

Day County, South Dakota



Zoning Ordinances

Effective: March, 22, 2010

**PREPARED BY:
NORTHEAST COUNCIL OF GOVERNMENTS**

ZONING ORDINANCE # 1-2010

DAY COUNTY, SOUTH DAKOTA

COUNTY COMMISSION MEMBERS 2010

Chuck Hesla – Commission Chair
Sandra Rapp – Auditor
Janet Knapp – Director of Planning/Zoning
Marvin Bury – Commission Member
Derek Sinner – Commission Member
Mark Wattier – Commission Member
Richard Tobin – Commission Member

PLANNING AND ZONING BOARD 2010

Chuck Hesla – Commission Chair
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Richard Tobin – Commission Member

The Zoning Ordinance Plan was prepared by Northeast Council of Governments under the direction of the Day County Planning and Zoning Board, County Commission and the State's Attorney.

The Northeast Council of Governments assumes no responsibility for the contents of the Zoning Ordinance. Implementation and enforcement of the Plan is the responsibility of Day County.

SCHEDULE OF PUBLIC HEARINGS

Date:	Action:
12/15/2009	Planning Commission Public Hearing
1/4/2010	Notice of First County Commission Public Hearing
1/19/2010	First County Commission Public Hearing
2/1/2010	Notice of Second County Commission Public Hearing
2/16/2010	Second County Commission Public Hearing
2/22/2010	First Publication of Notice of Adoption - Ordinance 1-2010
3/1/2010	Second Publication of Notice of Adoption Ordinance 1-2010
3/22/2010	Effective Date (20 days after 2nd publication of summary)

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ARTICLE 1
SHORT TITLE

SECTION 101 – Short Title

This ordinance may be known and may be cited and referred to as "the Zoning Ordinances for Day County, South Dakota," to the same effect as if the full titles were stated.

ARTICLE 2
JURISDICTION

SECTION 201 - Jurisdiction

The provisions of this Ordinance shall apply within the unincorporated areas of Day County. This Ordinance will only apply in incorporated areas upon adoption of the plan and ordinances by Resolution of the Town Board or City Council. The enforcement of said plan and resolutions will be left to the Town or City.

SECTION 202 – Provisions of the Ordinance Declared to be Minimum Requirements

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. All provisions of this ordinance, must at a minimum, be met in all circumstance. Whenever a provision of any other ordinance is greater in requirements, that ordinance will govern.

ARTICLE 3

OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

SECTION 301 General

The County is hereby divided in to districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

SECTION 302 – Zoning Map Changes

If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County commissioners and has become law according to the statutes of the State of South Dakota. The minutes of the Board of Commissioners Meeting and the Planning Commission Meeting must reflect the DATE, CHANGES MADE, and DESCRIPTION OF THOSE CHANGES.

No amendment to the Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on Official Zoning Map.

Any unauthorized change to the Official Zoning Map made by any person or persons shall be considered a violation of this ordinance and punishable as provided by this Ordinance.

The Official Zoning Ordinance shall be located in the Register of Deeds Office in the Day County Courthouse. This map shall be the final authority as the current zoning status of land within the legal boundaries of Day County.

SECTION 303 – Zoning Map Replacement

In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may, by ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners, attested by the County Auditor, and bearing the seal of the County under the following words:

“This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted _____ (date of adoption of map being replaced) as part of the Zoning Ordinance of

Day County, South Dakota".

Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption or amendment.

SECTION 304 – Rules for Interpretation of District Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
3. Boundaries indicated as approximately following City limits shall be construed as following such limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following center line of streams, river, canals, lakes, or other bodies of water shall be construed to follow such center lines;
6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
7. Where physical or cultural features existing on the ground are at variances with those shown on the official Zoning Map or in other circumstances not covered by subsections 1 through 6 above, the County Planning and Zoning Commission shall interpret the district boundaries; and
8. Where a district boundary line divides a lot which was in single ownership at the time of passage of this ordinance, the County Planning Commission may permit, as a conditional use, the extension of the regulation for either a portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

ARTICLE 4

APPLICATION OF DISTRICT REGULATIONS

SECTION 401 – General

The regulations set forth in this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

SECTION 402 – Zoning Applications

No building, structure, or land shall hereafter be used or occupied; and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

SECTION 403 – Performance Standards

No building or other structure shall hereafter be erected or altered:

1. to exceed the height or bulk;
2. to accommodate or house a greater number of families;
3. to occupy a greater percentage of lot area; and
4. to have narrower or smaller rear yards, front yards, side yards, or other open spaces;

than herein required; or in any other manner contrary to the provisions of the Ordinance.

SECTION 404 - Open Space or Off-Street Parking or Loading Space

No part of a yard or other open space or off-street parking or loading space required about or in connection with any building for the purpose of complying within the Ordinance shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building.

SECTION 405 - Yard and Lot Reduction Prohibited

No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

SECTION 406 - Unclassified or Unspecified Uses

Unclassified or unspecified uses may be permitted by conditional use permit by the Planning Commission after a review has been made that such uses are similar in character to the principle uses permitted in the district.

ARTICLE 5

ESTABLISHMENT OF DISTRICTS

SECTION 501 - Districts Established

For the purposes of this Ordinance, there are hereby created seven (7) types of districts by which the jurisdictional area defined in ARTICLE 2 shall be divided:

Agricultural Fringe Protection District (AGFP)

Agricultural District (AG)

Residential District (R-1)

Lake Front Residential District (R-2)

Commercial District (C)

Highway Commercial District (HC)

General Industrial District (I)

ARTICLE 6

AGRICULTURAL FRINGE PROTECTION DISTRICT (AGFP)

SECTION 601 - Statement of Intent

The intent of this District is to protect land adjacent to communities from premature development that would inhibit orderly growth and development within the fringe area while maintaining normal agricultural undertakings.

SECTION 602 - Permitted Uses and Structures

The following uses and structures shall be permitted in Agricultural Fringe Protection District:

1. Any form of agriculture including the raising of crop, horticulture, animal husbandry, and kennels;
2. Dwellings and their normal accessory buildings including mobile homes, subject to compliance with other ordinances or restrictions;
3. Railroad track right-of-way;
4. Living quarters of persons employed on premises;
5. Roadside produce stands in conjunction with a bonafide farm operation on the premises; and
6. Artificial lakes.

SECTION 603 - Conditional Uses

After notice and appropriate safeguards, the Planning Commission may permit the following conditional uses in the AGFP District:

1. Fairgrounds, racetracks, amusement parks, riding arenas and rodeo facilities;
2. Utility substations;
3. Airports;
4. Cemeteries

5. Golf courses, country clubs, and golf-driving ranges;
6. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;
7. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;
8. Public parks, public recreational areas, churches, and schools;
9. Concentrated Animal Feeding Operations;
10. Operation and maintenance terminals for trucks and other equipment;
11. Junkyards and salvage yards provided they are set back one thousand (1000) feet from the nearest edge of the right of way of any interstate or primary highway right-of-way; if not, they must be screened and not visible to main traveled ways;
12. Sanitary landfill sites in accordance with the South Dakota Department of Environment and Natural Resources and the United States Environmental Protection Agency regulations;
13. Home occupations; and
14. Sewage, lagoons and wastewater treatment facilities subject to all applicable federal and state laws and regulations.

SECTION 604 - Maximum Number of Approaches

All approaches on public roads or highways are subject to approval permitted by the Planning Commission, subject to approval permitted by the Planning Commission with approval of the highway superintendent or township board. Approach access on a state highway will need to comply with state regulations.

SECTION 605 - Minimum Yard Requirements

There shall be a minimum set back from the property line of not less than one hundred fifty (150) feet set back from the center of the public road. There shall be a frontage of not less than one hundred fifty (150) feet across the front yard and a side yard not less than twenty (20) feet.

SECTION 606 - Minimum Parcel of Land

The minimum area for any piece, plot or area of land of contiguous assemblage which creates less than a ten (10) acre tract of land shall be platted by a South Dakota registered land surveyor and recorded and plat approved by board of commissioners or other entities as may be required by law in the office of the Day County Register of Deeds.

SECTION 607 - Minimum Shelterbelt Setback

Shelterbelts, field belts, and living snow fences consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred twenty-five (125) feet from the centerline of a county highway, township road or public right of way. Shelterbelts along state and federal highways shall comply with state and federal regulations. Shelterbelts for existing farmstead purposes are exempt from minimum setback requirements. Any new, replacement, extension or expansion of existing shelterbelts, field belts, or living snow fences should follow the minimum requirements if the surrounding area allows it.

SECTION 608 - Minimum Sewer Requirements

Installation of wastewater systems shall comply with Administrative Rules of South Dakota, Chapter 74:53:01

ARTICLE 7

AGRICULTURAL DISTRICT (AG)

SECTION 701 - Statement of Intent

The intent of Agricultural District is to protect the agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial and industrial development to those areas where they are best suited for reasons of practicality. There should be no Agricultural District zoned within an incorporated Municipality.

SECTION 702 - Permitted Uses and Structures

The following uses and structures shall be permitted in Agricultural Districts:

1. Any form of agriculture including the raising of crop, horticulture, animal husbandry, and kennels;
2. Dwellings and their normal accessory buildings including mobile homes;
3. Railroad track right-of-way;
4. Living quarters of persons employed on premises;
5. Roadside produce stands in conjunction with a bonafide farm operation on the premises;
6. Artificial lakes;
7. Public meeting facilities such as schools or churches provided they are subordinated to and complementary with the agricultural activities of the district;
8. All utility systems necessary to service the district; and
9. The sale of seed.
10. Home Occupations

SECTION 703 - Conditional Uses

After notice and appropriate safeguards, the Planning Commission may permit the following conditional uses in the AG District, providing no new facilities are closer than one (1) mile from any occupied dwelling unless written permission is granted by the owner or owners of such dwelling:

1. Fairgrounds, racetracks, amusement parks, riding arenas and rodeo facilities;
2. Utility substations;
3. Airports;
4. Cemeteries
5. Golf courses, country clubs, and golf-driving ranges;
6. Amphitheatres, stadiums, drive-in movies, arenas, and field houses;
7. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;
8. Public parks, public recreational areas, churches, and schools;
9. Concentrated Animal Feeding Operations subject to obtaining and compliance with all state and federal permits and licenses;
10. Junkyards and salvage yards provided they are set back one thousand (1000) feet from the nearest edge of the right of way of any interstate or primary highway right of way; if not, they must be screened and not visible to main traveled ways;
11. Sanitary landfill sites in accordance with the South Dakota Department of Environmental Protection Agency regulations; and
12. Sewage, lagoons and wastewater treatment facilities subject to all applicable federal and state laws and regulations.

