harvesting (baling hay, chopping silage), planting, harvesting, construction of fences, waterways, ponds and contours, weaning calves, working cattle, feeding/finishing drylot cattle and other reasonable agricultural practices which from time to time shall be customary in this area. These practices are essential to the perpetuation expected to result in the detection of odors, noise and dust on neighboring properties.

Based upon the foregoing, the Scott County Fiscal Court makes the following determination as outlined in K.R.S. 411.550:

1. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural use and open space is a lawful and necessary use of

the property if the agricultural way of life is to be preserved in Scott County.

2. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural use and open space is the proper manner in which agricultural land should be used in Scott County. These practices have developed over time as the method most likely to optimize the utility and preservation of agricultural land.
3. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural use and open space is essential to the financial success of Scott County's agricultural community, which constitutes a substantial portion of the general community.
4. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural use and open space is necessary if the agricultural community in this county is to continue its influence on and contribution to the growth and prosperity of the county at large.
5. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural use and open space results in the kind, volume and duration of annoyance or interference with neighboring properties which are insignificant when compared to the contribution this use makes to the financial and cultural well-being of the community.
6. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural

use and open space is essential to the maintenance of financial viability for those areas reserved to agricultural use and open space. These areas, having no development potential until such time as they are annexed and rezoned, are valued only for agricultural production. The value generated by the creation of these reserved agricultural and open space areas reduces the residential development cost and enhances the utility of each residential lot. The absence of these areas would necessitate greater expense and less efficient use of capital and land required of residential development in the agricultural area.

7. The use of customary agricultural practices on that portion of the cluster residential developments reserved for agricultural use and open space is vital to the continued existence of the rural way of life in Scott County.

Section 4: **Repeal of Suspension of Cluster Development:**

Ordinance No. 94-001 which suspended cluster residential development in the A-1 zone in Scott County is repealed.

Section 5: **Incorporation Into Subdivision Regulations:** The Planning and Zoning Commission shall incorporate the substantive provisions set out in Sections 1 and 2 of this ordinance into its Subdivision Regulations, referring to the ordinance number and effective date.

Section 6: **Amended Agricultural Use Definition in Scott County Zoning Ordinance:** Article II, General Regulations, 2.1 Definitions, of the Scott County Zoning Ordinance originally

adopted _____ by Ordinance No. _____ is amended to read as follows:

ARTICLE II, SECTION 2.1 DEFINITIONS

A. Agricultural Uses: Agricultural use means the use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops; including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers or ornamental plants, including provisions for dwellings for persons and their families who are engaged in the above agricultural use on the tract (Section amended 7/22/92 by City of Georgetown, 8/5/92 by Scott Fiscal Court).

B. Agricultural Residential Uses: Agricultural residential use means residential use in an A-1 zone, the density of which shall not exceed one dwelling unit per five contiguous acres held under common title and residential cluster development into A-1 zone, the density of which shall not exceed one dwelling unit per five acres, but without the requirement of all five acres being contiguous.

In a residential cluster development, the dwelling unit shall be placed upon a lot of at least one acre. The remaining acreage necessary to satisfy the five acre minimum density in cluster development must be contiguous acres dedicated to agricultural use or green space reserved. Title to the lot containing the dwelling unit and the acres dedicated to agricultural or green space use need not be held by the same person(s) or entity.

In no event shall all permissible dwelling units be developed as cluster lots. At least one dwelling unit must be reserved for use on the acreage reserved for agricultural or green space. The maximum number of clustered lots in a development is calculated as follows: $(\text{total acreage} / 5) - 1 = \text{maximum no. of cluster lots}$.

It is further defined and regulated as follows: (a) All division of agricultural tracts less than 50 acres in size, or as provided in the Subdivision Regulations, shall require the signature of the Chairman of the Planning Commission prior to recording. (b) All land

easements and other methods of land transfer are subject to the approval of the Chairman of the Planning Commission prior to transfer and recording. (c) All division of agricultural tracts are subject to the following: (1) Evidence must be submitted to the Chairman (or designated official) describing the proposed agricultural use and limiting the use of the property to agricultural use. The Chairman shall use the standards established by the above definition and by the Kentucky Department of Revenue (KRS 132) to determine agricultural use, except that five acres is the minimum in all cases of all cases. (2) All tracts must have access to a public road or street and are subject to the dedication of the right-of-way for public streets, setback regulations for building, Health Department approval for building and other provisions of the Subdivision Regulations for dwellings occupied by farm owners and farm dwelling including mobile homes for full-time employees and members of the immediate family not to exceed a density of one (1) per five (5) acres.

Since five acres is the minimum lot size for tracts in Agricultural Districts and since coordination of KRS 100 for Subdivision Regulations and the Zoning Ordinance are essential to agriculture use and further defined to the extent that (1) dwelling units in A-1 and C-1 Districts are not excluded from building permits and certificates of occupancy requirements.

Section 7: **Effective Date:** This ordinance shall take effect upon passage and publication.

Section 8: **Severability:** Each section or, wherever divisible, sub-section of this Ordinance is separable, and the invalidity of a section or sub-section shall not be construed to affect the validity of the remaining section or sub-sections.

The foregoing came for on first reading on June 13, 1994, was published June 15, 1994, read for the second time, passed and approved on June 27, 1994.

APPROVED:



GEORGE LJSBY, COUNTY JUDGE-EXECUTIVE

ATTEST:



MARTHA NECLARIO,
FISCAL COURT CLERK