PLANNING & ZONING: The Cass County Planning Commission
COUNTY PLANNING & ZONING: may not impose regulations or require permits with respect to lands used or to be used for the raising of crops which may include grassland. This restriction is applicable with respect to land used or to be used for the enumerated purposes and does not extend to land devoted to other uses although owned by the same landowner. The county court may not require permits on the construction or alteration of farm buildings or farm structures. In determining whether to regulate the construction or alteration of a particular building or structure, the use of the building or residence as a farm building or farm structure must be determined by examining the relationship of the building to the farming activities.

OPINION NO. 254

October 6, 1970

FILED
254

Honorable Carl D. Gum
Prosecuting Attorney
Cass County Court House
Harrisonville, Missouri 64701

Dear Mr. Gum:

In your recent letter you requested an opinion from this office with respect to the interpretation of Section 64.620, RSMo 1969. You indicated therein:

> "We have particular reference to the following sentence that is contained in this section, which is: 'The provisions of Sections 64.510 through 64.690 should not be exercised so as to impose regulations or to require permits with respect to land, used or to be used for the raising of crops, orchards or forestry or with respect to the erection, maintenance, repair, alteration or extension of farm buildings or farm structures.'"

With regard to the above language, you asked two questions, the first of which is as follows:

> "Would this quoted part of this section mean that the Cass County Planning Commission has no jurisdiction to apply or enforce our zoning regulations on any land in the county used or to be used for the raising of crops, orchards or forestry? The meaning of orchards and forestry would seem clear enough, but the meaning

> of the word 'crops' could extend even to grass, and would therefore preclude any regulation on any farm that maintained any grass, which would be about all inclusive."

In addition to the language previously quoted from Section 64.620, RSMo 1969, the section provides in part as follows:

> "For the purpose of promoting health, safety, morals, comfort or the general welfare of the unincorporated portion of counties of the second or third class to conserve and protect property and building values, to secure the most economical use of the land, and to facilitate the adequate provision of public improvements all in accordance with a comprehensive plan, the county court of any county to which sections 64.510 to 64.690 are applicable as provided in section 64.510 shall have power after approval by vote of the people as provided in section 64.530 to regulate and restrict, by order of record, in said unincorporated portions of the county, the height, number of stories, and size of buildings, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land for trade, industry, residence or other purposes, including areas for agriculture, forestry, and recreation. The provisions of sections 64.510 to 64.690 shall not be exercised so as to impose regulations or to require permits with respect to land, used or to be used for the raising of crops, orchards or forestry or with respect to the erection, maintenance, repair, alteration or extension of farm buildings or farm structures. The powers granted by sections 64.510 to 64.690 shall not be construed (1) so as to deprive the owner, lessee or tenant of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted; . . ." (Emphasis ours)

This section indicates that it was intended by the legislature that the county court should have power to regulate and restrict unincorporated portions of the county including those areas used for agriculture, forestry and recreation purposes.

However, the specific language which you cite provides that the county courts shall not exercise their zoning power so as to impose regulations or to require permits with respect to land, used or to be used for the raising of crops, orchards or forestry. You state that you are not certain whether "crops" include "grass" and ask whether if crops include grass, that would preclude "any regulation on any farm that maintained any grass."

Initially, it should be noted that the restriction imposed upon the county court extends under this provision only to land used or to be used for the enumerated purposes. Therefore, this restriction applies only to that portion of a particular farm which is used or to be used for crops, orchards or forestry. It does not exempt an entire farm from regulation unless the entire farm is devoted to the described use.

For most purposes, the term "crops" is readily understood. Thus, such commodities as corn, tobacco, cotton, and soybeans are often referred to as crops and were no doubt in the contemplation of the legislature.

Whether land devoted to grass was intended to be within the exemption is to be resolved by determining if the term "crops" includes lands devoted to that purpose. In determining the meaning of crops it is well to note:

> "In determining the meaning of an ordinance or statute pertaining to zoning, as well as other subjects, the courts generally seek to ascertain the intention of the lawmakers by giving the words used their ordinary meaning, by considering the entire acts and its purposes, and by seeking to avoid unjust, absurd, unreasonable, confiscatory or oppressive results. . . ." Suburbia Gardens Nursery, Inc. v. County of St. Louis, 377 S.W.2d 266, 271 (Mo. En Banc 1964)

We could find no comprehensive definition of the term "crop" in the reported Missouri decisions.

Crop is defined in Webster's New International Dictionary, Second Edition, as follows:

> "4. Of grain or fruit, that which is cropped, cut, or gathered from a single field, or of a single kind, or in a single season or part of a season; harvest, also, the state of yielding crops; cultivation; as, to be in or out or crop."

Thus the term is used in conjunction with the exercise of labor to obtain the yield from land of a commodity. The above definition seems to indicate that a significant element in determing whether a commodity is to be viewed as a crop is a determination as to whether the particular product is harvested.

This definition obtained some support from Venie v. South Central Enterprises, Inc., 401 S.W.2d 495 (Spr.Ct.App. 1966) in which the court defined the term "annual crop." The court there emphasized the "annual labor and cultivation" of the farmer.

In Wimp v. Early, 78 S.W. 343 (St.L.Ct.App. 1904), plaintiff, a landlord, sought to recover the value of timothy seed from a party who purchased "any part of a crop known by him to have been grown on the landlord's premises." It is clear from an examination of the opinion that the decision is based upon the conclusion of the court that timothy seed is a crop. Furthermore, the court stated:

> ". . . It was proper to receive any testimony tending to show consent to the sale of the entire crop, for that would include the seed. . . ." loc. cit. 78 S.W. 343, 345

Prior to the last quoted portion of the opinion, the court had noted that the hay grown on the premises had been previously sold. Thus, the seed from the grass and hay harvested may be viewed as a crop.