SECTION 704 - Determination of Uses and Structures

The uses and structures specifically listed in this chapter are not considered to be the only conceivable uses of agricultural land. However, these uses listed do represent the types of uses which may be considered. If an applicant desires to construct a building or conduct a use which is not specifically listed, such applicant shall carry the burden of proof to the board of adjustment

that his/her request is the type of use allowed in the agricultural district, is not more compatible with a different zoning district, and it does in no way violate the intent of this chapter.

SECTION 705 - Maximum Number of Approaches

All approaches on public roads or highways are subject to approval permitted by the Planning Commission, subject to approval permitted by the Planning Commission with approval of the highway superintendent or township board. Approach access on a state highway will need to comply with state regulations.

SECTION 706 - Minimum Yard Requirements

There shall be a minimum setback from the property line of not less than seventy-five (75) feet from public road right-of-ways. There shall be a frontage of not less than two hundred (200) feet across the front yard.

SECTION 707 - Minimum Parcel of Land

The minimum area for any piece, plot or area of land of contiguous assemblage which creates less than a ten (10) acre tract of land shall be platted by a South Dakota registered land surveyor and recorded and plat approved by board of commissioners or other entities as may be required by law in the office of the Day County Register of Deeds.

SECTION 708 - Minimum Shelterbelt Setback

Shelterbelts, field belts, and living snow fences consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of one hundred twenty-five (125) feet from the centerline of a county highway, township road or public right of way. Shelterbelts along state and federal highways shall comply with state and federal regulations. Shelterbelts for existing farmstead purposes are exempt from minimum setback requirements. Any new, replacement, extension or expansion of existing shelterbelts, field belts, or living snow fences should follow the minimum requirements if the surrounding area allows it.

SECTION 709 - Minimum Sewer Requirements

Installation of wastewater systems shall comply with Administrative Rules of South Dakota, Chapter 74:53:01

ARTICLE 8

CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

SECTION 801 - Intent

An adequate supply of safe drinking water, healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. All new and proposed expansions of Concentrated Animal Feeding Operations to be located within Day County shall assume primary responsibility complying with the appropriate State and Federal agencies that monitor water, water quality, and environmental protection. Applicants shall provide Day County with copies of established guidelines and verification of compliance with said agencies.

It is the intention of the Day County Planning Commission in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.

ARTICLE 9

SITING OF WIND ENERGY SYSTEMS (WES)

SECTION 901 – Purpose

The purpose of this ordinance is to ensure that the placement, construction and modification of a Wind Energy System (WES) facility is consistent with the County's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens.

SECTION 902 – Authority and Jurisdiction

South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

SECTION 903 - Federal and State Requirements

All WES facilities shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WES facilities.

SECTION 904 - Definitions

1. Board — The County Commission, City Commission, or other governmental body governing the district this ordinance refers to.
2. Construction — Any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.
3. High Voltage Transmission Line — A conductor of electric energy and associated facilities.
4. Large Wind Energy System or LWES — All WES facilities excluding Small Wind Energy Systems.
5. Person — An individual, partnership, joint venture, private or public corporation,

association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, consumers power district, or any other entity, public or private, however organized.

6. Route — The location of a High Voltage Transmission Line between two end points. The route may have a variable width of up to 1.25 miles.
7. Small Wind Energy System or SWES — A WES facility with a single Tower Height of less than seventy-five (75) feet used primarily for on-site consumption of power.
8. Tower Height — The height above grade of the fixed portion of the tower, excluding the wind turbine itself
9. System Height — The height above grade of the tallest point of the WES, including the rotor radius.
10. Turbine — The parts of the WES including the blades, generator and tail.
11. Utility — Any person engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to, a private investor owned utility, a cooperatively owned utility, a consumers power district and a public or municipal utility.
12. Wind Energy System or WES — A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:
 - (a) Tower or multiple towers, including foundations;
 - (b) Generator(s);
 - (c) Blades;
 - (d) Power collection systems, including padmount transformers;
 - (e) Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and
 - (f) Electric interconnection systems or portion thereof dedicated to the WES.

SECTION 905 - Requirements for Siting Small Wind Energy Systems

1. Standards

A Small Wind Energy System shall be a permitted use in all zoning districts subject to the

following non-exclusive requirements:

- (a) **Setbacks.** The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and dwellings shall be equal to no less than one point one (1.1) times the system height, unless written permission is granted by each affected person.
- (b) **Access.** All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.
- (c) **Lighting.** A SWES shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
- (d) **Noise.** SWES facilities shall not exceed fifty-five (55) dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
- (e) **Appearance, Color, Finish.** The SWES shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
- (f) **Signs.** All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWES visible from any public road shall be prohibited.
- (g) **Code Compliance.** A SWES shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
- (h) **Utility Notification.** No SWES shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement. The Board reserves the right to establish such additional change requests to requirements or standards as may be necessary under the circumstances of each application. The Board may also grant at its discretion variances to the above standards in appropriate circumstances. All such variances shall be set forth in the permit issued.

2. Permit Requirements

- (a) **Building Permit.** A building permit shall be required for the installation of a SWES.

- (b) The building permit shall be accompanied by a plot plan which shall include at a minimum the following:
- (1) Property lines and physical dimensions of the property;
 - (2) Location, dimensions, and types of existing major structures on the property;
 - (3) Location of the proposed SWES;
 - (4) The right-of-way of any public road that is contiguous with the property;
 - (5) Any overhead utility lines;
 - (6) Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);
 - (7) Tower foundation blueprints or drawings;
 - (8) Tower blueprint or drawing;
 - (9) Proof of notification to the utility in the service territory in which the SWES is to be erected, consistent with the provisions of 5(3)(h) herein; and
 - (10) The status of all necessary interconnection agreements or studies.
 - (11) Easement agreements and separate landowner agreements;
 - (12) The Board may also request additional information and documents should they deem it necessary in order to properly review the application.
- (c) Expiration. A permit issued pursuant to this ordinance shall expire if
- (1) The SWES is not installed and functioning within twenty-four (24) months from the date the permit is issued; or
 - (2) The SWES is out of service or otherwise unused for a continuous 12-month period.

3. Abandonment

- (a) A SWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Board may issue a Notice of Abandonment to the owner of a SWES that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt

date. The Board shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

- (b) If the SWES is determined to be abandoned, the owner of the SWES shall remove the wind generator from the tower at the Owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Board may pursue legal action to have the wind generator removed at the owner's expense.

4. Building Permit Procedure

- (a) An owner shall submit an application to the Board for a building permit for a SWES. The application must be on a form approved by the Board and must be accompanied by two (2) copies of the plot plan identified.
 - (b) The Board shall issue a permit or deny the application within one month of the date on which the completed application is received, unless the Board provides specific reasons for delay.
 - (c) The Board shall issue a building permit for a SWES if the application materials show that the proposed SWES meets the requirements of this ordinance. The Board may also issue a conditional use permit for a SWES which would allow the applicant to proceed subject to the conditions attached to the permit by the Board. The Board would retain jurisdiction over the application until the conditions have been met by the applicant.
 - (d) If the application is approved, or approved with conditions, the Board will return one signed copy of the application with the permit and retain the other copy.
 - (e) If the application is rejected, the Board will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may reapply if the deficiencies specified by the Board are resolved.
 - (f) The owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the SWES is complete.
5. Violations. It is unlawful for any person to construct, install, or operate a SWES that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. SWES facilities installed prior to the adoption of this ordinance are exempt.
6. Severability. The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity

or effectiveness of the remainder of the ordinance.

SECTION 906 - Requirements for Siting Large Wind Energy Systems

1. Mitigation Measures

- (a) **Site Clearance.** The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the LWES.
- (b) **Topsoil Protection.** The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- (c) **Compaction.** The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- (d) **Livestock Protection.** The permittees shall take precautions to protect livestock on the LWES site from project operations during all phases of the project's life.
- (e) **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- (f) **Roads**
 - (1) **Public Roads.** Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable and written haul road agreements obtained from relevant jurisdictions and filed with the county. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practicable, existing roadways shall be used for all activities associated with the WES. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County Zoning Office of such arrangements and file a copy of

haul road agreements.

- (2) **Turbine Access Roads.** Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
 - (3) **Private Roads.** The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
 - (4) **Control of Dust.** The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.
- (g) **Soil Erosion and Sediment Control Plan.** The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Zoning Office. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive re-vegetation plan that uses native plant species to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or bathers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

LWES shall meet the following minimum spacing requirements.

- (a) Distance from currently occupied off-site residences, business and public buildings shall be not less than one thousand (1,000) feet. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater. For the purposes of this section only, the term "business" does not include agricultural uses.
- (b) Distance from right-of-way (ROW) of public roads shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater.

- (c) Distance from any property line shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater, unless appropriate easement has been obtained from adjoining property owner.
3. **Electromagnetic Interference.** The permittees shall not operate the LWES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the LWES or its operation, the permittees shall take the measures necessary to correct the problem.
 4. **Lighting.** Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.
 5. **Turbine Spacing.** The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
 6. **Footprint Minimization.** The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the LWES is constructed.
 7. **Electrical Cables.** The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This paragraph does not apply to feeder lines.
 8. **Feeder Lines.** The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement(s) negotiated. The permittees shall submit the site plan and engineering drawings for the feeder lines to the Board before commencing construction.
 9. **Height from Ground Surface.** The minimum height of blade tips at their lowest possible point shall be twenty-five (25) feet above grade.

10. Towers

- (a) Color and Finish. The finish of the exterior surface shall be non-reflective or matte.
- (b) All towers shall be singular tubular design, unless approved by the Board.

11. Noise. Noise level produced by the LWES shall not exceed 55 dBA, average A-weighted sound pressure at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner and occupant of the residence. The obtaining of a waiver or easement does not bind the Board in granting or denying a variance to this request.

12. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance unless extended by the county or unless the time period is altered by the specific terms of the permit.

13. Required Information for Permit Application.

- (a) Boundaries of the site proposed for LWES and associated facilities on United States Geological Survey Map or other map as appropriate.
- (b) Copies and map of easements for LWES and separate landowner agreements and waivers.
- (c) Map of occupied residential structures, business and public buildings within one half mile of the proposed LWES site boundaries, unless the county grants a variance to this requirement prior to filing the permit application.
- (d) Preliminary map of sites for LWES, access roads and utility lines. Location of other LWES within five (5) miles of the proposed LWES site.
- (e) Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with the following agencies:
 - (1) South Dakota Department of Game, Fish and Parks;
 - (2) U.S. Fish and Wildlife Service;
 - (3) South Dakota State Historical Society;
 - (4) USDA, FSA and affiliated agencies; and
 - (5) Other cultural agencies to include, but not limited to, tribal government agencies.

Evidence of such consultation shall be included in the application.

- (f) Project schedule.
- (g) Mitigation measures.
- (h) Status of interconnection studies/agreements.
- (i) The Board may also request additional information and documents should they deem it necessary in order to properly review the application.

14. **Variations.** The requirements for a LWES as established by paragraphs 1-13 may be varied or altered by the Board. Applicant must submit a request for variance to Board as part of its application prior to filing application. The Board may grant a variance only after public hearing as requested by the applicable zoning ordinance in the county. The existence of a waiver or easement from the landowner or adjoining landowner does not bind the Board regarding the granting or denying a variance.

15. **Decommissioning**

- (a) **Cost Responsibility.** The owner or operator of a LWES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.
- (b) **Useful Life.** A LWES is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Board for approval of a plan outlining the steps and schedule for returning the LWES to service within twelve (12) months of the submission.
- (c) **Decommissioning Period.** The facility owner or operator shall begin decommissioning a LWES facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in 14(b). Decommissioning must be completed with eighteen (18) months after the facility or turbine reaches the end of its useful life.
- (d) **Decommissioning Requirements.** Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWES. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the

landowner requests in writing that the access roads or other land surface areas be retained. Underground cables are not required to be removed if affected landowner(s) either at time of installation or at time of decommissioning consents to or waives in writing the removal of such cables.

- (e) Decommissioning Plan. Prior to commencement of operation of a LWES facility, the facility owner or operator shall file with the Board the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The Board may at any time require the owner or operator of a LWES to file a report describing how the LWES owner or operator is fulfilling this obligation.
 - (f) Financial Assurance. After the tenth (10th) year of operation of a LWES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the LWES facility. LWES facility, unless at the time of application LWES facility owner provides certification of a plan which sets aside on an annual basis a reserve account for costs associated with decommissioning and provides proof of existence and maintenance of such a plan on an annual basis.
 - (g) Failure to Decommission. If the LWES facility owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of bonds if required by section 15(f) of this section. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a LWES facility and seek additional expenditures necessary to do so from the facility owner, consistent with the requirements of paragraph 15(f) of this section.
16. Pre-construction Filing. At least forty-five (45) days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines. Upon completion, the applicant shall also supply an "as-built" ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.

ARTICLE 10

SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES

SECTION 1001 - Purpose

The purpose of this ordinance is to ensure that the placement, construction and modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, to minimize the impact of Wireless Telecommunications Facilities, to encourage the collocation of Wireless Telecommunications Facilities on existing structures, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens — while attempting to ensure access to reliable wireless communications services throughout the County.

SECTION 1002 - Authority and Jurisdiction

South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

SECTION 1003 - Definitions

For the purposes of this ordinance, the following terms shall be defined as:

1. **Accessory Equipment** — Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.
2. **Administrator** — The Zoning Administrator or individual designated by the Board to conduct the Administrative Review referred to in this ordinance
3. **Administrative Approval** — Zoning approval that the Administrator is authorized to grant after Administrative Review.
4. **Administrative Review** — The procedures established in Section 5-5 of this Ordinance.
5. **Antenna** — Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, the following: directional antennas, such as panels, microwave dishes and satellite dishes; and omnidirectional antennas, such as whips.
6. **Board** — The County Commission, City Commission, or other governmental body

governing the district this ordinance refers to.

7. **Collocation** — The act of siting Telecommunications Facilities in the same location on the same Support Structure as other Telecommunications Facilities. Collocation also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.
8. **Carrier on Wheels or Cell on Wheels or COW** — A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.
9. **Major Modifications** — Improvements to existing Telecommunications Facilities or Support Structures that result in a substantial change to the Facility or Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification. Major Modifications include, but are not limited to, extending the height of the Support Structure by more than twenty (20) feet or ten percent (10%) of its current height whichever is greater, and the Replacement of the structure.
10. **Minor Modifications** — Improvements to existing Telecommunications Facilities and Support Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a "substantial" change. Such Minor Modifications include, but are not limited to, extending the height of the Support Structure by less than twenty (20) feet or ten percent (10%) of its current height, whichever is greater, and the expansion of the compound area for additional Accessory Equipment.
11. **Monopole** — A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.
12. **Ordinary Maintenance** — Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas and Accessory Equipment on a like-for-like basis within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.
13. **Replacement** — Constructing a new Support Structure of proportions and of equal height or such other height as would be allowed under the definition of Minor Modification to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the preexisting Support Structure.

14. **Stealth Telecommunications Facility** — Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.
15. **Support Structure(s)** — A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, Utility Poles and other freestanding self-supporting structures.
16. **Telecommunications Facility(ies)** — Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunications Facility can consist of one or more Antennas and Accessory Equipment or one base station.
17. **Tower** — A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

SECTION 1004 - Approvals Required for Telecommunications Facilities and Support Structures

1. **Administrative Review**

Telecommunications Facilities located on any existing Support Structure shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. New Support Structures that are less than sixty (60) feet in height shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in any Industrial District [or your equivalent] after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. Monopoles or replacement poles located in utility easements or rights-of-way shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance. Stealth Telecommunications Facilities shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this ordinance.

2. **Variances/Exceptions**

Telecommunications Facilities and Support Structures not permitted by Administrative Approval may be permitted in any district upon granting of a variance or conditional approval from the Board in accordance with the standards and guidelines set forth in this ordinance.

3. Exempt

Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within the district after a declaration of an emergency or a disaster by the Governor or by the responsible official of the district; and (4) television and AM/FM radio broadcast towers and associated facilities.

SECTION 1005 - Telecommunications Facilities and Support Structures Permitted by Administrative Approval

1. Telecommunications Facilities Located on Existing Structures

- (1) Antennas and Accessory Equipment are permitted in all zoning districts when located on any existing structure, including, but not limited to, buildings, water tanks, utility poles, broadcast towers or any existing Support Structure in accordance with the requirements of this Part.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations, provided the Antenna and Accessory Equipment are in compliance with the requirements and standards of this Part.
- (3) Each Antenna mounted on existing structures and any Accessory Equipment shall meet the following standards:
 - (a) Omnidirectional or whip Antennas shall not exceed twenty (20) feet in length and not exceed seven (7) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (b) Directional or panel Antennas shall not exceed ten (10) feet in length and two (2) feet in width and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (c) Cylinder-type Antennas shall not exceed ten (10) feet in length and not exceed twelve (12) inches in diameter and shall be of a color that is identical or similar to the color of the supporting structure to make the Antenna and related Accessory Equipment visually unobtrusive.
 - (d) Satellite and microwave dishes shall not exceed ten (10) feet in diameter. Dish antennas greater than three (3) feet in diameter shall be screened with

an appropriate architectural treatment that is compatible with or integral to the architecture of the building to which they are attached. This screening requirement shall not apply to dishes located upon Towers or Monopoles.

- (e) Other Antenna types not specifically mentioned above shall be permitted if they are not significantly greater in size and will have a visual impact no greater than the Antennas listed above. This provision is specifically included in this Ordinance to allow for future technological advancements in the development of Antennas.
- (f) Accessory Equipment must comply with Section 7.5.

2. New Support Structures

- (1) New Support Structure less than sixty (60) feet in height shall be permitted in all zoning districts in accordance with the requirements of this Part.
- (2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in all general Industrial Districts in accordance with the requirements of this Part. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zone.
- (3) In the case of a monopoles or replacement poles that will support utility lines as well as a Telecommunications Facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this Part.
 - (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
 - (c) The height of the Monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
 - (d) Monopoles and the Accessory Equipment associated there with shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
 - (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
 - (f) Poles that use the structure of a utility tower for support are permitted under this Section. Such poles may extend up to twenty (20) feet above the height of the utility tower.

- (g) Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to Telecommunications Facilities shall be permitted in accordance with requirements of this Part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

3. Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in all zoning districts after Administrative Review and Administrative Approval in accordance with the requirements below:
 - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
 - (b) The structure utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for the supporting structure shall be governed by the setback requirements of the underlying zoning district.

4. General Standards, Design Requirements, and Miscellaneous Provisions

Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section 7 and the provisions of Section 8.

5. Administrative Review Process

- (1) All Administrative Review applications must contain the following:
 - (a) Administrative Review application form signed by applicant.
 - (b) Copy of lease, ownership documents or letter of authorization from property owner evidencing applicant's authority to pursue zoning application.
 - (c) Zoning Drawings detailing proposed improvements. Drawings must depict improvements related to the requirements listed in this Part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.

- (d) In the case of a new Support Structure:
 - i. Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option.
 - ii. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower or monopole is listed among the alternatives, applicant must specifically address why the modification of such structure is not a viable option.
 - (c) Administrative Review application fee. Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.
- (2) Procedure
- (a) Within ten (10) business days of the receipt of an application for Administrative Review, the Administrator shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) schedule an Administrative Review hearing with the Applicant within thirty (30) days of the receipt of a complete application, unless for a good cause a later date is necessary.
 - (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
 - (c) The Administrative Hearing will be conducted to confirm that the proposed application is consistent with this Ordinance. The Administrator must issue a written decision granting or denying the request within thirty (30) days of the hearing. This time period may be extended for good cause. Failure to issue a written decision within (30) days shall constitute a denial of the application. The applicant may appeal such a denial as provided in this Ordinance or applicable State or Federal Law.
 - (d) Should the Administrator deny the application, the Administrator shall provide written justification for the denial, specifically the inconsistencies between the applicant and this ordinance.

SECTION 1006 - Telecommunications Facilities and Support Structures Permitted by
Variance/Exception

1. Any Telecommunications Facility or Support Structures not Meeting the Requirements of Section 5 may be permitted by application for a variance or exception in all Zoning Districts Subject to:
 - (1) The submission requirements of Section 6.2 below;
 - (2) The applicable standards of Sections 7 and 8 below; and
 - (3) The requirements of the Article 20, Section 2003 of this ordinance.
2. Submission Requirements for Variance Applications
 - (1) All variance applications for Telecommunications Facility and Support Structures must contain the following:
 - (a) Variance application form signed by applicant.
 - (b) Copy of lease, ownership record or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application.
 - (c) Written description and scaled drawings of the proposed Support Structure, including structure height, ground and structure design, and proposed materials.
 - (d) Number and type of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Support Structure.
 - (e) When locating within a residential area, a written technical and operational analysis of why a Monopole or similar structure at a height of less than one hundred (100) feet cannot be used.
 - (f) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
 - (g) A statement justifying why Collocation is not feasible. Such statement shall include:
 - i. Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option.