Since grass is a commodity which occurs naturally and by design and at times is harvested, it would appear that no all-inclusive definition is possible. That is, although grass is planted and cultivated as a lawn, we do not believe that grassland, there, is to be viewed as land devoted to the raising of a crop. However, where grass is sown to produce a hay crop and is cut and baled, such land would seem to be included in the definition.

It is our opinion that the terms utilized by the legislature were intended to permit each farmer to determine what agricultural commodity is to be grown on his land. As to that land, the county court may not require permits or impose regulations. Where the land is devoted to agricultural purposes, we think the word "crops" should be defined to include grasslands. However, this exemption extends only to that portion of a landowner's property which is devoted to the uses set forth in the statutes.

The second question you asked is as follows:

> "Heretofore, we have been requiring permits on the construction or alteration of both residences and farm buildings or farm structures, without taking into account whether or not the lands were used for crops, orchards or forestry, and are wondering whether or not we have in our jurisdiction to do so, and whether or not we should continue to do so."

Section 64.620, RSMo 1969, provides, in part:

> ". . . The provisions of sections 64.510 to 64.690 shall not be exercised so as to impose regulations or to require permits . . . with respect to the erection, maintenance, repair, alteration or extension of farm buildings or farm structures. . . ."

This exemption extends only to "farm buildings or farm structures." Thus, once it is determined that a particular structure or building is a farm building or farm structure, then under the specific terms of the statute, the county court may not require permits or impose regulations upon the erection, maintenance, repair, alteration or extension of such a building or structure.

The first portion of the exemption exempts land in certain circumstances, and the second portion exempts buildings or structures where they are properly considered to be denominated as farm buildings or farm structures.

In determining what structures are to be deemed as farm structures, the same standard of interpretation should be utilized as that set forth above in Suburbia Gardens Nursery, Inc. v. County of St. Louis, supra.

With regard to specific structures, it would seem necessary to determine if that structure or building is to be functionally used in the farm operation.

Thus, if a silo was constructed to retain the produce of the farm, it would seem to be a farm structure. However, if a farmer would construct a restaurant, such structure would not be within the exemption even though it was erected by a farmer since the restaurant has no relationship to the operation of a farm.

In determining what use is within the term "farming," the courts look to what is incidental to a farming operation. In 101 C.J.S., Zoning, Section 157. it is stated:

> "The test of whether or not a use not normally considered farming is 'farming' is within a zoning regulation permitting farming is whether such use is incidental to farming operations or is an independent or dominant enterprise. . . ."

It has been held that a residence for a farmer is such an incidental use.

In Rice v. Board of County Commissioners of Benson County, 135 N.W.2d 597, 600 (N.D. 1965) a taxpayer objected to the assessment of taxes upon his residence which was located upon a 64-acre tract within a city, but which was used in conjunction with a 784-acre farm. In reaching its decision the court stated:

> ". . . There is no question but that the 64-acre tract is an integral part of a farm unit and that the residence located on it is the home of the owner and operator of the farm. It is a farm building in the same sense that the home of any farm owner and operator located outside the city limits is a farm building. . . ." loc. cit. 135 N.W.2d 597, 600

Similarly, in Kroeger v. Bohrer, 91 S.W. 159, 160 (St.L.Ct. App. 1905) the court determined whether a notice to vacate was sufficient. The question framed by the court was as follows:

> "The question in the case is to determine to which class of tenancies the premises in controversy belong. If classed as agricultural lands, the notice to quit was insufficient, and the judgment should be affirmed; if classed as houses within a city, the notice was sufficient, and the judgment should be reversed. . . ." loc. cit. 91 S.W. 159, 160

If classed as agricultural land, the tenancy would fall within a statute which specifies a different method of terminating leases than would ordinarily apply, the court stated:

> ". . . We do not think that lands devoted to agriculture, though within the limits of a city, town, or village, and with a dwelling house upon them, are included in the section. . . ." loc. cit. 91 S.W. 159, 161

Thus, the court clearly intended to include the farm residence as being within the doctrines applicable to leases upon farms and lands devoted to agricultural purposes.

Where a business is permitted under a zoning ordinance, the courts will permit activities "when such use or activity is performed as an integral and essential part" of the business. Suburbia Gardens Nursery, Inc. v. County of St. Louis, supra.

Thus, the question is whether a "farm building" is ordinarily thought to include a farm residence given the ordinary meaning of that term. Although some farms may not have a residence associated with it, most persons anticipate a residence in which the farmer lives which is located on the farm.

Thus, it is our opinion that a residence of a person located on lands devoted to farm use and which is incidental to the operation of the farm, is exempt from the operation of Section 64.620.

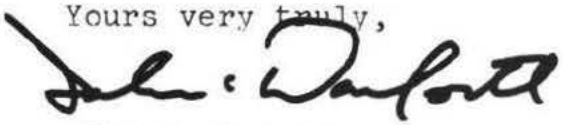
CONCLUSION

The Cass County Planning Commission may not impose regulations or require permits with respect to lands used or to be used for the raising of crops which may include grassland. This restriction is applicable with respect to land used or to be used for the enumerated purposes and does not extend to land devoted to other uses although owned by the same landowner.

The county court may not require permits on the construction or alteration of farm buildings or farm structures. In determining whether to regulate the construction or alteration of a particular building or structure, the use of the building or residence as a farm building or farm structure must be determined by examining the relationship of the building to the farming activities.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Yours very truly,



JOHN C. DANFORTH
Attorney General