- ii. A list of all existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unacceptable or infeasible due to technical, physical, or financial reasons. If an existing tower was listed among the alternatives, applicant must specifically address why the modification of such tower is not a viable option.
 - (h) A statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.
 - (i) If required of other variance applications, a property owner list that includes the name, address, and tax parcel information for each parcel entitled to notification of the application.
 - (j) Variance application fee. Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.
- (2) Procedure
- (a) Within ten (10) business days of the receipt of an Application for a Variance, the Administrator shall meet with the applicant to confirm that the application is complete or to inform the applicant in writing the specific reasons why the application is incomplete. This review meeting with staff is not a public hearing and is not subject to any public notification requirements.
 - (b) If an application is deemed incomplete, an Applicant may submit additional materials to complete the application. An applicant's failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal without prejudice of the application. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
 - (c) Once an application is deemed complete, a review meeting shall be held within thirty (30) days.
 - (d) A complete application for a Variance shall be scheduled for a hearing date at this review meeting in accordance with the requirements of this Ordinance.
 - (e) The posting of the property and public notification of the application shall be accomplished in the same manner required for any Variance application under this Ordinance.

SECTION 1007 - General Standards and Design Requirements

1. Design

- (1) Monopoles shall be subject to the following:
 - (a) Monopoles shall be designed to accommodate at least three (3) telecommunications providers.
 - (b) The compound area surrounding the Monopole must be of sufficient size to accommodate Accessory Equipment for at least three (3) telecommunications providers.
 - (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the Board, Monopoles shall have a galvanized silver or gray finish.
- (2) Towers shall be subject to the following:
 - (a) Towers shall be designed to accommodate at least four (4) telecommunications providers.
 - (b) A compound area surrounding the Tower must be of sufficient size to accommodate Accessory Equipment for at least four (4) telecommunications providers.
 - (c) Unless otherwise required by the Federal Communications Commission, the Federal Aviation Administration, or the Board, Towers shall have a galvanized silver or gray finish.
- (3) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible or aesthetically appropriate, as determined by the Board or Administrator.
- (4) Upon request of the Applicant, the Board or Administrator may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that Collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

2. Setbacks

- (1) **Property Lines.**
Unless otherwise stated herein, Monopoles and Towers shall be setback from all property lines a distance equal to their height measured from the base of the structure to its highest point. Other Support Structures shall be governed by the setbacks required by the underlying zoning district.

- (2) **Residential Dwellings.**
Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be setback from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement utility poles shall not be subject to a set back requirement.
- (3) Unless otherwise stated herein, all Accessory Equipment shall be setback from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a set back requirement.
- (4) The Board or Administrator shall have the authority to reduce or waive any required setback upon the request of the applicant if the Telecommunications Facility or Support Structure will be less visible as a result of the diminished setback. The Board or Administrator must also find that the reduction or waiver of the setback is consistent with the purposes and intent of this Ordinance. The structure must still meet the underlying setback requirements of the zone.

3. Height

- (1) In non-residential districts, Support Structures shall not exceed a height of one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (2) In residential districts, Support Structures shall not exceed a height equal to one hundred fifty (150) feet from the base of the structure to the top of the highest point. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant.
- (3) In all districts, the Board shall have the authority to reduce or waive the height restrictions listed in this section upon the request of the applicant and a satisfactory showing of need for a greater height. With its waiver request, the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Board.

4. Aesthetics

- (1) **Lighting and Marking.**
Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission or the Federal Aviation Administration (FAA).

- (2) **Signage.**
Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (3) **Landscaping.**
In all districts, the Board or Administrator shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The Board or Administrator may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Board or Administrator, landscaping is not appropriate or necessary.
5. **Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Telecommunications Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.**
- (1) **An equipment building, shelter or cabinet must not exceed five hundred sixty (560) square feet and twelve (12) feet in height, including the support structure for the equipment building.**
- (a) **Exception to size restriction. A single equipment building or shelter may exceed five hundred sixty (560) square feet if it is located at ground level, is used by more than one Telecommunications provider and does not exceed one thousand five hundred (1500) square feet.**
- (b) **Exception to height restriction. Upon the Applicant's request, the Board or Administrator may waive the height restriction to allow for the stacking of equipment on top of each other. The Board or Administrator must find that there is a practical necessity for the stacking of the equipment and that any resulting impact on adjoining properties is minimal or may be minimized by the requiring of appropriate screening. The Board or Administrator may also waive the height restriction where a higher support structure is needed to raise the Equipment above a slope or flood plain.**
- (2) **If the Accessory Equipment is at ground level in a residential zone, the Board or Administrator may require that the building or shelter be faced with brick or other suitable material on all sides and that the compound area be surrounded by landscaping providing a screen of at least three (3) feet in height at installation. The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Board or Administrator.**

SECTION 1008 - Miscellaneous Provisions

1. Safety

- (1) Ground-mounted Accessory Equipment and Support Structures shall be secured and enclosed with fence not less than six (6) feet in height, or as deemed appropriate by the Board or Administrator.
- (2) The Board or Administrator may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

2. Abandonment and Removal

- (1) Abandonment. Any Telecommunications Facility or Support Structure that is not operated for a period of twelve (12) consecutive months shall be considered abandoned.
- (2) Removal. The owner of the Telecommunications Facility or Support Structure shall remove the Facility within six (6) months of its abandonment. The district authority shall ensure and enforce removal by means of its existing regulatory authority.

3. Multiple Uses on a Single Parcel or Lot

Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site.

SECTION 1009 - Existing Telecommunications Facilities and Support Structures

Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

1. Non-Conforming Telecommunications Facility

- (1) Non-conforming Antennas or Accessory Equipment. Ordinary Maintenance may be performed on Non-conforming Antennas and Accessory Equipment.
- (2) Minor Modifications to non-conforming Telecommunications Facilities may be permitted upon the granting of Administrative Approval by the Administrator.
- (3) Major Modifications to non-conforming Telecommunications Facilities may be permitted only upon the granting of Variance approved by the Board.

2. Non-Conforming Support Structures

- (1) Ordinary Maintenance may be performed on a Non-conforming Support Structure.

- (2) Collocation of Telecommunications Facilities on an existing non-conforming Support Structure is permitted upon the granting of Administrative Approval by the Administrator.
- (3) Minor Modifications may be made to non-conforming Support Structures to allow for Collocation of Telecommunications Facilities. Such Minor Modifications shall be permitted by Administrative Approval granted by the Administrator.
- (4) Major Modifications may be made to non-conforming Support Structures only upon the granting of Variance approved by the Board.

ARTICLE 11

RESIDENTIAL DISTRICT (R-1)

SECTION 1101 - Intent

The intent of Residential District (R-1) is to provide for residential uses of varying types and other compatible uses in a pleasant and stable environment.

SECTION 1102 - Permitted Uses and Structures

1. Single-family dwelling;
2. Noncommercial horticultural uses; and
3. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

SECTION 1103 - Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the County Planning Commission may permit as a conditional use in the Residential District (R-1):

1. Multiple-family dwellings;
2. Mobile home parks and mobile homes;
3. Churches, synagogues, and temples;
4. Nursery, primary, intermediate, and secondary schools;
5. Day Cares;
6. Public recreational uses and park facilities;
7. Golf courses and country clubs;
8. Mortuary or Funeral Homes;
9. Cemeteries;
10. Utility substations;

11. Convalescent, nursing, and rest homes;
12. Medical and other health facilities;
13. Governmental services;
14. Commercial uses, and
15. Home occupations and professional offices.

SECTION 1104 - Minimum Lot Requirements

The minimum lot area shall be seven thousand (7,000) square feet for single and multi-family dwellings. The minimum lot width shall be fifty (50) feet.

SECTION 1105 - Minimum Yard Requirements

There shall be a front yard setback of not less than a depth of twenty-five (25) feet. There shall be a rear yard setback of not less than a depth of ten (10) feet. Each side yard setback shall not be less than five (5) feet. All distances shall be measured from the outer edge of the property line.

ARTICLE 12
LAKE FRONT RESIDENTIAL (R-2)

SECTION 1201 - Intent

The intent of the Lake Front Residential District (R-2) is to provide for residential uses of shoreline land without altering natural surroundings of the District.

SECTION 1202 - Permitted Uses and Structures

1. Single-family residential dwellings;
2. Noncommercial horticultural uses; and
3. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District.

SECTION 1203 - Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the County Planning Commission may permit on such terms and conditions as may be determined or set by the County Planning Commission as a conditional use in the Lake Front Residential (R-2):

1. Golf courses and country clubs;
2. Resorts;
3. Grocery, convenience, and sporting goods stores;
4. Home occupations and professional offices;
5. Mobile homes; and
6. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District. and

SECTION 1204 - Minimum Lot Requirements

Each lot shall have a depth of not less than one hundred (100) feet and shall have a shoreline frontage width of not less than fifty (50) feet. The minimum lot road frontage shall not

be less than ten (10) feet in width. All lots without shoreline frontage shall have a minimum width of fifty (50) feet and a minimum depth of one hundred (100) feet

SECTION 1205 - Minimum Yard Requirements

Each structure shall be setback not less than forty (40) feet from the normal high water mark. The road setback shall not be less than fifty (50) from federal and state highways and not less than thirty (30) feet from other roads. Each side yard shall not be less than five (5) feet as measured from the property line of the lot in question. The setback from other road accesses may be waived if not practicable within existing plats.

SECTION 1206 - Minimum Sewer Requirements

Installation of wastewater systems shall comply with Administrative Rules of South Dakota, Chapter 74:53:01

SECTION 1207 - Modification/alteration with 40' OHWM

Maintaining a buffer zone to intercept runoff, filter sediment and pollution, and maintaining portions of natural shoreline are extremely important in preserving water quality, preventing pollution, preserving fish and wildlife habitat, and for natural scenic beauty.

Any shoreline development and construction or modification, including rip-rap and retaining walls, shall require a special permit prior to undertaking such development, construction or modifications. The considerations or factors to be considered in granting a permit include, but are not limited to:

1. The work minimizes erosion or sediment to the lake;
2. Runoff will be minimized by construction and maintenance of a proper silt fence during construction; and
3. Intensive vegetation clearing in the vegetative buffer zone should be minimized on lake bluffs and steep slopes. Limited clearing and trimming of trees and shrubs is allowed to accommodate the placement of stairways paths, water accesses, and to provide a view to the water from the principal dwelling. Trees and natural shrubbery shall be preserved as far as practicable, and those removed should be replaced if possible to retard runoff, prevent erosion and preserve natural beauty.

Application for such a permit must be accompanied by a detailed plan showing the work to be accomplished, and also a list of names and addresses of the adjacent landowner(s). After filing of application the hearing shall be scheduled and notice of hearing given by publication

and written notice to landowner(s) contained in application. After granting of such permit applicant shall provide to the Zoning Officer within two years after the date of permit, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

ARTICLE 13
COMMERCIAL DISTRICT (C)

SECTION 1301 - Intent

The intent of the Commercial District (C) is to provide a commercial area for those establishments serving the general shopping needs of the trade area and in particular, those establishments customarily oriented to the pedestrian shopper. The grouping of uses is intended to strengthen the central business area as the urban center of trade, service, governmental and cultural activities and to provide neighborhood commercial convenience areas.

SECTION 1302 - Permitted Uses and Structures

The following uses and structures shall be permitted in the Commercial District (C):

1. All retail sales and services;
2. Finance, insurance and real estate services;
3. Lodges and fraternal organizations;
4. Wholesale trade;
5. Eating places;
6. Public buildings and grounds;
7. Churches, welfare, and charitable services; and
8. Rental storage units.

SECTION 1303 - Conditional Uses

After the provisions of this Ordinance relating to Conditional Uses have been fulfilled, the County Planning Commission may permit as conditional uses in the Commercial District (C):

1. Grain Elevators;
2. Other trade and service uses which are similar to the permitted uses and which are in harmony with the intent of this Ordinance;

3. Structures containing both commercial and residential uses; and
4. Multi-family and single-family dwellings
5. Automobile repair and services; not including automobile salvage or storage yards.
6. Funeral services and/or funeral homes.
7. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District; and
8. Drinking establishments, not offering any form of entertainment except as permitted by any other ordinance.

SECTION 1304 – Minimum Lot Requirements

The minimum lot area shall be two thousand four hundred (2,400) square feet. The minimum lot width shall be twenty five (25) feet.

SECTION 1305 – Minimum Yard Requirements

All permitted structures located on the lot shall have a front yard setback of a least ten (10) feet and a minimum rear yard setback of ten (10) feet. Minimum side yard setbacks to be determined by location and circumstances defined in permit, and agreements(s) of adjoining landowners.

SECTION 1306 – Maximum Lot Coverage

The maximum lot coverage for all buildings shall not be more than ninety percent (90%) of the total lot area.

ARTICLE 14

HIGHWAY COMMERCIAL DISTRICT (HC)

SECTION 1401 – Intent

The intent of the Highway Commercial District (HC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to major vehicular transportation routes defined herein as State and Federal Highways. The intent must also be made for the needs of the highway user and the automobile, and in so doing to establish appropriate locations along major streets and highways for highway and automobile related retail and service establishments in locations which will not cause undue traffic congestion.

SECTION 1402 – Permitted Uses and Structures

1. Retail sale of: lumber and other building materials, farm equipment, motor vehicles, marine craft, trailers, farm and garden supplies, fuel and ice;
2. Wholesale sale of: motor vehicles and automotive equipment; drugs, chemicals, and allied products; dry goods and apparel; groceries and related products; electrical goods hardware, plumbing, heating equipment, and supplies; machinery, equipment, and supplies, beer, wine, and distilled alcoholic beverages; paper and paper products; furniture and home furnishings; lumber and construction materials;
3. Funeral and crematory services;
4. Farm products warehousing and storage, excluding stockyards;
5. Refrigerated warehousing;
6. Household goods warehousing and storage;
7. General warehousing and storage;
8. Automobile repair and services;
9. Reupholster and furniture repair service;
10. Contract construction service;
11. Bus garaging and equipment maintenance;
12. Motor freight terminals;

13. Motor freight garaging and equipment maintenance;
14. Automobile parking;
15. Libraries, museums, art galleries, planetary, aquariums, historic and monument sites; auditoriums, exhibition halls; and arcades;
16. Miniature golf course, gymnasiums and athletic clubs, swimming pool, tennis courts, ice skating rinks; roller skating rinks;
17. Parks;
18. Amphitheaters, stadiums, drive-in movies, arenas and field houses; race tracks, fairgrounds, amusement parks, golf driving ranges, go-cart tracks, golf courses and country clubs, riding stables, playfields and athletic fields, bowling alleys, riding arenas and rodeo facilities.
19. Communication and utility uses;
20. Automobile service stations;
21. Motels;
22. All retail sale and services;
23. Finance, insurance, and real estate services;
24. Lodges and fraternal organizations;
25. Eating places;
26. Public buildings and grounds;
27. Churches, welfare, and charitable services;
28. Grain elevators;
29. Rental storage units, and
30. Campgrounds

SECTION 1403 – Conditional Uses

1. Light industry and manufacturing;
2. Food lockers, provided, that any slaughtering, killing eviscerating, skinning, or plucking be done indoors;
3. Other trade and service uses which are similar to the permitted uses and which are in harmony with the intent of this Ordinance;
4. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District, and
5. Drinking establishments.

SECTION 1404 – Minimum Lot Requirements

The minimum lot area for permitted uses shall be thirty thousand (30,000) square feet. The minimum lot width for permitted uses shall not be less than one hundred (100) feet.

SECTION 1405 – Minimum Yard Requirements

There shall be a front yard setback of not less than forty (40) feet. There shall be a rear yard setback of not less than twenty (20) feet. Each side yard setback shall be not less than 10 feet. All distances shall be measured from the lot lines.

ARTICLE 15

GENERAL INDUSTRIAL DISTRICT (I)

SECTION 1501 - Intent

The intent of the General Industrial District (I) is to provide space for certain types of industrial and/or manufacturing and/or warehousing or storage operations which are compatible to adjoining districts. Such uses generally require open storage of materials or goods either before, during, or after the manufacturing process but are of a low noise or nuisance level. Land designed for this District should be located in relation to the thoroughfare network of the community as well as rail and air if required and designed so as not to disrupt normal traffic flows. Because of increasing technological developments, extensive lists of permitted uses are not practical. At anytime, a Planned Industrial Park is encouraged in this District.

SECTION 1502 - Permitted Uses and Structures

1. None

SECTION 1503 - Conditional Uses

All industrial uses and structures will be allowed by a conditional use permit. The County Planning Commission may permit as a conditional use in general industrial districts any use which is consistent with the intent of this district.

SECTION 1504 - Minimum Lot Requirement

There shall be, at a minimum, thirty thousand (30,000) square feet per general industrial district lot.

SECTION 1505 - Minimum Yard Requirements

There shall be a front yard setback of not less than twenty five (25) feet. There shall be a rear yard setback of not less than twenty (20) feet. Each side yard setback shall not be less than twenty (20) feet, PROVIDED, that on lots adjacent to a Residential District, all structures shall be located so as to provide a minimum side and rear yard setbacks of twenty five (25) feet along that portion of the lot adjacent to the Residential District. Measurements shall be taken from the property lines of the lot in question.

ARTICLE 16

SUPPLEMENTARY DISTRICT REGULATIONS

SECTION 1601 - Visibility at Intersections

On all corner lots and lots bordering alleys and all private driveways intersecting public roads, and adjoining any other county and secondary roads or any other public rights-of-way in all districts except Commercial, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one-half (2 1/2) feet and ten (10) feet above the centerline grades of the intersecting streets, in the area formed by a radius of twenty (20) feet from the intersection of the street, curbs, or edge.

SECTION 1602 - Erection of More Than One Principal Structure on a Lot

In any district, more than one structure may be erected on a single lot, provided, that the use is a permitted use and that yard and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.

SECTION 1603 - Spacing of Signs

Signs may not be located in such a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device; obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic. There shall also be a distance of at least five (5) feet from the bottom of the advertising sign to the ground.

SECTION 1604 - Front Yard Regulations

In any required front yard, no fence or wall shall be permitted which materially impedes vision across such yard above the height of thirty (30) inches, and no hedge or other vegetation shall be permitted which materially impedes vision across such yard between the heights of thirty (30) inches and ten (10) feet. See Section 1601 for further regulations concerning corner lots.

In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the County Zoning Officer may waive the requirement for the normal front yard and substitute, therefore, a special yard requirement which shall not exceed the average of the yards provided on adjacent lots.

Depth of required front yards shall be measured at right angles to a straight line joining the

foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be parallel.

ARTICLE 17

NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, NONCONFORMING USES OF STRUCTURES AND PREMISES, AND NONCONFORMING CHARACTERISTICS OF USES

SECTION 1701 - Intent

Within the Districts established by this Ordinance or amendments that may later be adopted, there exists:

1. Lots;
2. Structures;
3. Uses of land and structures; and
4. Characteristics of use

Which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit the nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by these regulations to be incompatible with permitted uses in the Districts involved. A nonconforming use of structure or a nonconforming use of land and structure in combination shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises intended to be seen from off the premises or by the addition of other uses of a nature which would be prohibited generally in the District involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of this adoption or amendment of this Ordinance and upon which actual building construction had been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

SECTION 1702 - Nonconforming Lots of Record

In any District in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership. This provision shall apply even though such lot fails to meet the requirements for area and/or width, that are generally applicable in the District, provided that yard dimensions and requirements other than those applying to area and/or width of the lot shall conform to the regulations for the District in which such lot is located. Variances to the yard requirements shall only be obtained through action of the County Planning Commission.

In any District, if two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered undivided parcel for the purpose of this ordinance. No portion of said parcel shall be used or sold in a manner which diminished compliance with lot width and area requirements established by this Ordinance; nor shall any division of any parcel be made which creates a lot with a width or area below requirements stated in this Ordinance.

SECTION 1703 - Nonconforming Uses of Land (or Land with Minor Structures Only)

Where at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.
2. If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the District in which such land is located.
3. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

SECTION 1704 - Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the

structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its reasonable fair market value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

SECTION 1705 - Repairs and Maintenance

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any portion of twelve consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the current reasonable fair market value of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the District in which it is located.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

SECTION 1706 - Conditional Uses Shall Not be Nonconforming Uses

Any use which is permitted as a conditional use in a District under the terms of this Ordinance (other than a change through the County Planning Commission action from a nonconforming use to another use not generally permitted in the District) shall not be deemed a nonconforming use in such District shall without further action be considered a conforming use at the date of adoption of this Ordinance.

ARTICLE 18

ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

SECTION 1801 - Administration Procedure and Enforcement

An administrative official who shall be known as the Secretary of Planning and Zoning and who shall be designated by the County Board of Commissioners shall administer and enforce this Ordinance. This person may be provided with the assistance of such other persons as the County Board of Commissioners may direct.

If the Secretary of Planning and Zoning shall find that any of the provisions of this Ordinance are being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she may order discontinuance of illegal use of land, building, or structures; removal of illegal buildings or structures or illegal additions, alterations, or structural changes; discontinuance of any illegal work being performed; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

SECTION 1802 - Building Permits Required

No building including a mobile home shall be erected, partially erected, moved, added to, or structurally altered without a permit therefore issued by the Secretary of Planning and Zoning. No building permit shall be issued by the Secretary of Planning and Zoning except in conformity with the provisions of this Ordinance, unless he/she received a written order from the County Planning Commission in the form of an administrative review, conditional use, or variance as provided by this Ordinance.

SECTION 1803 - Application for Building Permits

All applications for building permits shall show the actual dimensions and shape of the lot to be built upon; the exact size and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. Building permits may be obtained from the Secretary of Planning and Zoning.

The application shall include such other information as lawfully may be required by the Secretary of Planning and Zoning, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance.

One copy of the application shall be returned to the applicant by the Secretary of Planning and Zoning after he/she has marked such copy either as approved or disapproved and attested to the same by his/her signature on such copy. If a building permit is refused, the Secretary of Planning and Zoning shall state the reasons for such refusal in writing. The original and one copy of the application, similarly marked, shall be retained by the Secretary of Planning and Zoning.

The issuance of a building permit shall, in no case, be construed as waiving any provisions of this Ordinance.

If the work described in any building permit has not been started prior to one (1) year of the date of issuance thereof, and completed within two (2) years of the date of issuance thereof, said permit shall expire and be canceled by the Secretary of Planning and Zoning. Any further work or completion of project shall require a new permit.

SECTION 1804 - Construction and Use to be Provided in Applications and Permits

Building permits issued on the basis of applications approved by the Secretary of Planning and Zoning shall be authorized only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance and punishable as provided by SECTION 2402 hereof.

SECTION 1805 - Obtaining a Building Permit

All building permits shall be obtained by application of the owner or builder. It is the owner's responsibility to obtain a permit prior to construction on his/her property, owned or leased. The schedule of building permit fees will be on file with the Secretary of Planning and Zoning with such fees to be established and changed by a Resolution by the Board of County Commissioners. Such fees to be based on good faith estimate of costs of improvements or construction.

ARTICLE 19

COUNTY PLANNING COMMISSION

SECTION 1901 - Proceedings of the County Planning Commission

The County Planning Commission shall serve as the board of adjustment as provided by South Dakota law. The County Planning Commission shall adopt rules necessary for the conduct of its affairs and in keeping with the provisions of this Ordinance. The County Planning Commission shall keep record of all proceedings. Meetings shall be held at the call of the Chairperson and at such other times the Planning Commission may determine. The Chairperson, or in his/her absence, the acting chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The County Planning Commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be of public record and be immediately filed with the Secretary of the Planning Commission. The Planning Commission shall adopt from time to time, subject to the approval of the Board of County Commissioners, such rules and regulations as it may deem necessary to carry out appropriate provisions of this Ordinance in effect.

SECTION 1902 - Hearings, Appeals, and Notices

Appeals to the County Planning Commission may be taken by any person aggrieved or by any officer, department, board or bureau of the County affected by any decision of the Secretary of Planning and Zoning. Such appeal shall be taken with fifteen (15) days after permit publications in the newspaper, by filing with the officer from whom the appeal is taken and with the County Planning Commission a notice of appeal specifying the ground thereof. The officer from whom the appeal is taken shall forthwith transmit to the County Planning Commission all the paper constituting the record upon which the action appealed from was taken.

The County Planning Commission shall within thirty (30) days after receipt of the petition hold a public hearing on the appeal, give a public notice fifteen days in advance, as well as, give due notices to the parties in interest, and decide the same. At the hearing, any party may appear in person or by agent or by attorney.

ARTICLE 20

COUNTY PLANNING COMMISSION--POWERS AND DUTIES

SECTION 2001 - Administrative Review

The County Planning Commission shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation relating to the location or soundness of structures or to interpret any map.

SECTION 2002 - Conditional Uses; Conditions Governing Applications; Procedures

The County Planning Commission shall have power to hear and decide requests for conditional uses or for decisions upon other special questions upon which the County Planning Commission is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether a conditional use should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the County Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested;
2. The Secretary of Planning and Zoning shall publish in the official county newspapers the public hearing notice ten (10) days in advance of the public hearing.
3. The public hearing shall be held. Any party may appear in person, by agent, by attorney, or by sworn affidavit to the Secretary of Planning & Zoning;
4. The County Planning Commission shall make a finding that it is empowered under the section of the Ordinance described in the application to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest; and
5. Before any conditional use shall be issued, the County Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses which may include consideration of the following:
 - a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and

convenience, traffic flow and control, and access in case of fire or catastrophe;

- b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare, or other effects of the conditional use on adjoining properties and properties generally in the District;
- c. Refuse and service areas, with particular reference to the items in (a) and (b) above;
- d. Utilities, with reference to locations, availability, and compatibility;
- e. Screening and buffering with reference to type, dimensions, and character;
- f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the District;
- g. Required yards and other open spaces; and
- h. General compatibility with adjacent properties and other property in the District.

SECTION 2003 - Variances, Conditions Governing Applications; Procedures

The County Planning Commission shall have the power, where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situations or conditions of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardships, as such relief may be granted without substantially impairing the intent and purpose of this Ordinance.

- 1. No such variance shall be authorized by the Commission unless it finds that the strict application of the Ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property; and the character of the district will not be changed by the granting of the variance; and the granting of such

variance is based on the reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.

2. No variance shall be authorized unless the Commission finds that the condition or situation of the property concerned or the intended use of the land concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the County Planning Commission unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or buildings involved and which are not applicable to other lands, structures, or buildings in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; that the special conditions and circumstances do not result from the action of the applicant; that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
5. The Secretary of Planning and Zoning shall publish in the official county newspapers the public hearing notice ten (10) days in advance of the public hearing.
6. Any party may appear in person, by agent, by attorney or by sworn affidavit; the County Planning Commission shall make findings that the requirements of this SECTION have been met by the application for a variance; the Commission shall further make a finding that the reasons set forth in the application justify the granting of a variance; and the variance is the minimum variance that will make possible the reasonable use of the land, structure, or building; the Commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
7. In granting any variance, the County Planning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made in part of terms

under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under SECTION 2402 of this Ordinance.

8. Under no circumstances shall the County Planning Commission grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

SECTION 2004 - County Planning Commission has Powers of Zoning Administrator on Appeals; Reversing Decision of Secretary of Planning and Zoning

In exercising the above mentioned power, the County Planning Commission may reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination appeal from, and may make such order, requirement, decision or determination appeal as ought to be made, and to that end shall have all the powers of the Administrator from whom the appeal is taken. The concurring vote of three-fourths (3/4) of the full membership of the County Planning Commission shall be necessary to reverse any order, requirement, decision, or determination of any such administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

ARTICLE 21

APPEALS

SECTION 2101 - Duties of Secretary of Planning and Zoning, County Planning Commission, Board of Adjustment, and Courts on Matters of Appeal

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be presented first to the Secretary of Planning and Zoning and that such questions shall be presented to the County Planning Commission only in appeal from the decisions of the Secretary of Planning and Zoning and that recourse from the decisions of the County Planning Commission shall be to the Board of County Commissioners and then to the court as provided by law.

The procedure for deciding such questions shall be as stated in this SECTION and Ordinance. Under this Ordinance, the Board of County Commissioners shall have the following duties: (1) of considering and adopting or rejecting proposed amendments or the repeal of this Ordinance as provided by law, (2) or establishing a schedule of fees and charges as stated in ARTICLE 22.

SECTION 2102 - Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the County Planning Commission after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause eminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the County Planning Commission or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

SECTION 2103 - Appeals from the County Planning Commission; Procedures of Appeal

Any person or persons, or any board, taxpayer, department, board or bureau of the county aggrieved by any decision of the Board of Adjustment may appeal to the Board of County Commissioners and then seek review by a court of record of such decision in the manner provided by the laws of the State of South Dakota.

ARTICLE 22

SCHEDULE OF FEES, CHARGES, AND EXPENSES

SECTION 2201 - Schedule of Fees, Charges, and Expenses

The Board of County Commissioners shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance. The schedule of fees will be on file with the Secretary of Planning and Zoning. The schedule of fees may be altered or amended only by the Board of County Commissioners by resolution. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application for appeal. All fees shall go into the Day County general fund.

ARTICLE 23

AMENDMENTS

SECTION 2301 - Amendments

The provisions set forth in this Ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed by action of the Board of County Commissioners or when such amendment, supplement, change, modification, or repeal is requested through a petition by thirty (30) percent of the landowners in the district requesting change. An individual landowner may also petition the Board to change the zoning of all or any part of his/her property. Upon filing or upon separate request by the Board of County Commissioners, the County Planning Commission and the Board shall hold a public hearing not less than fifteen (15) days after the notice published in the official newspaper of the County and subject to the provisions in SDCL 11-2-19. Such petitioning landowner shall also notify all other abutting landowners by registered mail of the petitioned zoning change at least one week prior to any public hearing held thereon by the County Planning Commission.

The County Planning Commission shall within forty-five (45) days make its recommendation to the Board of County Commissioners. The report of such recommendation shall include approval, disapproval, or other suggestions and the reasons therefore, and a discussion of the effect on such amendment, supplement, change, modification upon adjacent property and upon the Comprehensive Plan.

The Board of County Commissioners shall therefore, by duly enacted Ordinance, either adopt or reject such amendment, supplement, change, modification, or repeal, and if it is adopted by the Board of County Commissioners, the same shall be published in the official newspaper in the County and take effect on the twentieth (20th) day after its publication.

ARTICLE 24

VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

SECTION 2401 - Building Permit Violations

Any person, firm, or corporation in violation of this ordinance shall be fined one hundred (\$100) dollars. The Secretary of Planning and Zoning may also take enforcement measures as given in SECTION 1801. Payment of all fines shall be made in the office of the Day County Secretary of Planning and Zoning within fourteen (14) days after the person, firm, or corporation in violation of the above Ordinance has been notified by certified letter. If payment of the fine is not received at the end of the ten (10) day period the County may assess a fine of twenty five (\$25) dollars per day in addition to the \$100 fine and the Day County States Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9 and 7-19-1. Any fines collected shall be deposited in the Day County general fund.

SECTION 2402 - Violation of Ordinance

Any person, firm, or corporation in violation of the provision of these Ordinances, except SECTION 1802, shall be punishable by a fine not less than twenty-five (\$25) dollars nor more than five thousand (\$5,000) dollars. The Secretary of Planning and Zoning may also take enforcement measures as given in SECTION 2101. Payment of all fines shall be made in the office of the Day County Zoning Officer within ten (10) days after the person, firm, or corporation in violation of the above Ordinance has been notified by certified letter. If payment of the fine is not received at the end of the ten (10) day period, the Day County States Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9 and 7-19-1. Any fines collected shall be deposited in the Day County general fund.

The assessment of the payment of fines is not an exclusive remedy of the county for violations and the county may pursue or require other remedial steps to obtain compliance.

ARTICLE 25

LEGAL STATUS PROVISIONS

SECTION 2501 - Separability

Should any article, section, or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 2502 - Purpose of Catch Heads

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience to serve the purpose of any index; and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

SECTION 2503 - Repeal of Conflicting Ordinances

All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with the provision of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect. Provisions of this ordinance do not impair or affect the enforcement of the Flood Map Ordinance dated August 18, 2000.

SECTION 2504 - Effective Date

This Ordinance shall take effect and be in force from and after its passage and publication according to law.

ARTICLE 26

ADDITIONAL USE REGULATIONS

UTILITY POLES/STRUCTURES

SECTION 2601 – Purpose

Day County, South Dakota Board of Commissioners deems it necessary for purposes of promoting the safety and general welfare of the community and to assist the County Highway Department in its snow removal procedures and for snow storage and in order for the County to maintain the in-slopes of its roads, to prohibit the installation and placement of all utility poles, structures, guy wires, within fifty feet (50') of the center-line of all County Roads designated as part of the County Highway System. This does not apply to placement along other secondary roads in the County unless at the time of application this is waived upon approval by County as set forth in 2604 below.

SECTION 2601(A) – Obstructions at or near Right of Way

No building, structure, haystack, bales, or bale stacks, advertising sign, stock dam, water diversion ditch, tree stumps, rock piles, debris or other public hazards shall be located closer than one hundred fifty (150) feet from the center of all highways and roads located in Day County, including township roads, county roads and public highways. There shall be a distance of at least five (5) feet from the bottom of an advertising sign to the ground.

SECTION 2602 – Penalty for Violation

A violation of this Article shall result in a maximum fine of \$500.00 or thirty (30) days in the county jail, or both the jail and fine. In addition, all poles, structures, etc. placed or installed in violation shall be removed at the expense of the utility company. If not removed, the County may contract for the removal and charge the cost and expense to the utility company.

SECTION 2603 – Prospective Application

This Article is intended to apply prospectively and does not affect existing utility poles, structures, guy wires in place and fully constructed and energized prior to effective date of ordinance. This Article also does not apply to on-going maintenance, up-grades, and repair of existing facilities, i.e. poles and lines.

SECTION 2604 – Waiver of 50' No Build Requirements

The fifty-foot (50') no build provisions of this Article may be modified or reduced upon an affirmative showing of negative impact to landowner, or unreasonable delay in completing the project, or that easements are not available to utility under the circumstances. Applicants will be

required to document their efforts to comply with this Ordinance and to obtain the necessary easements. This waiver may be granted at the time of approval of initial permit or request.

APPENDIX A

DAY COUNTY SUBDIVISION REGULATIONS

APPENDIX A

An Ordinance establishing rules, regulations, and standards governing the subdivision of the land within Day County, South Dakota, and providing harmonious development of the county and its environs for the coordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan of the county for adequate open spaces for traffic, recreation, light and air, and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity.

Now, therefore, be it enacted by Day County, South Dakota.

ARTICLE I - GENERAL PROVISIONS

SECTION 101 - Purpose

These regulations shall be for the purpose of promoting harmonious development through the implementation of the Day County Comprehensive Plan.

SECTION 102 - Extent of Regulation

The provisions of these regulations shall apply to every addition to, or subdivision within Day County, South Dakota, and their prescribed area of extra-territorial jurisdiction. No plat of a subdivision of land shall be filed or recorded until it has been submitted to the Planning and Zoning Commission for their review and then approved by the Day County Commissioners.

SECTION 103 - Definitions

For the purposes of this ordinance, certain terms or words used herein shall be interpreted as follows:

The word *person* includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word *shall* is mandatory, the word *may* is permissive.

The words *used or occupied* included the words *intended, designed, or arranged* to be used or occupied.

The word *lot* includes the words *plot or parcel*.

The word *building* includes the word *structure*.

Alley: A public right-of-way which is used primarily as a secondary means of access to the abutting property.

Block: A track or parcel of land bounded by public streets or land, streams, railroads, unplatted lands or a combination thereof.

Comprehensive Plan: A long-range plan for the improvement and development of Day County, South Dakota, as adopted by the Planning Commission and the County Commissioners.

Cul-de-sac: A street having one end connecting with a public street and being terminated as its other end by a vehicular turn-around.

Improvements: Pavements, curbs, gutters, sidewalks, water mains, sanitary sewers, storm sewers, grading street signs, plantings, and other items for the welfare of the property owners and the public.

Lot: A portion of a subdivision or other parcel of platted land, intended as a unit for transfer of ownership or for development.

Lot of record: A tract of land described as an integral portion of a subdivision plat which is properly recorded in the Register of Deeds Office of Day County, South Dakota.

Plat: A map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which he submits for approval and which will be recorded in final form.

Right-of-way: A strip of land separating private property from the existing road, street or alley or dedicated in public ownership.

Street: A right-of-way, dedicated to public use, which affords a primary means of access to the abutting property.

Street -major: Provides for the through traffic movement between areas and across the city, and direct access to abutting property; subject to necessary control of entrances, exits and curb use.

Street -collector: Provides for traffic movement between major arterials and local streets, and direct access to abutting property.

Street - local: Provides for direct access to abutting land, and for local traffic movements.

Subdivider: A natural person, firm, co-partnership, association or corporation who submits a proposed subdivision to the Planning Commission.

Subdivision: The division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership or building development.

Water course, drainage way, channel or stream: A natural or man-made depression in which a current of surface run-off water flows following precipitation.

ARTICLE 2
PROCEDURES

SECTION 201 - Plat Application

Day County shall follow the procedures pursuant to SDCL 11-3-1 to 11-3-26.

ARTICLE 3

DESIGN STANDARDS

SECTION 301 - General Standards

Land within the proposed subdivision which the Planning and Zoning Commission finds to be unsuitable for subdividing due to flooding or bad drainage shall not be subdivided until the objectionable features have been eliminated or until adequate safeguards against such objectionable features are provided.

SECTION 302 - Streets and Alleys

1. Streets in the subdivision normally shall connect with streets already dedicated in adjoining or adjacent subdivisions.
2. Minor residential streets should be planned as to discourage through traffic. Permitted cul-de-sacs shall not be longer than four hundred (400) feet and shall terminate with a turn-around having a curblin diameter of not less than eighty (80) feet.
3. Centerline off-sets of intersecting streets shall be avoided, but where necessary shall be not less than one hundred fifty (150) feet.
4. Blocks in residential subdivisions shall be not less than three hundred (300) feet long and not more than one thousand two hundred (1,200) feet long.
5. Half streets shall be prohibited except where essential to the reasonable development of the subdivision or where it is found to be practical to require the dedication of the other half when adjoining property is subdivided.
6. Under normal conditions streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography or other conditions justify variations. More than four (4) approaches to any intersection shall be prohibited.
7. Alleys shall be provided in Commercial and Industrial districts except where other definite and assured provision is made for service access.
8. The right-of-way widths and pavements widths (back-to-back of curb) for interior streets and alleys included in any subdivision shall not be less than the minimum dimensions for each classification as follows:

<u>TYPE</u>	<u>PAVEMENT WIDTH</u>	<u>R.O.W</u>
Major Arterial Streets	66'	80'
Local Streets	46'	66'
Alleys	16'	20'

SECTION 303 - Lots

1. Side lot lines shall be approximately at right angles to straight street lines or radial to curved street lines.
2. Every lot shall abut and have access to a public street.
3. Double frontage lots shall be avoided except where they back upon a major street.

SECTION 304 - Easements

1. Easements on rear or side lot lines shall be provided for sanitary sewers where necessary and shall be a total of at least ten (10) feet wide on each side.
2. Where a subdivision is traversed by a water course, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way of such width as will be adequate for both water flow and maintenance operations.

ARTICLE 4
ENFORCEMENT

SECTION 401 - Enforcement

1. No plat of any subdivision within the application of this Ordinance shall be entitled to be filed or recorded in the office of the Register of Deeds or have any validity until such plat has been prepared, approved, and acknowledged in the manner prescribed by this Ordinance.

2. It shall be unlawful to sell, trade, or otherwise convey any lot or parcel of land for building purposes as a part of or in conformity with any plat, plan, or replat of any subdivision within the area subject to application of this Ordinance unless said plan, plat, or replat shall have been approved as prescribed by this Ordinance and filed and recorded in the office of the Register of Deeds.

ARTICLE 5

PENALTY

SECTION 501 - Penalty

It is declared unlawful for any person, firm, or corporation to violate any of the terms or provisions of this Ordinance. Violation thereof shall be a misdemeanor and may be punishable by a fine established by the County Commissioners for each and every day that any violator fails to comply with the provisions of this Ordinance.

Any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent Day County from taking such other lawful action as is necessary to prevent any violation.

ARTICLE 6
SEVERABILITY CLAUSE

SECTION 601 - Severability Clause

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the regulations as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

ARTICLE 7

LEGAL STATUS PROVISIONS

SECTION 701 - Conflict with Other Regulations

No final plat of land within the force and effect of the Zoning Ordinance shall be approved unless it conforms to these Regulations. Whenever there is a discrepancy between standards or dimensions noted herein and those contained in the Zoning Ordinance, building code, or other official regulations or ordinances, the most restrictive shall apply.

APPENDIX B

ZONING DEFINITIONS

For the purpose of this Ordinance, certain terms and words used herein shall be interpreted as follows:

A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 10-12 inches in Day County.

Abandoned property - Any deteriorated, dilapidated, and/or abandoned property in unusable condition having no value other than nominal scrap or junk value.

Abutting - Abutting shall mean adjacent or contiguous property except property which separated by a publicly dedicated roadway. The term "abutting" implies a closer proximity than the term "adjacent".

Accessory Use or Structures - A use or structure on the same lot with and of a nature customarily included or subordinate to the principle use or structure.

Alley: A public right-of-way which is used primarily as a secondary means of access to the abutting property.

Animal Husbandry - The branch of agriculture concerned with the care and breeding of domestic animals such as cattle, hogs, sheep, and horses.

Applicant - An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

Aquifer - a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.

Block - A track or parcel of land bounded by public streets or land, streams, railroads, unplatted abutting property.

Building - Any structure designed or intended for the support, enclosure, shelter, or protection of persons or property. The word includes the word structure and is a structure which is entirely separated from any other structure by space or by wall in which there is not communicating doors, windows, or similar openings. A principal building including covered porches and paved patios is a building which is a primary use. In any residential district, any dwelling shall be deemed to be the principal building on the lot.

Building Area - The portion of a lot remaining after required setbacks and widths have been determined.

Building Permit - A document signed by the Zoning Administrator as a condition precedent to the commencement of a use or the erection, construction, re-construction, restoration, alteration, conversion, or installation of a building, which acknowledges that such use, or building complies with the provisions of the zoning ordinance or an authorized variance therefrom.

Best Management Practices (BMP) - Schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.

A Chronic or Catastrophic Event - A single precipitation event, or a series of rainfall events in a short period of time, that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

Comprehensive Plan - A long-range plan for the improvement and development of Day County, South Dakota, as adopted by the Planning Commission and the County Commissioners.

Concentrated Animal Feeding Operation - A lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal operation if they adjoin each other, or if they use a common area, or system for disposal of manure.

Conditional Use - A conditional use is a use that would not be appropriate generally or without restrictions throughout a zoning district, but which if controlled as to number, area, location, or relations to the neighborhood, would promote the public health, safety, welfare, appearance, comfort, convenience, prosperity, and general well being. Such uses may be permitted in a zoning district as conditional uses, if specific conditions are defined by the Day County Planning Commission and the County Board of Commissioners. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such exceptions is made in these zoning regulations. The Board of Adjustment may, after notice and hearing, revoke a conditional use in the event of a violation of any of such conditions. In addition, the conditional use permit may not be transferred during any violation.

Confinement Feeding Operation - A totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.

Confinement Feeding Operation Structure - A formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

Cul-de-sac - A street having one end connecting with a public street and being terminated as its other end by a vehicular turn-around.

Density - Pertaining to the number of dwelling units per net acre or gross acre, as indicated for the appropriate zoning district and new subdivisions.

District - A part, zone, or geographic area of Day County within which certain zoning or development regulations apply.

Domestic Animal - Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind. For the purpose of this ordinance the definition shall include, but is not limited to, animals commonly raised on farms and ranches, such as cattle, horses, hogs, sheep and mules.

Dwelling, Single Family - A residential dwelling unit other than a mobile home, designed for one family.

Dwelling, Multiple Family - A residential building designed for two or more families living independently of each other, completely.

Dwelling Unit - One room or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or long term basis, and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking, bathroom, and sleeping facilities.

Family - One or more individuals, related by blood or law, occupying a dwelling unit and living as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. In addition to persons actually related by blood or law, the following persons shall be considered related by blood or law for the purposes of this title: (1) A person residing with the family for the purpose of adoption; (2) Not more than six (6) persons under licensed or approved by a governmental agency; (3) Not more than four (4) persons nineteen (19) years of age or older residing with the family for the purpose of receiving foster care licensed or approved by a governmental agency; and (4) any person who is living with the family at the direction of a court.

Floor Area - The sum of all gross horizontal enclosed area of the floors of the building(s) and its accessory building(s) on the same lot, excluding basement floor areas and non-enclosed portions of the structure.

Home Occupation - An occupation conducted in a dwelling unit provided that:

1. No more than two other persons, in addition to the members of the family, residing on the premises shall be engaged in such occupation.

2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. No more than 30 percent of the floor area is allowed for such occupation.
3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding TWO SQUARE FEET in area, nonilluminating and mounted flat against the wall of the principal building.
4. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and may the need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
5. No equipment or process shall be used in such home occupation which created noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot.

Horticulture - The art or science of growing flowers, fruit, and vegetables.

Improvements - Pavements, curbs, gutters, sidewalks, water mains, sanitary sewers, storm sewers, grading street signs, planning, and other items for the welfare of the property owners and the public.

Junk Yards - The use of more than seven hundred fifty (750) square feet of open storage on any lot, portion of a lot, or tract of land for the sale, storage, keeping, or abandonment of junk, scrap metal, or salvageable materials, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

Kenel - Any premise, or portion thereof, where dogs, cats, and other household pets are maintained, boarded, bred, or cared for, in return for remuneration, or are kept for the purpose of sale.

Landscaped Area - An area that is permanently devoted and maintained for the growing of shrubbery, grass or other plant material, and may include minor areas with non-living ground cover. Said minor areas will exclude the street right-of-way.

Letter of Assurances - A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Lot - For the purpose of this Ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required.

Lot Frontage - The front of a lot shall be construed to be the portion nearest the street. For purposes of determining yard requirements on corner lots and through lots, all sides of a lot abutting to streets shall be considered frontage, and yards shall be provided as indicated under Yards as defined herein.

Lot Line - A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

Lot Measurements

1. DEPTH - of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and their rearmost points of the side lot lines in the rear; and
2. WIDTH - of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot.

Lot of Record - A tract of land described as an integral portion of a subdivision plat which is property recorded in the Register of Deeds Office of Day County, South Dakota.

Lot Types - Any lot within the jurisdiction of this Ordinance shall be one of the following types:

1. CORNER LOT - A corner lot is defined as a lot located at the intersection of two or more streets. A lot abutting a curved street will be considered a corner lot if the interior angle of the side lot lines are less than 135 degrees.
2. INTERIOR LOT - An interior lot is defined as a lot other than a corner lot with only one frontage on a street.
3. THROUGH LOT - A through lot is defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Major renovation - Reconstruction and/or renovation/remodeling of an existing structure to the extent of 75% or more of the replacement cost of said structure. Replacement cost shall be determined by use of the Day Swift Program which is used by the Day County Director of Equalization Office.

Man-made - A pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.

Mobile Home - A one-family dwelling unit of vehicular, portable design, built on a chassis and designed to be moved from one site to another and to be used without a permanent foundation.

Mobile home means any vehicle or similar portable structure having been constructed with wheels (whether or not such wheels have been removed) and having no foundation other than wheels, jacks or skirtings, and so designed as to permit occupancy for dwelling or sleeping purposes.

Mobile Home Park – Any premises where more than two mobile homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public, parking space for two or more mobile homes for living and sleeping purposes, and which include buildings, structures, vehicles, or enclosure used or intended for use of storing a vehicle. All proper utilities must also be present for said living quarters.

Modular Home – A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

Nonconforming Use - Any building or land lawfully occupied by a use at the time of passage of this Ordinance, which does not conform after passage of this Ordinance.

Open Concentrated Animal Feeding Operation - An un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.

Permit - Required by these regulations unless stated otherwise.

Permitted Uses – Any permissive, permitted, special, or conditional use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Plat – A map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which he submits for approval and which will be recorded in final form.

Premises - A lot or parcel of land, improved or unimproved.

Principal Building – A building in which is conducted the primary or predominant use of the lot on which it is located.

Principal Use – the primary or predominant use or building of any lot.

Public Utility Substation - An area where facilities are provided for the distribution of telephone, radio communications, water, gas, and electricity.

Residential Development Area - An area of land that is located in a residential zoning district or an area consisting of three (3) or more dwelling units within a 500 foot radius.

Resorts - Lodging, restaurant, bait shop, marina, or any combination of these.

Right-of-way - A strip of land separating private property from the existing road, street or alley or dedicated in public ownership.

Setback/Setback Line - That line that is the required minimum distance from any lot line that establishes the area within which the principal use must be erected or placed.

Shall - The condition is an enforceable requirement of this permit.

Should - The condition is a recommendation. If violations of the permit occur, the Board of Adjustment will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

Shelterbelt - A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock, residences, recreational areas, and wildlife from wind.

Sign, Off-Site (Billboards) - A sign other than an exterior or interior on-site sign. Off-site signs are more conventionally known as billboards.

Sign, Exterior On-Site - A sign that is erected for purpose of being visible from the outside of the building or structure relating to said building or structure. Such signs will be regulated within this Ordinance.

Sign, Interior On-Site - A sign on the interior of the structure relating to subject matter to the premises which it is located, or to products, accommodations, services, or activities available on the premises. As long as any such sign is not normally visible from the exterior of the premises, it will not be regulated by this Ordinance.

Solid Waste - (reference SDCL 34A-6-1.3, 17.) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.

Solid Waste Facility or Solid Waste Disposal Facility - (reference SDCL 34A-6-1.3, 18.) All facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.

Solid Waste Management System - (reference SDCL 34A-6-1.3, 19.) The entire process of storage, collection, transportation, processing and disposal of solid wastes by any person.

Street - A right-of-way, dedicated to public use, which affords a primary means of access to the abutting property.

Street Line - The lot line abutting right-of-way line.

Street-collector - Provides for traffic movement between major arterials and local streets, and direct access to abutting property.

Street-local - Provides for direct access to abutting land, and for local traffic movements.

Street-major - Provides for the through traffic movement between areas and across the city, and direct access to abutting property; subject to necessary control of entrances, exits, and curb use.

Structure - Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include, but not limited to, buildings, mobile homes, walls, signs, billboards, and poster panels.

Subdivider - A natural person, firm, co-partnership, association or corporation who submits a proposed subdivision to the Planning Commission.

Subdivision - The division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, or transfer of ownership or building development.

Travel Trailer - A vehicle built on a chassis designed to be used as a temporary dwelling for travel and/or recreational uses. The body of this vehicle has a width not exceeding eight (8) feet.

Truck or Trailer Terminal - Any lot, structure, or premises used for the parking or storage of capital equipment such as trucks, trailers, or other like equipment.

Variance - A variance is a relaxation of the terms of the Zoning Ordinance where such variance is in relation to the regulations set forth onto the property and not a result of the actions of the applicant, a literal enforcement of the Ordinance would result in the unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. This is not to be confused with a conditional use.

Water course, drainage way, channel or stream - A natural or man-made depression in which a current of surface run-off water flows following precipitation.

Waters of the State - All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Yard - A required open space other than a court, unoccupied and unobstructed by any structure or portion of a structure from thirty (30) inches above the grade of the lot upward.

Yard, Front - A yard extending between side lot lines across the front of a lot adjoining a public street. Depth of a required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding.

Yard, Side - A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street.

In the case of through lots, side yards shall extend from the rear lines of front yards required. In case of corner lots, yards remaining after full and half depth front yards have been established shall be considered side yards.

Width of required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

Yard, Rear - A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yard, but only front and side yards. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

Zoning Complaints - All zoning complaints must be in writing and signed.

Zone A - Special Flood Hazard Areas subject to inundation by the 100-year flood.

Zone B - Areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood.