

# **ZONING ORDINANCE**

**FOR**

# **HAMLIN COUNTY**

**PREPARED BY**

**THE HAMLIN COUNTY PLANNING AND ZONING COMMISSION  
FEBRUARY 2013**

**WITH ASSISTANCE FROM  
THE FIRST DISTRICT ASSOCIATION OF LOCAL GOVERNMENTS**

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## **ARTICLE I GENERAL PROVISIONS**

### **CHAPTER 1.01 TITLE AND APPLICATION**

#### **Section 1.01.01 Title**

This Ordinance may be known and may be cited and referred to as the "Hamlin County Zoning Ordinance" to the same effect as if the full title were stated.

#### **Section 1.01.02 Jurisdiction**

Pursuant to SDCL 11-2, 1967, as amended, the provisions of this Ordinance shall apply within the unincorporated areas of Hamlin County, South Dakota, as established on the map entitled "The Official Zoning Map of Hamlin County, South Dakota."

#### **Section 1.01.03 Purpose**

The Zoning Ordinance is adopted to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of Hamlin County's Comprehensive Land Use Plan which in its entirety represents the foundation upon which this Ordinance is based.
2. To foster a harmonious, convenient, workable relationship among land uses.
3. To promote the stability of existing land uses that conform with the Land Use Plan and to protect them from inharmonious influences and harmful intrusions.
4. To insure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the community as a whole.
5. To prevent excessive population densities and overcrowding of the land with structures.
6. To protect and enhance real estate values.
7. To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the comprehensive land use plan.
8. To facilitate the adequate provision of transportation, water and sewerage, schools, parks, and other public requirements;
9. To regulate and restrict the height, number of stories, and bulk of building and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; and the location and use of other purposes;
10. To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.



## **CHAPTER 1.02 ORDINANCE PROVISIONS**

### **Section 1.02.01 Provisions of 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, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, Ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards, shall govern.

### **Section 1.02.02 Purpose of Catch Heads**

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of an 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 1.02.03 Violation and Penalty.** Violations of the ordinance shall be treated in the manner specified below.

1. Any person who starts work for which a permit is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All fees assessed there under shall be rounded to the nearest whole dollar.
  - a. Upon finding such violation, Hamlin County Planning and Zoning Staff shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the fee for the building permit plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
  - b. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the building permit fee. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (2) below.
  - c. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.
2. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the Auditor and shall be credited to the General Fund of the

County.

The owner or tenant of any building, structure, premises, or part thereof, 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 the County from taking such other lawful action as is necessary to prevent or remedy any violation.”

3. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, or a threatened violation of these regulations, the appropriate authorities of Hamlin County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or a threatened violation of these regulations, and it is the duty of the State's Attorney to institute such action
4. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

#### **Section 1.02.04 Separability Clause**

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

#### **Section 1.02.05 Repeal of Conflicting Ordinances**

All ordinances or resolutions or part of ordinances or resolutions in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

#### **Section 1.02.06 Effective Date**

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

## **CHAPTER 1.03 OFFICIAL ZONING MAP**

### **Section 1.03.01 Official Zoning Map**

1. The unincorporated area of the county is hereby divided into zones, or 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. The Official Zoning Map shall be identified by the signature of the Chairman 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 is the Official Zoning Map referred to in Section 1.03.01 of Ordinance 05-01 adopted April 5, 2005 by Hamlin County, South Dakota."

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, with an entry on the Official Zoning Map as follows: "On (date of adoption) by official action of the Board of County Commissioners, the following change(s) were made in the Official Zoning Map:" (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which shall be located in the Office of the County Auditor shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

### **Section 1.03.02 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. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. Boundaries indicated at approximately following the center lines of streets, highways, or alleys, shall be construed to follow such center lines;
3. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
4. Boundaries indicated as approximately following city limits shall be construed as following such city limits;

5. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
6. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
7. 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; and
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 6 above, the Planning Commission shall interpret the district boundaries.

#### **Section 1.03.03 Disincorporation**

All territory which may hereafter become a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason may fall within the zoning jurisdiction of the County, shall automatically be classified in the "A" Agricultural District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

#### **Section 1.03.04 Changes and/or Replacement of Official Zoning Map**

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 may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such corrections shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

The new Official Zoning Map shall be identified by the signature of the Chairperson 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 Hamlin County, State of 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.

Changes to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 3.04, Section 3.04.05 of these regulations.

## **ARTICLE II DEFINITIONS**

**Section 201.** For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word “building” shall include the word “structure,” and the word “shall” is mandatory and not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

**Section 202. Abandoned Well.** A water producing well, which has not operated for twelve (12) consecutive months or a well no longer intended to be used as a water source.

**Section 203. Accessory Buildings and Uses.** A subordinate use which is incidental to that of the main building or to the main use of the premises.

**Section 204. Adult.** A person, one who has reached the age of eighteen (18).

**Section 205. Adult Amusement or Entertainment Establishment.** Any use which has as part of its operations amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as herein defined.

**Section 206. Adult Bookstores.** An establishment having as a substantial or significant portion of its stock and trade, books, magazines, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or an establishment with a segment or section devoted to the sale or display of such materials. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

**Section 207. Adult Mini-motion Picture Theater.** An enclosed building with a capacity for less than fifty (50) persons used for presenting material for observation by patrons and which excludes minors by virtue of age.

**Section 208. Adult Motion Picture Theater.** An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, for observation by patrons therein.

**Section 209. Adult Photo Studio.** An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing “specified anatomical areas”, as herein defined.

**Section 210. Adult Use.** The term “adult use” shall include adult amusement or entertainment establishment, adult bookstores, adult mini motion picture theaters, adult motion picture theaters, and adult photo studios.

**Section 211. Agriculture.** The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition shall not include intensive agricultural activities such as concentrated animal feeding operations and agribusiness activities.

**Section 2.12. Airport.** A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

**Section 213. Air Transportation Facility.** A transportation facility consisting of the means and equipment for the movement of passengers or goods by air.

**Section 214. Alley.** A narrow service way providing a secondary means of access to abutting property

**Section 215. Alter or alteration.** Any change, addition or modification in construction or occupancy.

**Section 216. Animal Feeding Operation Structure.** An anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin or confinement building.

**Section 217. Animal Husbandry.** The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

**Section 218. Animal Unit.** See Chapter 5.25.

**Section 219. Animal Waste, Incorporated.** Animal waste applied to the land surface and mechanically mixed into the soil within 24 hours.

**Section 220. Animal Waste, Injected.** Animal waste injected or tilled into the soil at the time of application.

**Section 221. Animal Waste, Surface Applied.** Animal waste applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal waste in irrigation waters.

**Section 222. Antenna Support Structure.** Any building or structure other than a Tower which can be used for location of Telecommunications Facilities.

**Section 223. Antique Car.** An antique car must be at least twenty-five (25) years of age or older and is currently functioning and restored to comply with the manufacturers original specifications.

**Section 224. Applicant.** An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business who request or seeks application approval under the terms of this ordinance.

**Section 225. Application.** The process by which the Owner of a parcel of land within the County submits a request to develop, construct, build, modify, upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an Applicant to the County concerning such a request.

**Section 226. Area of Special Flood Hazard.** The land in the flood plain within a community subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

**Section 227. Bar/Tavern.** An establishment that is licensed to sell alcoholic beverages by the drink.

**Section 228. Base Flood.** Base Flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

**Section 229. Base Flood Elevation (BFE).** Is the water surface elevation of the one (1) percent annual chance flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

**Section 230. Back Lots.** All lots not immediately adjacent to a lake in Lake Park District.

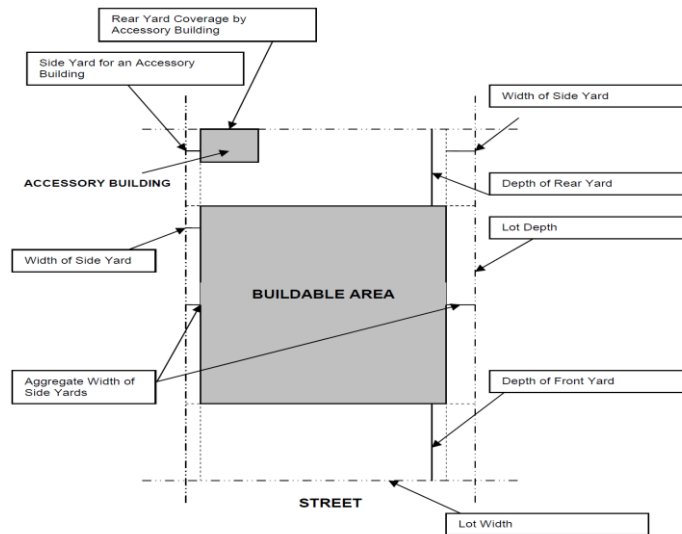
**Section 231. Basement.** A basement has more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.

**Section 232. Bed and Breakfast (B & B's):** A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties and should comply with Chapter 5.34.

**Section 233. Best Management Practices.** Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.

**Section 234. Board of County Commissioners.** The governing body of Hamlin County.

**Section 235. Buildable Area.** The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district.



**Section 236. Breakaway Wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Section 237. Building.** The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

**Section 238. Buildings, Height of.** The vertical distance from the grade to the peak (highest point of the structure).

**Section 239. Campground.** Shall mean a plot of ground for public use upon which two or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters. Campgrounds for tent trailers and recreational vehicles should be sited with consideration for access to the property. The campground should be designed to minimize the impact from adjacent major thoroughfares.

**Section 240. Change in Operation.** Change in operation means a cumulative increase of more than 300 animal units, after September 8, 1997, which are confined at an unpermitted concentrated animal feeding operation.

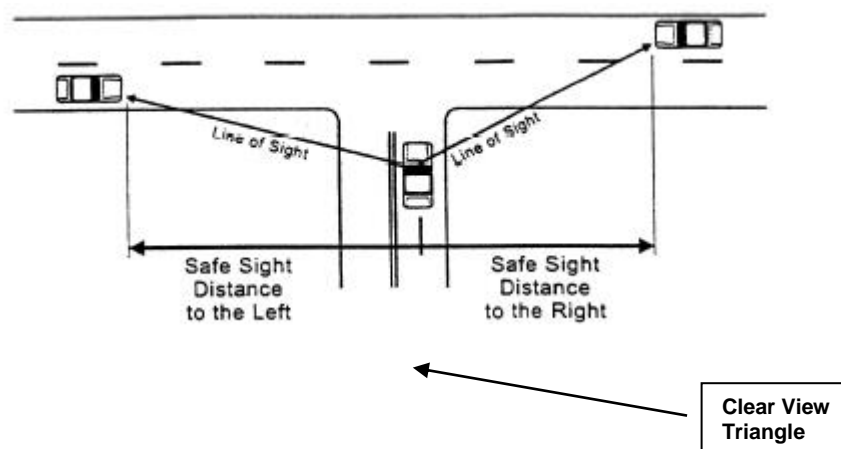
**Section 241. Chemigation.** The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.



**Section 242. Church.** A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

**Section 243. Class V Injection Well.** A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Hamlin County are 5W20--industrial process water and waste disposal wells and 5X28--automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.

**Section 244. Clear View Triangle.** A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below).



**Section 245. Club, Private.** Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

**Section 246. Common Ownership:** Single, corporate, cooperative, or other joint operation venture.

**Section 247. Comprehensive Plan.** The adopted long-range plan intended to guide the growth and development of Hamlin County.

**Section 248. Concentrated Animal Feeding Operation.** A Concentrated Animal Feeding Operation is defined as 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 single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

**Section 249. Conditional Use.** A conditional use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as conditional uses, as specific provisions for such uses is made in this zoning Ordinance. Conditional uses are subject to evaluation and approval by the Board of Adjustment and are administrative in nature.

**Section 250. Contamination.** The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

**Section 251. Contamination, Air.** A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that increases ambient air radiation levels by 50 mrems from the background levels at the perimeter of the mining and milling site or at the top of an exploration hole.

**Section 252. Contamination, Water.** A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration levels established by the Federal Safe Drinking Water Act and regulations promulgated thereunder.

**Section 253. Contingency Plans.** Detailed plans for control, containment, recovery and clean up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

**Section 254. Contractor Shops and Yards.** Those facilities to include structures and land areas where the outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

**Section 255. Convenience Store.** Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

**Section 256. District, Zoning.** A section or sections of the County for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

**Section 257. Domestic Sanitary Sewage Treatment Facility.** Shall mean the structures equipment and processes required to collect, carry away, and treat and dispose of domestic wastewater, industrial wastes, and or sludge.

**Section 258. Dredging.** Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, and waterways and in underwater mining.

**Section 259. Dwelling.** Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used exclusively for residential purposes. This definition does not include a mobile home or manufactured home.

**Section 260. Dwelling, Farm:** Any dwelling farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

**Section 261. Dwelling, Single-Family.** A building occupied exclusively by one (1) family.

**Section 262. Dwelling, Multiple-Family.** A building occupied by two (2) or more families.

**Section 263. Dwelling, Non-Farm.** Any occupied dwelling which is not a farm dwelling.

**Section 264. 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 longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

**Section 265. Electrical Substation.** A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

**Section 266. Eligible Building Site** (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

**Section 267. Engineer.** Means any engineer licensed by the State of South Dakota.

**Section 268. Erosion.** The process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

**Section 269. Essential Public Services** – Overhead or underground electrical, gas, steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.

**Section 270. Established Residence** (in reference to Chapter 5.25) A non-seasonal dwelling established before the siting of new concentrated animal feeding operation or the expansion of an existing animal feeding operation which requires a conditional use permit.

**Section 271. Established Private Shallow Wells** (in reference to Chapter 5.25) A private well which is established and presently in use prior to the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

**Section 272. Existing Construction** (in reference to Chapter 3.10). For the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

**Section 273. Existing Farmstead.** An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operation. The Planning Commission may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation. This may be determined by existence of buildings/foundations and/or an established shelterbelt, or by tax records.
2. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Planning Commission in determining the suitability of the parcel for development.
3. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to January 3, 1975.

**Section 274. Existing Manufactured Home Park Or Subdivision** (In reference to Chapter 3.10). A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Section 275. Expansion to an Existing Manufactured Home Park or Subdivision** (In reference to Chapter 3.10). The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Section 276. Exploration.** The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface or make magnetic, radioactive, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

**Section 277. Extended Home Occupation.** See Chapter 5.19.

**Section 278. Facility.** Something built, installed or established for a particular purpose.

**Section 279.** **Family.** One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

**Section 280.** **Farm.** An area with or without dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine. The term “farming” includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities, and provided further, that farming does not include a commercial feedlot.

**Section 281.** **Feedlot.** Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Feedlot is synonymous with other industry terms such as open lot pasture lot, dirt lot, or dry lot.

**Section 282.** **Fence.** A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar material and is used as a barrier of some sort.

**Section 283.** **Filling.** To reclaim land by filling in low-lying ground with soil.

**Section 284.** **Firearm.** A gun that discharges shot, bullet or other projectile by means of an explosive, gas, compressed air, or other propellant.

**Section 285.** **Flood or Flooding.** Means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; Or the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**Section 286.** **Flood Elevation Determination.** A determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one (1) percent or greater chance of occurrence in any given year.

**Section 287. Flood Insurance Rate Map (FIRM).** An official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Section 288. Flood Insurance Study or Flood Elevation Study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Section 289. Flood Plain or Flood-Prone Area.** Any land area susceptible to being inundated by water from any source (see definition of “flooding”).

**Section 290. Flood Proofing.** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Section 291. Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Section 292. Frontage.** All the property on one (1) side of a street or road.

**Section 293. Functionally Dependent Use** (In reference to Chapter 3.10). A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Section 294. Game Lodge.** A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

**Section 295. Garage, Private.** An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, trailers, and boats.

**Section 296. Grade.** The finished grade of premises improved by a building or structure is the average natural elevation or slope of the surface of the ground within fifty (50) feet of the building or structure.

**Section 297. Grading.** The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

**Section 298. Grandfather”ed” Clause.** A clause in a law that allows for the continuation of an activity that was legal prior to passage of the law but would otherwise be illegal under the new law.

**Section 299. Greenhouse.** A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

**Section 300. Grey Water.** All domestic wastewater except toilet discharge water.

**Section 301. Ground Water.** Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

**Section 302. Group Home.** A supervised living or counseling arrangement in a family home context providing for the 24 hour care of children or adults.

**Section 304. Highest Adjacent Grade** (In reference to Chapter 3.10). The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Hazardous Materials: A material which is defined in one or more of the following categories:

1. Ignitable: A gas, liquid or solid which may cause fire through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
5. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.
6. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

**Section 305. High Water Mark.** The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high water mark (elevation) solely for the purpose of the administration of this ordinance. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

**Section 306. Historic Structure** (In reference to Chapter 3.10). Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or
  - b. Directly by the Secretary of the Interior in states without approved programs.

**Section 307. Home Occupation.** An occupation engaged in by the occupants of a dwelling subject to Chapter 5.35

**Section 308. Horticultural services.** Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

**Section 309. Incorporation.** A soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil  
**Injection.** The application of manure into the soil surface using equipment that discharges it beneath the surface.

**Section 310. Institutional Farm.** Agricultural land wholly owned by a government agency, federal, state, county, or municipality, and used to grow an agricultural commodity

**Section 311. Junkyards/Salvage Yards.** The use of more than one thousand (1,000) square feet of any land, building, or structure, for commercial purposes, where waste, discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded or inoperable vehicles, paper, rags, rubber, discarded appliances, cordage, barrels, and other similar materials are stored with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

**Section 312. Kennel.** Any premise or portion thereon where more than three (3) adult dogs, cats, or other household pets are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

**Section 313. Lagooning.** The process of creating a shallow body of water, separated from a larger body of water.

**Section 314. Leaks and Spills.** Any unplanned or improper discharge of a potential containment including any discharge of a hazardous material.



**Section 315. Letter of Assurances:** A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

**Section 316. Levee.** A man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Section 317. Levee System.** A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Section 318. Light Manufacturing.** Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

**Section 319. Lot Area.** The lot area is the land in square feet, within the lot line.

**Section 320. Lot, Buildable.**

1. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance including one (1) principal building together with its accessory buildings, the open spaces and parking spaces required by this ordinance.
2. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the County Register of Deeds at the time of the adoption of this Ordinance, or an irregular tract lot described by a deed recorded in the office of the County Register of Deeds at the time of the passage of this Ordinance; provided that if a lot has less width or area as required by this Ordinance, the lot is not a buildable lot.

**Section 321. Lot, Corner.** A lot abutting upon two (2) or more streets at their intersection.

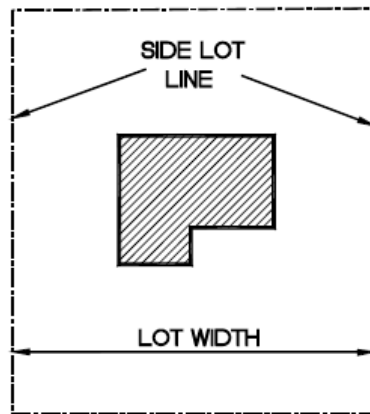
**Section 322. Lot, Depth of.** The average horizontal distance between the front and rear lot lines.

**Section 323. Lot, Double Frontage.** A lot having a frontage of two (2) streets as distinguished from a corner lot.

**Section 324. Lot Line.** A line marking the legal limits of the property of a person. The term property line and lot line shall have the same meaning

**Section 325. Lot of Record.** A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds prior to January 3, 1975.

**Section 326. Lot Width.** The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front line thereof (see below).



**Section 327. Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Chapter 3.10.

**Section 328. Map** (In reference to Chapter 3.10) The Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

**Section 329. Manure.** Poultry, livestock, or other animal excreta, bedding, compost and raw materials or other materials commingled with poultry, livestock, or other animal excreta set aside for disposal.

**Section 330. Manure, Liquid.** A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

**Section 331. Manure Storage Area.** An area for the containment of animal manure. Said area is separate from pens or buildings where animal manure is stored for more than one (1) year.

**Section 332. Mean Sea Level.** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Section 333. Milling.** The processing or enhancing of a mineral.

**Section 334. Mineral.** An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel and quarry rock.

**Section 335. Mineral Extraction.** The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

**Section 336. Manufactured Home.** See Chapter 5.10

**Section 337. Manufactured Home Park.** Any manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the mobile home park and its facilities or not. "Manufactured Home Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

**Section 338. Modular Home.** See Chapter 5.10.

**Section 339. Motel/Hotel.** A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

**Section 340. New Construction** (In reference to Chapter 3.10.) For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**Section 341. New manufactured home park or subdivision** (In reference to Chapter 3.10.) means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**Section 342. Nonconforming Use.** Any building or use of land lawfully occupied by a use at the time of passage of this Ordinance or amendment thereto, which does not conform after the passage of this Ordinance or amendment.

**Section 343. Nonstandard Use.** The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

**Section 344. Nursery.** A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

**Section 345. Open Lot:** Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Synonymous with pasture lot, dirt lot, dry lot.

**Section 346. Outdoor Music Event.** A musical event with recorded or live music where there may or may not be a cover charge and/or alcohol.

**Section 347. Outdoor Storage.** The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

**Section 348. Owner.** Means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County who desires to develop, or construct, build, modify, or erect a structure upon such parcel of land.

**Section 349. Parking Space.** An area, enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

**Section 350. Parks and Recreation Areas.** Public non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

**Section 351. Pasture.** A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

**Section 352. Permit.** A permit required by these regulations unless stated otherwise.

**Section 353. Permitted Use.** Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

**Section 354. Plat.** The map, drawing or chart on which the subdivider's plan of subdivision is legally recorded.

**Section 355. Potential Pollution Hazard.** A Concentrated animal feeding operation of fifty (50) to four hundred ninety nine (499) Animal Units may be required to obtain a special exception permit when a potential pollution hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:

1. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
2. A Potential Water Pollution Hazard exists due to siting over a shallow aquifer or drainage which contributes to the waters of the State. A permit would not be required if the operation is at least five hundred (500) feet from a receiving body of water. **EXCEPTION:** The operation may locate within one hundred (100) feet of the receiving body of water if a NRCS approved grass buffer is utilized.

**Section 356. Primary Containment Facility.** A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

**Section 357. Principal Structure.** The structure in which the principal use of the lot is conducted. For Example a dwelling on a residential lot.

**Section 358. Principal Use.** The primary use to which the premises are devoted.

**Section 359. Private Shooting Preserves.** An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

**Section 360. Private Wind Energy Conversion System (PWECS).** Any mechanism or device, not owned by a public or private utility company, designed for the purpose of converting wind energy into electrical or mechanical power to be used on the site where said power is generated.

**Section 361. Process Generated Wastewater.** Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

**Section 362. Process Wastewater.** Process wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation, but not including feed storage areas.

**Section 363. Private Shooting Preserves.** An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

**Section 364. Quarter Section.** The Northeast, Northwest, Southwest, or Southeast quarter (1/4) section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of one hundred fifty-five (155) acres.

**Section 365. Quarter-Quarter Section.** The Northeast, Northwest, Southwest, or Southeast quarter (1/4) of a quarter section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of thirty-five (35) acres.

**Section 366. Range Officer.** Means the person designated to be responsible at a Range at any given time during any activity.

**Section 367. Recreational vehicle.** A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include manufactured homes.

**Section 368. Religious Farming Community.** A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

**Section 369. REM (Roentgen Equivalent Man).** A measurement of the biological effects resulting from ionizing radiant energy where roentgen is the amount of radiation leading to the absorption of eighty-eight (88) ergs of energy per gram of air.

**Section 370. Repair.** Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word "repair" or "repairs" shall not apply to any change of construction.

**Section 371. Resort.** This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

**Section 372. Retail Sales and Trade.** Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

**Section 373. Rubble Site.** A site for the disposition of refuse as defined by the South Dakota Department of Environment and Natural Resources.

**Section 374. Runoff Control Basin.** A structure which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to area which are unroofed or partial roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

**Section 375. Sale or Auction Yard or Barn.** A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

**Section 376. Sanitary Landfill.** A government-owned site for the disposal of garbage and other refuse material.

**Section 377. Seasonal Camp Trailers or Recreational Vehicles.** A vehicle designed for temporary seasonal living quarters.

**Section 378. Secondary Containment Facility.** A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.

**Section 379. Section Line.** A dividing line between two sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

**Section 380. Service Station.** Any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.

**Section 381. Setback.** Unless specifically mentioned within this ordinance, a setback is the horizontal distance measured from the wall line of a neighboring building or structure to the wall line of the proposed building/structure/use.

**Section 382. Setback Between Uses.** Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/ use.

**Section 383. Shooting Range.** Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets.

**Section 384. Shall** (when used in regard to concentrated animal feeding operations) means that the condition is an enforceable requirement of this permit.

**Section 385. Shallow Aquifer.** An aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

**Section 386. Shallow Well.** A well which is located in a shallow aquifer.

**Section 387. Shelterbelt.** A strip or belt of trees or shrubs established to reduce soil erosion and to protect yards, lots, buildings, livestock and residences, recreation and wildlife from wind. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, separated by a distance of forty (40) feet or less. Ornamental and/or shade trees, generally used in front yards and spaced further than thirteen (13) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts.

**Section 388. Should.** (when used in regard to concentrated animal feeding operations) means that the condition is a recommendation. If violations of the permit occur, the County will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.

**Section 389. Shorelands.** All land within one thousand (1,000) feet of a lake or pond and lands within three hundred (300) feet of a river or stream or to the landward side of the flood plain, whichever distance is greater.

**Section 390. Sign.** Any device or structure, permanent or temporary, which directs attention to business, commodity, service or entertainment but excluding any flag, badge or insignia of any government agency, or any civic, charitable, religious, patriotic or similar organizations.

**Section 391. Sign, Abandoned.** A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three (3) months shall be considered an abandoned sign.

**Section 392. Sign. Off-premises.** Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

**Section 393. Sign, On-premises.** Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

**Section 394. Sign Structure.** Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

**Section 395. Significant Contributor of Pollution.** To determine if a concentrated animal feeding operation meets this definition, the following factors are considered:

1. Size of feeding operation and amount of manure reaching waters of the state;
2. Location of the feeding operation in relation to waters of the state;
3. Means of conveyance (pipes, tile, drainageways) of manure and process wastewater into waters of the state; and
4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.

**Section 396. Sleeping Quarters.** A room or an area contained within a dwelling unit utilized for the purpose of sleep.



**Section 397. Specified Anatomical Areas.** Means (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and (2) Genitals of humans or animals in a discernible turgid state, even if completely or opaquely covered.

**Section 398. Specified Sexual Activities.** Means (1) Human genitals in a state of sexual stimulation or arousal; (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation; (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast; and (4) Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or “Adult Entertainment Establishment”.

**Section 399. Solution mining.** Mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

**Section 400. Stable.** A building for the shelter and feeding of domestic animals, especially horses and cattle.

**Section 401. Stable, Commercial.** A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

**Section 402. Start of Construction** (In reference to Chapter 3.10) - for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Section 403. Stealth.** Means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamuflaged lattice, guyed, or monopole Tower designs.

**Section 404. Street, Arterial.** A street designated as such on the Major Street Plan of the Comprehensive Plan of Hamlin County, South Dakota.

**Section 405. Street, Collector.** A street designated as such upon the Major Street Plan of the Comprehensive Plan of Hamlin County, South Dakota.

**Section 406. Street, Highway or Road.** All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

**Section 407. Street, Local.** Any street which is not an arterial street or collector street.

**Section 408. Street, Highway or Road.** All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

**Section 409. Street, Highway or Road Right-of-Way (ROW) Line.** A dividing line between a lot or parcel of land and a contiguous street, highway or road.

**Section 410. Structural alterations.** Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of a roof or the exterior walls.

**Section 411. Structure.** Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on or below the ground. Among other things, structures include, but are not limited to, buildings, manufactured homes, walls, fences, billboards, and poster panels.

**Section 412. Structure, Temporary.** Anything constructed or erected, or placed, the use of which requires temporary location on the ground or attached to something having a temporary location on or below the ground. Excluding propane tanks.

**Section 413. Substantial damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

**Section 414. Substantial improvement.** Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this designation, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**Section 415. Telecommunications Facilities.** Means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:

1. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
2. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

**Section 416. Temporary Fireworks Sales Stand.** A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

**Section 417. Ten Year Time of Travel Distance.** The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.

**Section 418. Tower.** A self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

**Section 419. Townhouse.** A townhouse is an attached, privately owned single-family dwelling unit which is a part of and adjacent to other similarly owned single-family dwelling units that are connected to but separated from one another by a common party wall having no doors, windows, or other provisions for human passage or visibility. Differing from condominiums, townhouse ownership does include individual ownership of the land. There can also be common elements, such as a central courtyard, that would have shared ownership

**Section 420. Tree, Ornamental.** A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less. Ornamental trees maybe placed within fifty (50) feet of the public road right-of-way subject to Chapter 5.18.

**Section 421. Tree, Shade.** For the purposes of this Ordinance, a shade tree is a deciduous tree which is has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity.

**Section 422. Truck Garden.** A farm where vegetables are grown for market.

**Section 423. Turbine.** The parts of the Wind Energy System including the blades, generator, and tail.

**Section 424. Twin Homes.** A two-family dwelling which has a common wall and is platted into two (2) separate lots.

**Section 425. Variance.** A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in 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 non-conforming in the zoning district or uses in an adjoining zoning district.

**Section 426. Veterinary Clinic.** Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

**Section 427. Violation.** The failure of a structure/use or other development to be fully compliant with this ordinance.

**Section 428. 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.

**Section 429. Water Surface Elevation.** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

**Section 430. Wetlands.** Any area where ground water is at or near the surface a substantial part of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

**Section 431. Wind Energy System (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:

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems.

**Section 432. Windward Row.** Of or on the side exposed to prevailing winds. Regarding shelterbelts, on the north and west side of a public right-of-way, the windward row of the shelterbelt is northernmost or westernmost row of trees. On the south and west side of a public right-of-way, the windward row of the shelterbelt is southernmost and easternmost row of trees.

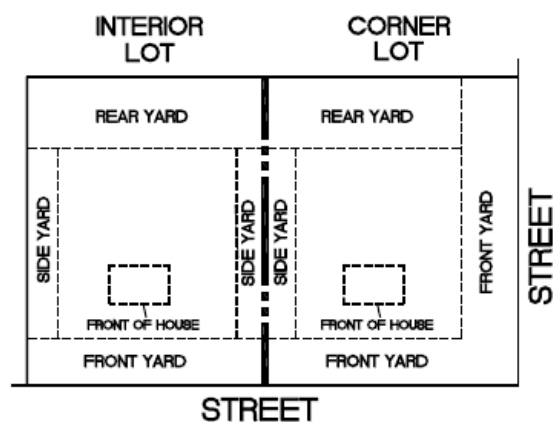
**Section 433. Yard.** An open space on the same lot with a building, unoccupied and unobstructed. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used.

**Section 434. Yard, Front.** A yard extending across the front of a lot between the sideyard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. There shall be a front yard on each street which a lot abuts regardless of zoning district. (See Front, Side, and Rear Yard Graphic Below)

**Section 435. Yard, Rear.** Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing wall or any projections other than steps, unenclosed porches, or unenclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard. (See Front, Side, and Rear Yard Graphic Below)

**Section 436. Yard, Side.** A yard between the main building and the adjacent side line of the lot being the minimum horizontal distance between the bearing wall of the building and the side yard line, and extending from the front yard lot line to the rear yard lot line. (See Front, Side, and Rear Yard Graphic Below)

**Front, Rear and Side Yard Graphic**



**Section 437. Zoning Officer.** The individual appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

**Section 438. Zone of Contribution.** The entire area around a well or wellfield that contributes water to the well or wellfield.

## **ARTICLE III DISTRICT REGULATIONS**

### **CHAPTER 3.01 APPLICATION OF DISTRICT REGULATIONS**

#### **Section 3.01.01 Application of District Regulations**

The regulations set by this Ordinance within each District shall be minimum regulations and shall apply uniformly to each class or kind of structure of land, and particularly, except as hereinafter provided:

1. No structure, permanent or temporary, shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or use of land be used except for a purpose permitted in the district in which the building or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.

### **CHAPTER 3.02 NON-CONFORMING USES**

#### **Section 3.02.01 Purpose and Intent**

Within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and 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. The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. It is the intent of this Ordinance to permit these 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.

### **Section 3.02.02 Repairs and Maintenance, Unsafe Nonconforming Use.**

1. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the non-conformity of the structure shall not be increased.
2. If a non-conforming structure or portion of a structure containing a non-conforming 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.

### **Section 3.02.03 Uses and Structures**

1. No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.
2. A nonconforming use shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the premise is located.
3. When the use of a building is nonconforming as defined by this ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than sixty (60) percent of its fair market cash value, it shall not be restored except in conformity with the provisions of the district in which the building is located. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code
4. Nothing in this Ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this Ordinance.
5. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.
6. Whenever the use of a premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

#### **Section 3.02.04 Non-conforming 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 and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

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 to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

#### **Section 3.02.05. Powers of the Planning Commission/Board of Adjustment.**

Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

#### **Section 3.02.06. Continuation of Nonstandard Uses.**

Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.
3. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.



## **CHAPTER 3.03 DISTRICT REGULATIONS**

### **Section 3.03.01 Districts**

For the purpose of this Ordinance, the unincorporated areas of the County may be divided into any of the following zoning districts: A--Agricultural; CI--Commercial/Industrial; CN--Conservation; LP-- Lake Park; PR -- Planned Residential; and TD--Town District. In addition to zoning districts, zoning overlay districts, FP--Flood Plain and AP--Aquifer Protection, created which impose special regulations on the property that may fall within these districts without abrogating the requirements imposed by the underlying land use district regulations.

### **Section 3.03.02 Prohibited Uses**

All uses and structures not specifically listed as a permitted use or as a conditional use in a particular zoning district shall be prohibited in said district.

## **CHAPTER 3.04 “A” AGRICULTURAL DISTRICT**

### **Section 3.04.01 Purpose**

This district is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural District is further characterized, as land areas not yet ready for further development. Residential development, other than single-family farming units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

### **Section 3.04.02 Permitted Uses**

1. Agricultural activities and farm related buildings, including Type E Concentrated Animal Feeding Operations.
2. Site-built single-family dwellings, modular homes, and Type I manufactured homes used as farm or non-farm dwellings.
3. Farm dwelling.
4. Fisheries services and game propagation areas (Public wildlife production areas).
5. Public parks and recreation areas.
6. On-site Signs.
7. Animal husbandry service.
8. Stabling, Pasturing, Raising Of Livestock on Small Acreages. (See Chapter 5.08).

### **Section 3.04.03 Permitted Accessory Uses**

The following accessory uses and structures shall be permitted in the “A” Agricultural District:

1. Accessory uses and structures customarily incidental to permitted uses and structures when established within the space limit of this district.
2. Home occupation.
3. Temporary roadside stands for sales of agricultural products grown or produced on the premises provided that there have been no past complaints or violations regarding previous sales.
4. On-premise signs.

#### **Section 3.04.04 Conditional Uses**

1. Airports and airstrips.
2. Church or cemetery.
3. Golf course, golf driving range, clubhouse.
4. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet the requirements of Chapters 5.21 and 5.28, as applicable.
5. Transfer of eligible building site - See Chapter 3.04.05.8
6. Institution farms.
7. Bed and breakfast home. (See Chapter 5.34)
8. Domestic sanitary sewer treatment plant/facility; provided they meet the requirements of Chapter 5.31.
9. Class A, Class B, and Class C Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article IV, Chapter 5.25) including off site manure containment systems for new or existing CAFO's.
10. Commercial stables.
11. Veterinary clinics.
12. Junkyards/salvage yards, provided that they meet the following minimum requirements and other restrictions that the Planning Commission may deem appropriate provided they meet the requirements of Chapter 5.32.
13. Water pumping stations, elevated tanks and similar essential public utilities and service structures.
14. Wireless Telecommunications Towers and Facilities. (See Chapter 5.23)
15. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;
16. Seasonal retail stands utilizing a permanent structure.
17. Extended home occupation (See Chapter 5.19).
18. Livestock sales barns.

19. Sanitary Landfills, Rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste provided they meet the requirements of Chapter 5.30.
20. Fur farms and kennels.
21. Wind Energy System (WES). (See Chapter 5.22).
22. Commercial orchards, tree farms, truck gardening, nurseries and greenhouses;
23. Horticultural services.
24. Type B manufactured home.
25. Contractor shops and yards.
26. Off-site signs.
27. Public buildings or facilities erected or established and operated by any governmental agency.
28. Secondary farm residences for family and farm employees. (See Chapter 3.04.05.3.c)
29. Earthen storage basin or lagoon used for manure storage.
30. Commercial storage garages.
31. Irrigation of manure, processed generated wastewater, process wastewater of effluent through irrigation pivot or traveling gun.
32. Private Wind Energy Conversion System (PWECS) (See Chapter 5.26).
33. Temporary structures used for the sale of fireworks between June 27<sup>th</sup> and July 5<sup>th</sup> provided that there have been no past complaints or violations regarding previous sales.
34. Religious farming communities.
35. Transfer of Eligible Building Site (See Section 3.04.05.3)

### **Section 3.04.05 Area Regulations**

1. All buildings shall be set back from road right-of-way lines and lot lines to comply with the following requirements:

## Agricultural District - Schedule of Regulations

<b>Minimum Lot Size</b>	<b>2 Acres* **</b>
<b>Minimum Front Yard Setback for Agricultural Related Structures on an Existing Farmstead</b>	<b>50 Feet**</b>
<b>Minimum Front Yard Setback for dwellings on an Existing Farmstead</b>	<b>100 Feet**</b>
<b>Minimum Front Yard Setback for all structures not on an Existing Farmstead</b>	<b>100 Feet**</b>
<b>Minimum Lot width</b>	<b>150 Feet**</b>
<b>Minimum Side Yard Setback</b>	<b>15 Feet**</b>
<b>Minimum Rear Yard Setback</b>	<b>30 Feet**</b>
<b>Maximum Lot Coverage for Dwellings and Accessory Structures</b>	<b><u>25</u> Percent**</b>

\* All residential lots shall be a minimum of two (2) acres not including public road right-of-way, except as provided in 3.04.05.2 of this Section.

\*\* All conditional uses shall have minimum area regulations determined by the Board of Adjustment.

2. Intensity of Use: Each buildable lot must be at least two (2) acres not counting the road right-of-way, and no more than one (1) dwelling per quarter-quarter section. Each quarter-quarter section shall have one (1) building eligibility when all of the following conditions are met:
  - a. There are no other dwellings on the quarter-quarter section.
  - b. The building site shall be a minimum of two (2) acres.
  - c. Approval has been granted by the appropriate governing entity for access onto a public road.
  - d. The remaining portion of the quarter-quarter section is retained as agricultural land or in its present use.
3. Transfer of building site eligibility: Building site eligibility may be transferred by conditional use permit subject to the following conditions:
  - a. The transfer of an eligible building site from one (1) quarter-quarter section to another quarter-quarter section may be allowed when all of the following conditions are met:
    - i. There are no dwellings on the quarter-quarter section from which the building eligibility is being transferred.
    - ii. The transfer of building eligibility shall occur only between contiguous parcels under the same ownership.
    - iii. The parcel of land from which the building eligibility is being transferred was a lot of record as of April 1, 1997.
    - iv. An affidavit documenting the transfer of the residential building right shall be recorded in the office of the Hamlin County Register of Deeds prior to the issuance of a building permit.
4. An easement will be required of any non-farm dwelling to be located within one-half (1/2) mile of any existing Concentrated Animal Feeding Operation.

5. Additional Dwellings: A conditional use permit may be issued by the Board of Adjustment for one additional single-family dwelling or manufactured home may be allowed to be constructed, erected, or placed on an existing farmstead provided subject to the following conditions:

- i. The dwelling is located within the perimeter of the existing farmstead.
- ii. The maximum number of dwelling units within the existing farmstead will not exceed two.
- iii. The dwelling is occupied by employees or relatives of the farm owner or operator.
- iv. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.

6. Access

- a. The drive-way serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:
  - i. Local road: 100 feet;
  - ii. Collector road: 300 feet;
  - iii. Arterial: 500 feet;
  - iv. Minimum distance from intersection of two or more of the above: 100 feet
- b. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit
- c. For all proposed uses and structures adjacent to County roadways, an access permit from the County Highway Superintendent shall be required. A permit shall also be required for all field driveways and approaches. The cost to construct any driveway or approach shall be the responsibility of the applicant.

7. Height Regulations

No main building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures:

- a. Water tanks.
- b. Wind Energy System (WES) and Private Wind Energy Conversion Systems (PWECS).
- c. Agricultural buildings.
- d. Wireless Telecommunications Towers and Facilities.
- e. Others, providing that they are not used for human occupancy.

### **Section 3.04.06 Easements/Waivers**

1. An Agricultural easement must be filed with Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) prior to issuance of a building permit. See Chapter 5.24
2. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. In the event the owner/operator of the existing concentrated animal feeding operation refuses to sign the waiver, the applicant for residential development shall sign a separate easement to be attached to the property. The easement waives the applicant's and subsequent owner's common law rights to object to the existing concentrated animal feeding operation's potential need for a variance from the setback requirements from the Hamlin County Zoning Ordinance. This waiver shall be filed with the Register of Deeds. See Chapter 5.27

## **CHAPTER 3.05 “CI” COMMERCIAL/INDUSTRIAL DISTRICT**

### **Section 3.05.01 Purpose**

The “CI” District is intended to provide areas for commercial and industrial activities, which require highway access, and further are oriented primarily to, and supportive of, farming and other activities which are determined to be appropriate in the rural area. Industrial uses which produce smoke, noise, dust, odor, and/or heavy traffic and large outdoor storage areas shall require special review and consideration.

### **Section 3.05.02 Permitted Use**

1. Field crops and grasslands.
2. On-premise signs.
3. Orchards and tree farms.
4. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use.
5. Temporary structures used for the sale of fireworks between June 27<sup>th</sup> and July 5<sup>th</sup> provided that there have been no past complaints or violations regarding previous sales.
6. Temporary structures used for the sale of produce raised provided that there have been no past complaints or violations regarding previous sales.

### **Section 3.05.03 Conditional Uses**

1. Implement sales and service.
2. Truck terminals and freight warehouses.
3. Seed sales and grain storage, fertilizer and chemical storage and sales.
4. Highway and street maintenance shops operated by a government institution.
5. Welding and machine shops.
6. Gas, oil and liquid propane stations including bulk stations.
7. Public and private utilities.
8. Livestock sales.
9. Contractors’ shops and yards including offices when in conjunction with a shop or yard.
10. Wholesale distributing companies.
11. Restaurants.



12. Motels, hotels.
13. Off-site premise signs.
14. Commercial stables.
15. Veterinary clinics.
16. Wireless Telecommunications Towers and Facilities.
17. Seasonal retail stands utilizing a permanent structure.
18. Commercial orchards, tree farms, truck gardening, nurseries and greenhouses.
19. Public buildings or facilities erected or established and operated by any governmental agency.
20. Convenience store/Service station.
21. Agricultural product processing facilities such as ethanol plants and corn/soybean processing.
22. Adult uses.
23. Commercial storage garages.
24. Kennel with or without animal grooming.
25. Recreation vehicle sales and park.
26. Bar/Tavern.
27. Wind Energy Systems (WES).
28. Private Wind Energy System (PWES).
29. Light manufacturing.
30. Commercial animal husbandry service.

### **Section 3.05.04 Area Regulations**

#### **1. Lot Area**

Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres. An applicant for a conditional use shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, building shall occupy no more than twenty-five percent (25%) of the lot.

- a. Front Yard. There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred (100) feet in depth.
- b. Side Yards. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.
- c. Rear Yards. No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.

#### **2. Height Regulations**

No main building shall exceed 4 stories or fifty (50) feet in height. Exceptions include the following structures:

- a. Chimneys, smokestacks, cooling towers.
- b. Water tanks.
- c. Wireless telecommunications towers and facilities.
- d. WES and PWECS systems.
- e. Others, providing that they are not used for human occupancy.

#### **3. Storage**

All outdoor storage within five hundred (500) feet of a residential zoning district must be completely enclosed in a building or by a solid walled fence, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest point of the stockpile and said fence shall be maintained in safe and good repair.

**Section 3.05.05. Performance Standards.** All commercial and industrial uses shall meet the following standards

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

**Section 3.05.06. Access**

1. The location of driveways accessing individual parcels shall be separated from adjacent driveways on the same side of the road by the following separation distances:
  - a. Roads identified on the Major Street plan as:
    - i. Local road: 100 foot separation distance.
    - ii. Collector road: 300 foot separation distance.
    - iii. Arterial road: 500 foot separation distance
  - b. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the

filing of a plat or the issuance of a building/use permit.

- c.** Access. It is recommended that all property in the “CI” District have access to an asphalt paved or concrete State or County Highway.

## **CHAPTER 3.06 “CN” CONSERVATION DISTRICT**

### **Section 3.06.01 Intent**

The intent of the “CN” Conservation District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses, and to protect wildlife habitat. Such areas may include, but are not limited to, flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands and natural prairies, and historical sites.

### **Section 3.06.02 Area**

All lands, unless otherwise zoned, within three hundred (300) feet of an identified wetland or the Big Sioux River measured from the normal high water of the river. In addition, lands totally or partially owned by the State or Federal Governments as wildlife production or public shooting areas and all lands within one hundred (100) feet of meandered lakes shall be included in the “CN” Conservation District.

### **Section 3.06.03 Permitted Uses**

The following uses and structures shall be permitted in the “CN” Conservation District:

1. Historic sites and/or monuments, designated natural prairies.
2. Wildlife production areas and forest reserves, public hunting and fishing access areas, game refuges.
3. Agricultural and horticultural activity, but excluding dwelling units.

### **Section 3.06.04 Conditional Uses**

1. Essential services – Transportation and utility easements and rights-of-way, Utility substations.
2. Public parks and/or playgrounds.
3. Golf courses,

### **Section 3.06.05 Alterations, Filling, Grading, Dredging, and Lagooning.**

1. Shoreline stabilization, filling, grading, dredging, and lagooning projects in the “CN” District shall be governed by Chapter 5.33.

## **CHAPTER 3.07 "LP" LAKE-PARK DISTRICT**

### **Section 3.07.01 Purpose**

The Lake-Park District is divided into two separate zones. The Lake Park-1 District (LP1) is established to provide for orderly residential and recreational development, together with certain public facilities, customary home occupations, and certain commercial establishments normally associated with lake shore development.

While the Lake Park-2 District (LP2) is also established for development similar to the LP1 District, it is also the intent to allow for agricultural uses within the district.

### **Section 3.07.02 Area Contained in "LP1" Lake-Park District**

All land, unless otherwise zoned, within one thousand (1,000) feet of the normal high water line of Lake Poinsett, Lake Albert and within the boundaries of the Lake Poinsett Sanitary Sewer District shall be designated as "LP1" Lake Park District and usage shall conform to the regulations for this district.

### **Section 3.07.03 Area Contained in "LP2" Lake-Park District**

All land, unless otherwise zoned, within one thousand (1,000) feet of the normal high water line of Lake Marsh, Lake Norden, Lake Mary, Lake John, Dry Lake, and Clear Lake shall be contained in "LP2" Lake Park District and usage shall conform to the regulations for this district.

### **Section 3.07.04 Permitted Uses**

1. Site-built single family home;
2. Modular home;
3. Type I manufactured home;
4. Public parks and recreation areas;
5. Agriculture and horticulture uses, excluding concentrated animal feeding operations;
6. Home occupations;
7. Attached garages and unattached private garages shall be limited to maximum dimensions of 36 feet by 42 feet and conform to the design of the house. Exceptions shall include buildings only within the LP2 District used for Agriculture purposes as defined herein;
8. Satellite dish meeting setback requirements;
9. Essential public services.
10. Accessory structures such as piers and docks and uses to include but not limited to boathouses and sheds further than fifty (50') feet from the high water mark, or from a point as determined by the Board of Adjustment.

### **Section 3.07. 05 Conditional Uses**

1. Twin homes;
2. Private parks and campgrounds;
3. Resorts;
4. Restaurants;
5. Boat houses within fifty (50) feet of high water mark;
6. Multiple family dwellings, including condominiums;
7. Attached, unattached garages with sidewalls greater than 10 ½ feet and or dimensions greater than 36 feet by 42 feet. Except for buildings for Agriculture purposes in the LP2 District s permitted by 3.07.04.
8. Type I manufactured home without a permanent foundation;
9. Type II manufactured home;
10. Commercial storage garages;
11. Laundromats;
12. Bait shop;
13. Grocery store;
14. Bar, tavern, or lounge;
15. Convenience store;
16. Recreational sales;
17. Rental services;
18. Outdoor music event.
19. Golf course, driving range, clubhouse and related accessory uses
20. Stabling, Pasturing, Raising Of Livestock on Small Acreages. (See Chapter 5.08)

### **Section 3.07.06 Prohibited Uses in the LP1 and LP2 Districts**

1. On lots where there are no permanent single family residential structures maintained the following shall be prohibited: campers, travel trailers and other recreational vehicles. Campers, travel trailers and other recreational vehicles shall be limited to a total of no more than one (1) regardless of the number of lots.
2. The parking or placement of personal property (i.e. boat docks/lifts, recreational vehicles, automobiles, etc.) in a public right-of-way is prohibited.

### **Section 3.07.07 Shoreline Alterations**

Shoreline stabilization, filling, grading, dredging, and lagooning projects in the "CN" District shall be governed by Chapter 5.36.

### **Section 3.07.08. Supplementary "LP" Lake Park District Regulations**

1. Storage Tanks

A building permit is required for any gasoline or diesel storage tanks in excess of fifty-five (55) gallons. No underground tanks for private use will be permitted.

2. Liability of Developer for Sewage Pollution

The developer of any platted lands which is in the Lake Park District shall be liable for any pollution to a lake. Provisions binding upon the developer to protect the lake from pollution from sewage shall be required to be filed with a plat.

3. Moved in Buildings

Any residence or accessory building moved into the Lake Park District must have signature by petition of one hundred percent (100%) of the adjoining landowners. EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location shall not require adjoining landowners approval.

4. The use of waste tires in Lake Park District for retaining walls or shoreline stabilization is prohibited.
5. An Agricultural Easement must be filed with Register of Deeds on all property to be used for a newly constructed or moved in residence prior to issuance of a building permit.
6. Manufactured Home Park-In Lake Park District, manufactured homes shall meet all requirements of Chapter 5.10 Manufactured Home Provisions with one exception: Type A and Type B Manufactured Homes be structurally sound, well-maintained, have been constructed within the last (25) twenty-five years. Before a manufactured home older than (10) ten years old can be moved into a Manufactured Home Park the applicant shall provide a photograph of the manufactured home exterior and interior to the Zoning Office. This provision shall only be allowed at a Manufactured Home Park that exists in Lake Park District at the time of passage of this ordinance.



## **Section 3.07.09 Area Regulations**

### **LAKE PARK DISTRICT LP1 and LP2 SCHEDULE OF REGULATIONS**

	Minimum Lot Area (Sq. Ft.)	Minimum Lot Width	Minimum Side Yard	Minimum Front Yard Road Front (1)	Minimum Rear Yard Lake Front (2)	Maximum Height
<u>Central Sewer/Holding Tank/ Rural Water</u>						
Single Family Dwelling	9,600	75'	8'	30'	50'	30'
Multiple Family Dwelling	10,000	100'	10'	30'	50'	45'
Commercial	20,000	125'	10'	30'	50'	45'
<u>Rural Water/Septic Tank</u>						
Single Family Dwelling	20,000	75'	8'	30'	50'	30'
Multi-Family and Commercial	Not Allowed					
<u>Well/Septic Tank</u>						
Single Family Dwelling	43,560	75'	8'	30'	50'	30'
Multi-Family and Commercial	Not Allowed					

(1) Side of lot facing road right-of-way or access easement.

(2) Side of lot facing lake.

(3) All structures, except boat houses, in addition to meeting the 50-foot setback from normal high water mark adjacent to lakes must also be seven (7) feet above the normal high water mark. The Zoning Officer may require the permit applicant to provide documentation of the normal high water mark location on applicant's property. The applicant shall further provide an elevation certificate prepared by a registered engineer.

(4) Where adjoining lots are developed with a rear yard setback less than fifty (50) feet, the required setback shall be the average of the setback of the adjoining lots.

(5) Accessory buildings may be built in a required front yard but such accessory building shall not occupy more than thirty (30) percent of a required front yard.

(6) Lot width is the distance between side lot lines measured at the rear of the required front yard on a line parallel with a line tangent to the road right-of-way line.

(7) An open, unenclosed porch which is in excess of two (2) feet above the floor level of the ground (first) story may project into a required front yard or rear yard for a distance not exceeding ten (10) feet. An enclosed porch containing not more than forty (40) square feet may project into a required front yard or rear yard for a distance not to exceed four (4) feet.

(8) Uncovered porches, decks and ornamental features which do not extend more than two (2) feet above the floor level of the ground (first) story may project into a required rear yard for a distance not to exceed fifteen (15) feet.

(9) Back Lots: Back Lots shall have the following minimum setback requirements:

Front Yard-Thirty (30) feet

Side Yard- Eight (8) feet

Rear Yard-Eight (8) feet

(10) All setbacks include overhangs

## **CHAPTER 3.08 “PR” PLANNED RESIDENTIAL DISTRICT**

### **Section 3.08.01 Intent**

The Planned Residential District is to provide for residential subdivisions which, through their design and development, will limit the amount of agricultural land that is taken out of production, will not require additional public expenditures for roads or other improvements and services, and which will minimize the conflict between farm and non-farm land uses.

### **Section 3.08.02 Planned Residential District Development Standards**

1. The use of land in the Planned Residential District shall be limited to non-farm single family dwelling units and their supporting services. A manufactured home court may be developed as a Planned Residential District.
2. The Planned Residential District shall not be permitted on a parcel of land less than ten (10) acres in area.
3. All roads, common facilities, and open spaces within the Planned Residential District shall be maintained by a homeowner's association.
4. Planned Residential Districts within one (1) mile of an incorporated area will be submitted to the community governing body for review and comment.
5. Where a proposed Planned Residential District is within one (1) mile of an incorporated area or sanitary district, the Hamlin County Planning Commission may request the developer to construct proposed improvements to specifications approved by the community or sanitary district.
6. Strip or linear development proposals along a road or highway will not qualify as a Planned Residential District.
7. The overall density of a Planned Residential District shall not be less than one (1) dwelling unit per three (3) acres of land.
8. Minimum lot size shall not be less than that required by the South Dakota Department of Environment and Natural Resources regulations on Private Sewage Disposal Systems (Chapter 34:04:01) as amended.
9. In addition to the Hamlin County Zoning Regulations, any proposed Planned Residential Districts are subject to platting and subdivision regulations of the county.
10. Access to public dedicated streets and roads shall be limited, and must meet the approval of the Hamlin County Highway Superintendent or State Highway Department.
11. Planned Residential Districts must have access to a concrete or bituminous-asphalt paved County or State highway.
12. Planned Residential Districts are not allowed over the shallow aquifer or wellhead protection areas.

13. Easements/Waivers per 3.04.06 of this ordinance shall be required to be placed on any lot in a Planned Residential District in order to protect agricultural operations or practices in the adjoining areas.

### **Section 3.08.03 Procedure for Planned Residential Development**

The following shall be observed when a Planned Development proposal is submitted for consideration:

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit ten (10) copies of a preliminary development plan to the Planning Commission for study at least seven (7) days prior to the Planning Commission meeting at which it is to be considered. The preliminary plan shall include the following information.
  - a. Location map showing the relationship of the proposed district to existing roads and property lines;
  - b. Proposed land uses, building locations, and housing unit densities;
  - c. Proposed circulation pattern indicating the status of street ownership;
  - d. Proposed open space uses;
  - e. Proposed grading and drainage pattern;
  - f. Proposed method of water supply and sewage disposal;
  - g. Relation of the proposed development to the surrounding area and comprehensive plan.
2. Copies of the proposed water and sewer system will be submitted to the South Dakota Department of Environment and Natural Resources for study and comment.
3. A list and schedule of improvements to be completed by the developer must be submitted.
4. In reviewing the plan, the Planning Commission shall need to determine that:
  - a. Resulting development will not be inconsistent with the Comprehensive Plan objectives or zoning provisions of the area;
  - b. The plan can be completed within a reasonable period of time;
  - c. The streets are adequate to support the anticipated traffic and the development will not overload the roads outside the planned area;
  - d. Proposed utility and drainage facilities are adequate for the population densities proposed.

5. If, in the opinion of the Planning Commission, the foregoing provisions are satisfied, the proposal shall be processed according to this section.
6. In addition to the requirements of this section, the Planning Commission may attach conditions it finds are necessary to carry out the purpose of this ordinance.
7. Before approving a Planned Development, the Planning Commission must have copies of proposed deed restrictions, agreements for maintenance by the homeowners' association of common facilities and open spaces, guarantees (surety bonds, etc.) by the developer for the completion of the development in accordance with the approved plan, and an agreement binding successors who may take over completion of the development to conditions of the plan approval.
8. The Planning Commission shall follow the procedure for considering an amendment to the Hamlin County Official Zoning Map before approving a Planned Residential District.
9. Permits for construction in a Planned Development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for processing as an amendment to this ordinance.
10. All residences in the Planned Residential District are required to have a signed agricultural easement registered on the deed of said property before a building permit is issued.
11. Following amendment of the Official Zoning Map by the Board of County Commissioners, the County Zoning Officer may, upon proper application, issue a building permit for the construction of the planned development unit in accordance with the approved plan.

#### **Section 3.08.04 Subsequent Performance**

Construction shall follow precisely the plan approved by the Board of County Commissioners to which modifications may be granted only by the Board of County Commissioners upon the filing of an amended plan. Failure to follow the approved plan on the part of the applicant or his agent shall be considered a violation of these regulations, punishable as herein prescribed.

## **CHAPTER 3.09. “TD” TOWN DISTRICT**

### **Section 3.09.01 Purpose**

The Town District is established to provide for orderly low density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns Dempster and Thomas.

### **Section 3.09.02 Permitted Uses**

1. Site-built single family homes;
2. Type A manufactured homes;
3. Type B manufactured homes;
2. Public parks;
3. Agriculture and horticulture uses, excluding concentrated animal feeding operations;
4. Home occupations.
5. Modular Homes.
6. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use.

### **Section 3.09.03 Conditional Uses**

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Contractors' offices, shops and yards.
7. Adult uses.
8. Manufactured home park.

### **Section 3.09.04 Area Regulations**

#### **Residential**

Minimum Yard Requirements: Front ..... Twenty-five (25) feet  
Side ..... Eight (8) feet  
Rear ..... Twenty-five (25) feet

Minimum Lot Size: Public Water Supply/Septic Tank ..... 20,000 sq. ft.  
Well/Septic Tank ..... 43,560 sq. ft.  
Public Water Supply/Public Sewer ..... 9,600 sq. ft.

#### **Commercial Uses/Lots**

Lot size shall be determined by off-street parking needs; availability of water and sewage disposal systems; adjacent land uses; need for screening; and type of business. Front, side and rear yards shall be determined by the Board of Adjustment.

#### **Industrial Uses/Lots**

Lot size shall be determined by off-street parking needs; impact or adjoining land used and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities. Front, side and rear yards shall be determined by the Board of Adjustment.

Hamlin County Town Districts shall include the following existing platted areas in the unincorporated towns of Dempster in Section 16, Township 115 North, Range 53 West; and Thomas in Section 33, Township 114 North, Range 51 West.

## **CHAPTER 3.10 “AP” AQUIFER PROTECTION OVERLAY DISTRICT**

### **Section 3.10.01 Purpose and Intent:**

The Hamlin County Planning Commission and Board of County Commissioners recognize (1) that residents of Hamlin County rely on ground water for a safe drinking water supply and (2) that certain land uses in Hamlin County can contaminate ground water particularly in shallow aquifers.

The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow aquifers of Hamlin County.

It is the intent to accomplish aquifer protection, as much as possible, by public education and securing public cooperation. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations.

### **Section 3.10.02: (Reserved)**

### **Section 3.10.03 Establishment/Delineation/Regulation of Aquifer Protection Overlay Zones**

Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on maps based upon data prepared by the East Dakota Water Development District (EDWDD), Brookings, South Dakota. Said map are hereby adopted by reference as part of these regulations as if the maps were fully described herein. In addition to East Dakota Water Development District Map, the South Dakota Department of Environment and Natural Resources, Division of Financial and Technical Assistance, Geological Survey created a map entitled “First Occurrence of Aquifer Materials Map 11” dated June 29, 2001. This map will be used to further identify aquifer boundaries. In the event of a conflict between such maps as to the area covered by the aquifer at a given location, then the map showing the larger aquifer area shall be followed.

The Aquifer Protection Overlay District is divided into two zones. The zone of contribution for Zone A was mapped by the East Dakota Water Development District with South Dakota Geological Survey technical assistance using techniques outlined in the U.S. Environmental Protection Agency publication "Guidelines for Delineation of Wellhead Protection Areas", June, 1987. The shallow/surficial aquifer boundary for Zone B was mapped by the South Dakota Geological Survey.

### **Section 3.10.04 Zone A – Aquifer Critical Impact Zones**

Zone A, the wellhead protection area, is the mapped zone of contribution around all public water supply wells or wellfields in shallow/surficial aquifers and includes land upgradient from the well or wellfield to the ten year time of travel boundary plus any delineated adjacent lands not underlain by the aquifer with sufficient slope that contaminated surface water could flow directly onto Zone A.

#### **Section 3.10.04.01 Permitted Uses in Zone A:**

The following uses are permitted provided they meet appropriate performance standards outlined for aquifer protection overlay zones:

1. Agriculture;
  - a. Application of manure is permitted with approved nutrient management plan.
2. Horticulture;
3. Parks, greenways or publicly owned recreational areas;
4. Necessary public utilities/facilities designed so as to prevent contamination of groundwater.
5. All "Permitted Uses" listed in the underlying district(s) which do not pose a potential risk to groundwater resources and are not a prohibited use.

#### **Section 3.10.04.02. Conditional Uses in Zone A:**

The following uses are permitted only under the terms of a conditional use permit and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.

Expansion of existing uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.

1. All uses permitted by conditional use in the underlying district which do not pose a potential risk to groundwater resources and are not a prohibited use and provided they can meet Performance Standards outlined for Aquifer Protection Overlay Zones.
2. Manure storage areas may be allowed provided they meet all Department of Environment and Natural Resources criteria.
3. New public water supply wells located within two thousand five hundred (2,500) feet of a concentrated animal feeding operation.
4. Expansion of existing Concentrated Animal Feeding Operations (Existing as of September 8, 1997, 1998) not to exceed a cumulative total of three hundred (300) animal units. Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria and shall apply for said General Permit.

#### **Section 3.10.04.03 Prohibited Uses in Zone A:**

The following uses are expressly prohibited in Zone A:

1. Residential developments with a density greater than one (1) lot or residence per one (1) acre.



2. New Concentrated Animal Feeding Operations, including Class A, Class B, and Class C. after September 8, 1997.
3. Manure storage areas except above ground tanks.
4. Disposal of solid waste except spreading of manure.
5. Outside unenclosed storage of road salt.
6. Disposal of snow containing de-icing chemicals;
7. Processing and storage of PCB contaminated oil;
8. Car washes.
9. Auto service, repair or painting facilities and junk or salvage yards.
10. Disposal of radioactive waste.
11. Graveyards or animal burial sites.
12. Detonation sites, except blasting of rock for farming purposes.
13. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves.
14. Public sewer systems and wastewater lagoons.
15. Fall application of nitrogen fertilizer except spreading of manure.
16. Land spreading of petroleum contaminated soil.
17. Land spreading or dumping of waste oil.
18. Industrial process water and waste disposal wells--5W20 type Class V injection wells.
19. Automobile service station disposal wells--5X28 type Class V injection wells.
20. Expansion of Existing Concentrated Animal Feeding Operations beyond a total of three hundred (300) animal units as of September 8, 1997.
21. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on groundwater quality.

### **Section 3.10.05 Zone B – Aquifer Secondary Impact Zones**

Zone B is the remainder of the mapped shallow/surficial aquifer in the County not included in Zone A. Zone B is being protected because (1) the aquifer is a valuable natural resource for future development, (2) the aquifer provides drinking water supply for individual domestic users, (3) contamination is not justified just because this area is not currently used for public water supply, and (4) contaminants from this area could eventually enter Zone A.

#### **Section 3.10.05.01 Permitted Uses in Zone B:**

1. All permitted uses in the underlying zoning districts provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones.

#### **Section 3.10.05.02 Conditional Uses in Zone B:**

1. The following uses are permitted only under the terms of a Conditional Use Permit and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.
  - a. Earthen storage basins and lagoons.
  - b. New Class C and expansion of existing Class C up to 999 animal units (Class B). Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria and shall apply for said General Permit. The County may require soil borings to determine impermeable material between land surface and the aquifer.
  - c. Expansion, modification, alteration, or relocation of existing permitted or conditional uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.
  - d. Stockpiling of solid waste.
  - e. All uses permitted by conditional use in the underlying district which do not pose a potential risk to groundwater resources and are not a prohibited use may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

#### **Section 3.10.05.03 Prohibited Uses in Zone B:**

The following uses are expressly prohibited in Zone B:

1. Fall application of nitrogen fertilizer on lands with Arvilla, Brandt, Divide, Egeland, Embden, Estelline, Fairdale, Fordville, Maddock, Marysland, Minnewauken, Orthents (gravely), Renshaw, Sioux and Spottswood soils, except spreading of manure.
2. Land spreading of petroleum contaminated soil.
3. Land spreading or dumping of waste oil.

4. Automobile service station disposal wells--5X28 type Class V injection wells.
5. New and expansion of Class A Concentrated Animal Feeding Operations or expansions of existing Class C concentrated animal feeding operations which cannot meet performance standards

#### **Section 3.10.06 Performance Standards for Aquifer Protection Overlay Zones:**

The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

1. New or replacement septic tanks and associated drain fields for containment of human or animal wastes must conform with regulations established by the South Dakota Department of Environment and Natural Resources.
2. Open liquid waste ponds containing any solid or liquid material or waste will not be permitted without a secondary containment system except for community wastewater lagoons. Manure storage areas are permitted in Zone B but must be constructed in conformance with Soil Conservation Service Waste Storage Pond (425).
3. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one locality in one tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system where it is deemed necessary by the County Zoning Office.
4. Any commercial or industrial facility, not addressed by #2 or #3 above, involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste, except for spreading of manure, in excess of 1,000 pounds and/or 100 gallons which has the potential to contaminate groundwater must have a secondary containment system which is easily inspected and whose purpose is to intercept any leak or discharge from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have double walls and accessible sumps.
5. Discharge of industrial processed water on site is prohibited without County Zoning Office approval.
6. Commercial auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of all other potentially hazardous waste materials.
7. Any facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous materials from contaminating the shallow/surficial aquifer should floods, fire, other natural catastrophes or equipment failure occur:
  - a. For flood control, all underground facilities shall include a monitoring system and a secondary standpipe above the 100-year frequency flood level. For above ground facilities, an impervious dike, above the 100-year flood level and capable of containing

- 120% of the largest storage volume, will be provided with an overflow recovery catchment area (sump).
- b. For fire control, plans shall include but not be limited to a safe fire fighting procedure, a fire retardant system and provision for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, other buried objects and other hazardous liquids, chemicals or open flames in the immediate vicinity.
  - c. For equipment failures, plans shall include but not be limited to:
    - i. Below ground level, provision for removal and replacement of leaking parts, a leak detection system with monitoring and an overfill protection system.
    - ii. Above ground level, provisions for monitoring, replacement, repair and cleanup of primary containment systems
  - d. For other natural or man-caused disasters, the owner and/or operator shall report all incidents involving liquid or chemical material which may endanger health and/or safety of disaster personnel and/or the general public.
  - e. Agricultural operations are exempted from performance standard #7 unless chemicals are stored which are on the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) extremely hazardous substance list in the quantities exceeding the threshold planning quantity at any one time.
  - f. The County Zoning Office and DENR shall be informed within 24 hours of all leaks and spills of materials that might potentially contaminate groundwater.
8. Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.
9. New Class C concentrated animal feeding operations must have a Nutrient Management Plan and Manure Management Plan.

### **Section 3.10.07 Grant of Permit, Alteration of Use:**

Before a permit is granted, the County Zoning Officer must examine an application and determine that the proposed use, activity or development meets the provisions of this ordinance.

When securing a use permit, the owner/developer agrees to make future improvements which may become necessary to prevent contamination of shallow/surficial aquifers and the owner/developer must allow County personnel to inspect any improvements to verify they meet the performance standards.

Whenever any person has an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit. The owner may appeal a County Zoning Officer's decision to modify or deny a requested permit to the County Planning Commission/Board of Adjustment.

Any lawful use in existence on the effective date of this ordinance shall be permitted to continue provided it can be shown such use does not threaten public health and safety by potential contamination of water in the shallow/surficial aquifer.

#### **Section 3.10.08 Exceptions**

1. Storage of liquids, chemicals and fertilizers used in agricultural operations during planting and crop cultivation are exempt from the requirements of this ordinance March 1 to October 1. However, Best Management Practices are encouraged, particularly in Zone A.
2. Tanks used for chemigation are exempt from secondary containment regulations but secondary containment is encouraged.
3. Storage of liquid or dry fertilizer in amounts equal to or less than one thousand (1,000) pounds or one hundred (100) gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.

#### **Section 3.10.09 Limitation of County Liability:**

Nothing in this ordinance shall be construed to imply that Hamlin County, by issuing a permit, has accepted any of an owner's/developer's liability if a permitted development contaminates water in shallow/surficial aquifers.

#### **Section 3.10.10 Underlying Zones:**

Underlying zoning restrictions apply along with restrictions set forth in the Aquifer Protection Overlay District.

#### **Section 3.10.11 Savings Clause:**

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

## **CHAPTER 3.11 “FP” FLOOD PLAIN OVERLAY DISTRICT**

### **Section 3.11.01 Statutory Authorization**

The Legislature of the State of South Dakota has in South Dakota Statutes delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners of Hamlin County, South Dakota does ordain as follows:

### **Section 3.11.02 Findings of Fact**

1. The flood hazard areas of Hamlin County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

### **Section 3.11.03 Purpose and Objectives**

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
8. To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.

#### **Section 3.11.04 Methods of Reducing Flood Losses**

In order to accomplish its purposes, this ordinance includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers; which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

#### **Section 3.11.05 Definitions** (Reserved)

#### **Section 3.11.06 General Provisions**

##### **Section 3.11.06.01 Lands to Which This Ordinance Applies**

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Hamlin County.

##### **Section 3.11.06.02 Basis for Establishing the Areas of Special Flood Hazard**

The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map (FIRM), dated September 4, 1985, is adopted by reference and declared to be part of this ordinance. The FIRM is on file at the Director of Equalization's Office, Hamlin County Courthouse, Hayti, SD.

##### **Section 3.11.06.03 Compliance**

No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this ordinance and other applicable regulations.

##### **Section 3.11.06.04 Abrogation and Greater Restrictions**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

##### **Section 3.11.06.05 Interpretation**

In the interpretation of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

#### **Section 3.11.06.06 Warning and Disclaimer of Liability**

This ordinance shall not create liability on the part of Hamlin County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

#### **Section 3.11.07 Administration**

##### **Section 3.11.07.01 Establishment of Development Permit**

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.11.06.02. Application for a development permit shall be made on forms furnished by the Zoning Officer and may include, but not be limited to:

Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 3.11.08.01; and
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

##### **Section 3.11.07.02 Designation of the Zoning Officer**

The Zoning Officer is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

##### **Section 3.11.07.03 Duties and Responsibilities of the Zoning Officer**

Duties of the Zoning Officer shall include but not be limited to:

1. Permit Review
  - a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.



- b. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- c. Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purpose of this ordinance, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.
  - i. If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further consideration.
  - ii. If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer's certification) for the proposed development shall be required.
  - iii. If the proposed development is a building, then the provisions of this ordinance shall apply.

## 2. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.11.06.02, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Zoning Officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance with 3.11.08.01. SPECIFIC STANDARDS.

## 3. Information to be Obtained and Maintained

- a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- b. For all new or substantially improved floodproofed structures:
  - i. Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed.
  - ii. Maintain the floodproofing certifications required in Section 3.11.07.01(3).
- c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

## 4. Alteration of Watercourses

- a. Notify adjacent communities and the Department of Water and Natural Resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

## 5. Interpretation of FIRM Boundaries

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).

### **Section 3.11.08 Provisions for Flood Hazard Reduction**

#### **Section 3.11.08.01 General Standards**

In all areas of special flood hazards, the following standards are required:

##### 1. Anchoring

- a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
- b. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Specific requirements may be:
  - i. Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side.
  - ii. Frame ties to be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
  - iii. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
  - iv. Any additions to the manufactured home be similarly anchored.

##### 2. Construction Materials and Methods

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities

that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### 3. Utilities

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### 4. Subdivision Proposals

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;
- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
- d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

### 5. Encroachments

Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

#### **Section 3.11.08.02 Specific Standard**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 3.11.07.03(2), Use of Other Base Flood Data, the following standards are required:

#### 1. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation.

#### 2. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to

the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in Section 3.11.07.03(2).

## **ARTICLE IV ADMINISTRATION**

### **CHAPTER 4.01 GENERAL**

#### **Section 4.01.01 Permits Required**

No building/use or other structure shall be erected, moved, added to, or structurally altered without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.

#### **Section 4.01.02 Applications**

All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Officer, including legal description, existing or proposed buildings or alterations; 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 conformity with, and provide for the enforcement of, this ordinance. Such plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03.

#### **Section 4.01.03 Fees**

The Board of County Commissioners shall, by resolution, 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 shall be posted in the office of the Zoning Officer and may be altered or amended only by the Board of County Commissioners.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

#### **Section 4.01.04 Building Permit**

##### **1. Building Permit Required.**

- a. It shall be unlawful to commence the excavation for or the construction of any building or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the Zoning Officer has issued a building permit for such work. Exception: Temporary structures with a gross floor area of less than one hundred fifty (150) square feet do not require building permits but shall comply with all other regulations contained herein.
- b. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way.

2. Issuance of a Building Permit. In applying to the Zoning Officer for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. He shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the Zoning Officer for determining whether the provisions of this Ordinance are being observed. If the proposed excavation or construction as set forth in the application are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building permit for such excavation or construction. If a building permit is refused, the Zoning Officer shall state such refusal in writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.
3. The issuance of a building/use 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 substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued.

#### **Section 4.01.05 Building/Use Permit Process**

1. The landowner requesting the Building/Use Permit shall complete an application for a building/Use permit, accompanied with the appropriate fee, available from the Administration Official. Completed applications shall be returned to the Zoning Officer for review
2. One copy of the application shall be returned to the applicant, after the Zoning Officer has marked such copy as either approved or disapproved, and attested to the same by signing said copy of the plans. Then Zoning Officer for county records shall retain one copy of the application, similarly marked.
3. The Zoning Officer shall then, if the applicant is approved, issue a signed building/Use permit. If the Zoning Officer determines the proposed action would not be in compliance with the provisions of these regulations, a building/Use permit may not be issued, and the applicant may then appeal the action of the Zoning Officer to the Board of Adjustment.
4. Building/Use permits shall be posted in a conspicuous place upon the premises and visible from a public right-of-way at all times from the beginning until completion of such construction, alteration, or repair.
5. With application for a building/Use permit, the site must be clearly staked out and/or the Zoning Officer will examine plans that clearly indicate the structure to be erected or remodeled, or alterations of the exiting structure.

## **CHAPTER 4.02 ZONING OFFICER**

### **Section 4.02.01 Zoning Officer**

The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the power to make inspection of building or premises necessary to carry out his duties in the enforcement of this Ordinance.

### **Section 4.02.02 Duties**

The powers and duties of the Zoning Officer shall be as follows:

1. Issue all building permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Provide public information relative to all matters arising out of this Ordinance.
8. Forward to the Planning Commission all applications for amendments to this Ordinance.
9. Forward to the Board of Adjustment, applications for appeals, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.
10. Initiate, direct, and review, from time to time, a study of the provisions of this ordinance, and to make such reports available to the Planning Commission. The Zoning Officer shall receive applications for Building Permits, Conditional Uses, Variances, and Zoning Amendments.
  - a. For building permits, the Zoning Officer shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
  - b. For Conditional Uses and Variances, the Zoning Officer shall review the application, and shall make a recommendation to the Board of Adjustment to either approve or deny said application.

- c. For Zoning Amendments, the Zoning Officer shall review the application, and shall make comments regarding said application to the Planning Commission and Board of County Commissioners.

#### **Section 4.02.03. Right of Entry.**

Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Officer or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Zoning Officer or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Zoning Officer by this ordinance, provided that if such building or premises be occupied, they shall first present proper credentials and request entry; and if such building or premises be unoccupied, they shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Zoning Officer or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Officer or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Zoning Officer or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

#### **Section 4.02.04. Stop Order**

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Officer may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Zoning Officer to proceed with the work.

#### **Section 4.02.04 Occupancy Violation.**

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Officer may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such persons shall discontinue the use within the time prescribed after receipt of such notice to make the structure, or portion thereof, comply with the requirements of this ordinance.



## **CHAPTER 4.03 BOARD OF ADJUSTMENT**

### **Section 4.03.01 Establishment**

Within Hamlin County outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The Board of Adjustment shall consist of seven (7) members--five district (5) members--One (1) member from District 1-Castlewood/Hamlin Townships, One (1) member from District 2-Oxford/Opdahl/Hayti Townships, One (1) member from District 3-Brantford/Dixon/Garfield Townships, One (1) member from District 4-Cleveland/Norden/Florence Townships, One (1) member from District 5-Estelline/Dempster Townships, One (1) member from At-Large and One (1) County Commissioner. All Members of the Board of Adjustment shall be appointed by the County Commission. District members shall reside in the district they represent, the At-Large Member may reside anywhere in Hamlin County. District Members must reside outside of incorporated municipalities. The County Commission member of the Board of Adjustment may or may not reside outside an incorporated municipality. If no person from a district is willing to serve on the Board of Adjustment, the County Commission shall appoint a member to serve that district, as long as the member is a resident of Hamlin County.
2. All members of the Board of Adjustment shall serve three (3) year terms, with varied terms beginning in 2006. District 3 and 5 shall serve a three (3) year term, District 2 and 4 shall serve a two (2) year term and District 1 and the At-Large Member shall serve a one (1) year term. After 2006 all terms shall be three (3) years.
3. Any member of the County Planning and Zoning Commission can be removed for cause, SDCL 11-2-3.
4. Each year in January the Planning and Zoning Commission shall elect a Chairperson, by majority vote, from the members duly appointed by the County Commission to serve on the County Planning and Zoning Commission. There is no limit to the number of years a member can serve as Chairperson.
5. The Chairperson, or in his or her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article.
6. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the County Zoning Office and shall be public record. The Board of Adjustment shall keep record in minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

### **Section 4.03.02 Appeals, Record of Appeal, Hearing and Stays**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Official and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.

2. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County or city/town affected by any decision of the Zoning Official. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Official from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days.
3. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

#### **Section 4.03.03 Power and Jurisdiction Relating to Administrative Review**

The County Board of Adjustment 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 the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.

#### **Section 4.03.04 Board of Adjustment has Powers of Zoning Officer on Appeals: Reversing Decision of Zoning Officer**

In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.

The concurring vote of five (5) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

#### **Section 4.03.05 (Reserved)**

#### **Section 4.03.06 Appeals to a Court of Record.**

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, landowner, or any officer, department, board, or bureau of the County, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Auditor.

### **CHAPTER 4.04 PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS**

#### **Section 4.04.01 Powers and Jurisdiction Relating to Conditional Uses**

The County Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special 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 Board of Adjustment 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 Zoning Officer shall require the applicant for a conditional use permit to notify adjacent property owners by certified or registered mail, at the cost of the applicant, of the conditional use permit or in lieu of this, obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The County Board of Adjustment shall make a finding that it is empowered under the section of this 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.
6. Before granting any conditional use, the County Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - a. Entrance and exit 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. Utilities refuse and service areas, with reference to locations, availability, and compatibility.
  - d. Screening and buffering with reference to type, dimensions and character.
  - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
  - f. Required yards and other open space.
  - g. General compatibility with adjacent properties and other property in the district.
  - h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.
- 7. In granting any conditional use, the County Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation
  - 8. The concurring vote of five (5) members of the Board of Adjustment is required to pass any application for a Conditional Use.
  - 9. A conditional use permit shall expire one (1) year from the date upon which it becomes effective if no work has commenced. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
  - 10. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

#### **Section 4.04.02 Powers and Jurisdiction Relating to Variances**

The County Board of Adjustment shall have the power, where, by reason of exception, 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 situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships 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 hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or registered mail of the variance request or in lieu of this obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The County Board of Adjustment shall make a finding that it is empowered under the section of this 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.
  - a. The Board of Adjustment shall follow the following procedure in considering the recommendation of the Zoning Officer. A variance from the terms of this ordinance shall not be granted by the Board of Adjustments unless and until:
    - i. A written application for a variance is submitted demonstrating:
    - ii. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
    - iii. 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;
    - iv. That the special conditions and circumstance do not result from the actions of the applicant;
    - v. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.

- vi. That granting the variance request 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.
  - vii. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
6. A variance which was previously granted by the Hamlin County Board of adjustment for a particular use, setback, or structure shall become null and void if at the time of a change in ownership, the variance for said use, setback, or structure has not been exercised by the original variance applicant.
  7. A variance that is granted but not used within one (1) year shall be considered invalid unless an extension has been requested and approved by the Board of Adjustment.
  8. If upon a change of ownership, a variance previously granted by the Hamlin County Board of Adjustment granting variance for a particular use or structure has not been exercised by the variance applicant, said variance shall become null and void.
  9. In granting any variance, the County Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
  10. Under no circumstances shall the County Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
  11. The concurring vote of five (5) members of the Board of Adjustment is required to pass any application for a variance.
  12. A variance shall expire one (1) year from the date upon which it becomes effective if no work has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment.

#### **Section 4.04.03 Zoning Amendments**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one (1) or more of the owners of property within the area requested to be changed. However, no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published once ten (10) days prior to the date of the meetings as provided in South Dakota Compiled Laws Chapter 11-2, and its and Amendments. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County

Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.

2. The following procedure for requesting a Zoning Amendment or Zoning District Boundary Change shall be followed:

The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Officer. Completed applications shall be returned to the Zoning Officer for review. To be considered by the Planning Commission and Board of County Commissioners, the application form shall be completed and shall be accompanied by the following items:

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
- c. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- d. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within 250 feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- e. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- f. The Planning Commission shall either recommend or not recommend approval of the amendment to the Board of County Commissioners.
- g. The Board of County Commissioners shall either approve or not approve the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.
- h. When the Board of County Commissioners approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (4 votes) of the Board of County Commissioners.

Protest Standard: The protest shall be signed by at least 40% of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within 250 feet of the area affected by the amendment.

- i. After passage the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.

**Section 4.04.04 Reapplication.**

No application requesting a variance, conditional use, zoning amendment, or zoning district classification change on any property whose application includes any such property either entirely or substantially the same as that which has been denied by the Board, shall again be considered by the Planning Commission or Board of Adjustment before the expiration of six (6) months from the date of the final action of the Planning Commission or Board of Adjustment.



## **ARTICLE V SUPPLEMENTAL REGULATIONS**

Pursuant to the purpose of this regulation are certain general requirements that are not provided for under Article III District Regulations. These requirements are set forth under this Article.

### **CHAPTER 5.01 VISIBILITY AT INTERSECTIONS**

On a corner lot in any district, no structure, planting, or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Lake Park District, Town District, and Planned Development District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

### **CHAPTER 5.02 FENCES**

#### **Section 5.02.01 Fences in the “LP” Lake Park Districts and “PR” Planned Residential District**

##### **Section 5.02.01.01 Purpose**

The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

##### **Section 5.02.01.02 Permit required**

1. All fences, walls and hedges in the LP-1 and PR Districts shall require a building permit

##### **Section 5.02.01.03 Location/Construction Requirements**

1. Not with standing other provisions of this Ordinance, fences, walls, trees, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall not be located within thirty (30) feet of an intersection, measuring along the property lines and connecting these two points by a straight line. Further, the fence, wall, tree, or hedge shall not be constructed within twenty-five (25) feet of a public right-of-way or private road. Fences, walls and hedges shall be set back twenty (20) feet from high water mark.
2. Fences, with a maximum height of not more than eighty inches (80) inches, may be erected on any part of a lot other than in the required front yard which shall be limited to a height of forty-eight (48) inches.

3. The County does not provide surveying services. The property owner is responsible for locating property lines.
4. Fences may be built no closer than one (1) foot up to the property line, not to include the public right-of-way. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.
5. The “finished side” of the fence shall face neighboring properties or the road.
6. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire fences shall be allowed. EXCEPTION: The use of barbed wire shall be allowed in Lake Park District for normal Agriculture as defined by Section 209.
7. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.
8. Fences can be built on the property line when the fence is shared between property owners.

#### **CHAPTER 5.03 ACCESSORY BUILDINGS**

1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.
2. No accessory use shall be permitted in any district unless such use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
4. No accessory building may be used for residential dwelling purposes at any time.
5. Lake Park and Planned Residential Districts.

Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Lake Park and Planned Residential Districts only in accordance with the provisions of the following table hereby adopted by reference and declared to be part of this Ordinance.

6. Commercial - Industrial District.

In any Commercial-Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.

## Permitted Accessory Uses: LP and PR Districts

### Principal Use

Single family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers

### Permitted Accessory Uses

1. Private garages.
  - a. Attached garages shall be limited to maximum dimensions of 36 feet by 42 feet and conform to the design of the house.
  - b. Unattached garages shall be limited to maximum sidewalls of 10 1/2 feet; maximum dimensions of 36 feet by 42 feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.
2. Buildings or structures for customary residential storage purposes not over 10 feet in height and not exceeding 150 square feet in gross floor area.
3. Readily moveable sports, recreation, or outdoor cooking equipment.
4. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved.
5. Home occupations but only as defined herein.
6. Non-commercial greenhouses provided that greenhouses over 100 square feet in floor area must have an approved site plan.
7. Off-street parking and storage of vehicles, but only as provided in Chapter 4.05 of this Ordinance.

Churches, Convents and Monasteries

1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.

All conditional uses

1. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.

All other items

1. No accessory uses permitted.

## **CHAPTER 5.04 SIGNS AND OUTDOOR ADVERTISING.**

### **Section 5.04.01 On – and Off –Site Signs**

1. No private sign shall be erected or maintained which:
  - a. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or  
Creates traffic hazards, by either:
    - i. Confusing or distracting motorists; or
    - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles, or
    - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
  - iv. Creates a nuisance to persons using a public right-of-way; or
  - v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement
2. Signs shall be permitted in all zoning districts, subject to the following provisions:
  - a. Wall signs may be located anywhere on the wall of a building.
  - b. Freestanding signs shall not project over public property.
  - c. Freestanding signs shall not be erected adjacent to a corner of two intersecting streets or roads, unless such signs are constructed to not obstruct the view of said intersection.
  - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
  - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or road or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Zoning Officer and the said Official grants a permit therefore.
3. The Zoning Officer shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with National Building Code relating to outdoor advertising.
4. On-Site Signs: Each sign erected as an on-site sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. The maximum amount of on-site signage allowed shall not exceed eighty (80) square feet. Further, no on-premise sign may be converted to an off-premise sign.

5. Off-Site Signs: Off-site signs erected in those districts where permitted shall conform to the following requirements:
  - a. Each sign shall have a maximum surface area of one thousand two hundred (1,200) square feet, and maximum dimensions of thirty (30) feet in height, and forty (40) feet in length.
  - b. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted off-site sign on the same side of the street or road.
  - c. Each sign shall not be closer than thirty (30) feet from any street/road right-of-way.

## **CHAPTER 5.05 STRUCTURES TO HAVE ACCESS**

Every building hereafter erected or moved shall be on a lot adjacent to a public street/road, or with access to private streets approved by the Board of Adjustment, and all structures shall be so located on lots as to provide safe and convenient access for services, fire protection and required off-street parking.

## **CHAPTER 5.06 YARDS**

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 with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

### **Section 5.06.01 Yards, Reduction in Size.**

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 and lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

### **Section 5.06.02 Additional Yard Requirements**

The following yard requirements must be observed in addition to the yard requirements of the various districts:

1. A corner lot must have a front yard on both streets
2. On residential, commercial and industrial developed property, in the LP-Lake Park District, TD Town District, and PR-Planned Residential District, fronting on one side of the street between two streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line. Provided, however, that on lots in any block fronting one side of a street between two intersecting streets in the above districts, the set-back line may be increased, providing that the owners of three-fourths (3/4) of the front footing on said side of the street in said block shall petition the Planning Commission to establish the set-back line

at a certain distance named in the petition. If the Planning Commission shall approve of establishing the setback line as petitioned, it may be so established.

3. In the LP, TD, and PR Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.
4. In the LP, TD, and PR Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

#### **Section 5.06.03 Exceptions to Yard Requirements**

The following exceptions may be made to the yard requirements in the LP, TD, and PR Districts:

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.
2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.
3. Filling station pumps and pump islands may occupy required yards provided, however, that they are not less than fifteen (15) feet from all lot lines.
4. An accessory building may be located in a rear yard but not occupy more than 30 percent of a rear yard.
5. Any accessory buildings closer than ten (10) feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.

#### **CHAPTER 5.07 ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT**

In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met.

#### **CHAPTER 5.08 STABLING, PASTURING, RAISING OF LIVESTOCK ON SMALL ACREAGES.**

1. The stabling, pasturing, raising of livestock on small acreages (parcel of ten acres or less) and zoned "LP-1 or LP-2" shall require a conditional use permit.
2. The stabling, pasturing, raising of livestock on small acreages (parcel of ten acres or less) and zoned "Agriculture" is a permitted use. Designated concentrated animal feeding operations excluded.
3. On agricultural and "LP-1 or LP-2" zoned small acreages of ten (10) acres or less, the maximum of one (1) animal unit per acre may be allowed. Agricultural and "LP-1 or LP-2" zoned small acreages, existing as of January 1, 2010, that contain animals are allowed to expand the existing number of animal units to the maximum density allowed {one (1) animal unit per acre} without having to acquire Board of Adjustment approval.

4. In order to obtain a conditional use permit, at a minimum, the Board of Adjustment requires the following:
  - a. The applicant shall demonstrate that he/she has sufficient number of acres of land to support the proposed number of animal units to be stabled, pastured, and/or raised.
  - b. A manure/nutrient management plan that details the management of manure on site and the safe disposal of the manure.

## **CHAPTER 5.09 PRIVATE WASTEWATER TREATMENT SYSTEMS (SEPTIC TANKS)**

All residential, commercial, and industrial uses must be connected to a sewer system. All uses within a sanitary sewer district are required to connect to the district's sanitary sewer system. Minimum requirements for uses outside of sanitary sewer districts include: Water-tight septic tanks connected to a drain field, drain fields to be not closer than eighty (80) feet to the shoreline of lakes or streams, and no drain area to be deeper than five (5) feet.

## **CHAPTER 5.10 MANUFACTURED HOME AND MODULAR HOME PROVISIONS.**

### **Section 5.10.01 Type A and B Manufactured Homes**

1. An industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling. For the purpose of this ordinance manufactured homes will be regulated by types. Three types of homes are defined under these regulations.
  - a. Type A Manufactured Home shall:
    - i. Have more than one thousand one hundred (1,100) square feet of occupied space in a double-section or larger multi-section unit.
    - ii. Be structurally sound, well-maintained, have been constructed within the last ten (10) years.
    - iii. Utilize a permanent perimeter in accordance with manufacturer's specifications.
    - iv. Be placed on a permanent foundation.
    - v. Be anchored to the ground, in accordance with manufacturer's specifications or the Defense Civil Preparedness Agency, TR-75, issued June, 1972, by the U.S. Department of Defense or as prescribed by the NFPA 225 Model Manufactured Home Installation Standards.
    - vi. Have a gabled roof with a pitch of at least 2/12 feet.
    - vii. Have siding material of a type customarily used on site-constructed residence.
    - viii. Have roofing material of a type customarily used on site-constructed residences.
  - b. Type B Manufactured Home shall:

- i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit. Minimum width for a Type B mobile home is fourteen (14) feet.
- ii. Utilize a perimeter enclosure in accordance with manufacturer's specifications.
- iii. Be anchored to the ground, in accordance with manufacturer's specifications or the Defense Civil Preparedness Agency, TR-75, issued June, 1972, by the U.S. Department of Defense or as prescribed by the NFPA 225 Model Manufactured Home Installation Standards.
- iv. Have siding material of a type customarily used on site-constructed residence.
- v. Have roofing material of a type customarily used on site-constructed residences.
- vi. Be placed on a support system, in accordance with approved installation standards.
- vii. Be structurally sound, well-maintained, have been constructed within the last ten (10) years.

## 2. Foundation/Skirting

- a. Permanent Perimeter Enclosure as required for Type A Manufactured Homes. Those manufactured homes designated in this Ordinance (Type A), as requiring a permanent perimeter enclosure must have footings and crawl space or basement walls. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

The foundation shall be (a) an approved wood basement constructed of 2 x 6 framework and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.\

The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).

- b. All manufactured homes without a permanent perimeter enclosure shall have an approved foundation siding/skirting enclosing the entire perimeter of the home.

## 3. Support System

- a. All HUD-Code manufactured homes of the Type A classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- b. Type B manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the ANTI/NFPA 501A 1977 installation standards.



#### 4. Nonconforming Homes.

A manufactured home placed and maintained on a tract of land and deemed to be a legal nonconforming use prior to the adoption of this Ordinance shall continue to be a legal nonconforming use. If the nonconforming use is discontinued for a period of one year, the land thereafter must be used in conformity with all provisions of this Ordinance.

#### 5. Replacement of Nonconforming Homes.

Type A and Type B Manufactured Homes located upon any lot or lots of record at the time of the adoption of this Ordinance may be replaced by Type A and/or Type B Manufactured Homes of like dimensions and said replacement shall not be deemed to have changed the use thereof from a non-conforming to a conforming use. If a replacement Type A and/or Type B Manufactured Home is of larger dimension than the replaced Type A and/or Type B Manufactured Home, then application must first be made to the County Planning Commission for conditional use permit.

#### 6. Structural Alteration.

Due to its integral design, the Zoning Officer after it is placed on the site must approve any structural alteration or modification of a manufactured home.

#### 7. Variance from Maximum Age Requirement

Type A and Type B manufactured homes may receive a variance from the maximum age requirement (Chapter 5.10). The Board of Adjustment may grant a variance if the applicant requesting the placement of the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Board of Adjustment that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Hamlin County.
- c. That the applicant shall obtain, and present to the Board of Adjustment, the written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site.

### **Section 5.10.02 Modular Homes**

#### 1. Modular homes shall meet the following regulations.

- a. Modular homes shall meet or exceed Uniform Building Codes.
- b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.
- c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.

- d. Modular homes shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch.
- e. Modular homes shall have a minimum of a 4/12-roof pitch.
- f. Have siding material of a type customarily used on site-constructed residences.
- g. Have roofing material of a type customarily used on site-constructed residences.

## **CHAPTER 5.11 PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS**

No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes as defined herein.

## **CHAPTER 5.12 UTILITY EASEMENTS**

No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.

## **CHAPTER 5.13 MOVED IN BUILDINGS**

It shall be unlawful to move any house or other building onto any lot or to any new location within the County unless and until a permit to do so has been obtained from the Zoning Officer. No permit shall be issued until the following requirements are met.

1. The fee for said permit as prescribed in Section 3.01.03, shall have been paid.
2. That the work is to be completed within twelve (12) months after the permit has been issued by the Zoning Officer.
3. The applicant may also be required to file with the County Auditor a sufficient bond conditioned so that the applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Officer shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.
4. Any building, which is not newly constructed to be used for first occupancy, shall also meet the following minimum requirements to obtain a permit.
  - a. The written consent of all property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site.

#### **CHAPTER 5.14 SCREENING**

Where any "CI" use is adjacent to any residential use, that use (building, parking or storage) shall be appropriately screened from the residential use by a fence or planting, approved by the Board of Adjustment, except where planting may be in conflict with vision clearance – Chapter 5.01 above.

#### **CHAPTER 5.15. REFUSE**

In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property free of trash. Normal farming operations excluded.

#### **CHAPTER 5.16 UNLICENSED VEHICLES**

Vehicles not in use and without current license may not be kept in any uncovered area other than a designated junk, salvage yard, or designated collection site. EXCEPTION: Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

#### **CHAPTER 5.17 MINIMUM WATER AND SEWER REQUIREMENTS**

A water and sewer system cannot be approved until it meets the following standards:

1. All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage; and
2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Environment and Natural Resources, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
3. Within the Lake-Park (LP1) District Applicants for building permits which will require a septic tank system must first receive approval from Lake Poinsett Sanitary District for installation of a said septic tank system. The septic system shall be installed by a State licensed installer.

#### **CHAPTER 5.18 SHELTERBELT SETBACK REQUIREMENTS**

A shelterbelt, consisting of one (1) or more rows shall not be established within one hundred fifty (150) feet of a public road right-of-way line on the north and west sides of roads and not within one hundred (100) feet of a public road right-of-way line on the south and east sides of roads. Shelterbelts at right angles to roads shall provide a minimum turnaround of fifty (50) feet measured from the road right-of-way. If a reduced setback is requested, it may be permitted by the Board of Adjustment through a variance, if a signed approval has been obtained from the chairman of the Township Supervisor, the County Highway Superintendent or the State Region Engineer as may be appropriate.

1. The recommended setback from adjoining property owners is fifty (50) feet, however shelterbelt plantings can be closer to adjoining property lines if the applicant obtains written permission from adjoining property owners using a form provided by the county and does require a variance. The setback distance must be clearly indicated on the form.
2. Ornamental Plantings – Ornamental plantings shall include shrubs, deciduous and conifer trees. No ornamental plantings shall be placed within fifty (50) feet of a public road right-of-way. All shrubbery shall not exceed five (5) feet in height with a minimum space between shrubs of four (4) feet. Minimum spacing for deciduous trees shall be a minimum of twenty (20) feet and minimum spacing for non-deciduous trees shall be thirty (30) feet. In no case shall ornamental plantings exceed one (1) row. No trees shall be planted within one hundred-fifty (150) feet of an intersection.

## **CHAPTER 5.19 EXTENDED HOME OCCUPATION**

1. There are significant differences between home occupations on small tracts and agricultural and extended home occupations. The nature of resources available for use, the benefits and disadvantages created by home occupations, and the problems generated necessitate a distinction between urban home occupations and farm home occupations. While each concept use is based on supplementing income, but the districts location and type of business in which each is practiced has unique characteristics. For the aforesaid reasons, different home occupations may be permitted in agricultural zoning districts than are permitted in the urban residential districts. Specifically a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building.
2. For the purpose of this section, provided all requirements performance standards are met, the following may be considered farm extended home occupations:
  - a. Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, welding repair conducted in a safe manner; Veterinarian's office; Seed Sales; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses. Specific business uses such as automobile and recreational vehicle sales are prohibited.
3. Performance Standards
  - a. An extended home occupation may not be changed to another extended home occupation except by the issuance of a separate conditional use permit.
  - b. The extended home occupation is accessory to the principal use of the property (residence).
  - c. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
  - d. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed sixteen (16) square feet in area, non-illuminated.

- e. Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
- f. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.
- g. There shall be no outdoor storage of materials, vehicles, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence approved by the Board of Adjustment.
- h. Extended home occupations should be agriculturally related and shall be conducted in an accessory building.
- i. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood. Prior to the issuance of a conditional use permit for an extended home occupation, County Highway Superintendent and/or Township approval shall be required.
- j. Any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- k. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

## **CHAPTER 5.20 SOIL EROSION AND SEDIMENTATION CONTROL**

Before issuing a building permit, the Zoning Officer may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Hamlin County Conservation District. The Zoning Officer shall consult the Hamlin County Soil Erosion and Sedimentation Control Ordinance that was developed pursuant to SDCL 38-8A before determining if the proposed activity requires such a certificate of intent.

If a complaint is received regarding a violation of the county soil loss standards caused by non-agricultural activity, the Zoning Officer shall undertake those actions outlined in the Hamlin County Soil Erosion and Sedimentation Control Ordinance in order to bring about compliance.

## **CHAPTER 5.21 MINERAL EXPLORATION AND DEVELOPMENT**

Separate permits are required for mineral extraction and milling. The applicant for a permit must meet the following minimal conditions as they pertain to the permit for which application is made.

- 1. The applicant shall provide:
  - a. A description of the mineral or minerals which are the subject of the mining or milling.

- b. Maps showing the general area within which the mining or milling operation will be conducted.
  - c. A detailed description of the regional environmental conditions, to include surface land use and vegetation as well as a detailed description of the area's geologic formations and hydrology from the best available scientific sources are required for mining or milling permits.
  - d. An environmental assessment which establishes base line conditions for radioactive and toxic material in air, ground and surface water, soil, vegetation and animals is required for mining or milling permits.
2. The applicant shall provide maps indicating the location of the affected sites to the nearest section of land, a technical description of the mining or milling process, the types of equipment to be used, and the estimated timetable for each phase of work and for final completion of the program.

The applicant shall provide:

- a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
  - b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.
3. The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands. The reclamation plan shall include:
- a. A reclamation schedule.
  - b. Methods of plugging drill holes.
  - c. Methods of severing and returning topsoil and subsoil.
  - d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
  - e. Methods of waste management and disposal, including liquid and solid wastes.
  - f. Method of revegetation.
4. The applicant may be required to post a surety performance bond in an amount to be determined by the County Commission to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years

after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.

5. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the special use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Planning Commission.
6. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.

## **CHAPTER 5.22 WIND ENERGY SYSTEM (WES) REQUIREMENTS**

### **Section 5.22.01 Purpose**

The purpose of this ordinance is to insure 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 5.22.02 Applicability**

The requirements of these regulations shall apply to all WES facilities except private facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

### **Section 5.22.03 Federal and State Requirements**

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

## **Section 5.22.04 General Provisions**

### **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 WES.
- 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 during all phases of the project's life.
- e. **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. **Roads**
  - i. **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. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
  - ii. 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 of such arrangements upon request of the County.
  - iii. **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. When access roads are constructed across streams and drainageways, 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.



- iv. 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.
- v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.
- vi. 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. 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 revegetation plan 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 barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

## 2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing off-site residences, businesses, churches, and buildings owned and/or maintained by a governmental entity shall be at least one thousand (1,000) feet. Distance from on-site or lessor's residence shall be at least five hundred (500) feet. Distance to be measured from the wall line of the neighboring principal building to the base of the WES tower.
  - b. Distance from centerline of public roads shall be at least five hundred (500) feet or one hundred ten percent (110%) the height of the wind turbine, whichever distance is greater, measured from the ground surface to the tip of the blade when in a fully vertical position.
  - c. Distance from any property line shall be at least five hundred (500) feet or one hundred ten percent (110%) the height of the wind turbine, whichever distance is greater, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.
  - d. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the adjoining landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Register of Deeds.
- ## 3. Electromagnetic Interference.
- The permittees shall not operate the WES 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 WES 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. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
5. **Turbine Spacing.** The turbines shall be spaced no closer together than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a string. If required during final micro siting of the turbines to account for topographic conditions, up to ten (10) percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
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 be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. **Collector Lines.** Collector lines are the conductors of electric energy from the Wind Energy System to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. **Feeder Lines.** Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.
9. **Decommissioning/Restoration/Abandonment**
  - a. **Cost Responsibility.** The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

- b. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (d) below. The plan shall include the estimated decommissioning cost per turbine and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
  - c. Financial Assurance. After the tenth (10<sup>th</sup>) year of operation of a WES 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 WES facility.
  - d. Site Restoration. The decommissioning of the WES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead collector and feeder lines, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
  - e. Failure to Decommission. If the WES 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 the bond. 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 WES facility.
10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
12. Towers.
- a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
  - b. All towers shall be singular tubular design.

13. Noise. Noise level shall not exceed fifty (50) dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.
14. Permit Expiration. The permit shall become void if no substantial construction has been completed within two (2) years of issuance.
15. Required Information for Permit.
  - a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
  - b. Map of easements for WES.
  - c. Affidavit attesting that necessary easement agreements with landowners have been obtained.
  - d. Map of occupied residential structures, businesses, churches and buildings owned and/or maintained by a governmental entity.
  - e. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines to be submitted sixty (60) days prior to construction.
  - f. Proof of right-of-way easement for access to utility transmission lines and/or utility interconnection.
  - g. Location of other WES in general area.
  - h. Project schedule.
  - i. Mitigation measures.
  - j. Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation shall be included in the application.
  - k. Final haul road agreements to be submitted sixty (60) days prior to construction.

## **CHAPTER 5.23 WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES**

### **Section 5.23.01 Purpose**

The general purpose of this Section is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County.

Specifically, the purposes of this Ordinance are:

1. To regulate the location of Towers and Telecommunications Facilities in the County;
2. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
3. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;

4. To promote and encourage shared use/co-location of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
5. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
6. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
7. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

### **Section 5.23.02 Definitions**

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

### **Section 5.23.03 Development Of Towers**

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Hamlin County mount law-enforcement or public safety communications apparatus.
3. An Application to develop a Tower shall include:
  - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
  - b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
  - c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half ( $\frac{1}{2}$ ) mile radius of the proposed new Tower site, including County-owned property.

- d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
  - e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or co-locate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or co-locate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially unreasonable.
  - f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or co-located on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.
  - g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
  - h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
  - i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
  - j. The FCC has sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.
  - k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the

reasons for approval or denial.

#### **Section 5.23.04 Setbacks**

1. All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
2. Towers in excess of one hundred (100) feet in height shall meet the following:
  - a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
  - b. Distance from public right-of-way shall be one and one-half (1 1/2) times the height of the tower.
  - c. Distance from any property line shall be one and one-half (1 1/2) times the height of the tower.
3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
4. Setback requirements may be modified, as provided in, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

#### **Section 5.23.05 Structural Requirements**

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the Building Code, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

#### **Section 5.23.06 Separation or Buffer Requirements**

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower.

Proposed Towers must meet the following minimum separation requirements from existing towers or towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance:

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.

### **Section 5.23.07 Method Of Determining Tower Height**

Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

### **Section 5.23.08 Illumination**

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

### **Section 5.23.09 Exterior Finish**

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

### **Section 5.23.10 Modification Of Towers**

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
  - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
  - b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
  - c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.

### **Section 5.23.11 Certifications And Inspections**

1. All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of this ordinance and all other construction standards set forth by federal and state law. For new monopole Towers, such certification shall be submitted with



an Application pursuant to of this Ordinance and every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to this Ordinance and every two (2) years thereafter. The Tower owner may be required by the County to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized.

The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.

The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

#### **Section 5.23.12 Maintenance**

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
4. The property in which Towers, Telecommunications Facilities, and Antenna Support Structures are situated shall be maintained in a manner to control noxious weeds.
5. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.
6. All Towers shall maintain compliance with current RF emission standards of the FCC.
7. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

#### **Section 5.23.13 Criteria For Site Plan Development Modifications**

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a conditional use in accordance with the following:
  - a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:

- i. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
  - ii. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
  - iii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.
  - iv. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for co-location, and the result of such attempts.
  - v. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
2. The Board of Adjustment shall consider the Application for modification based on the following criteria:
- a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
  - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
  - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.
3. In addition to the requirements of subparagraph (2) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:
- a. In the case of a requested modification to the setback requirement, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.
  - b. In the case of a request for modification of the separation and buffer requirements from residential use of land of, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.

- c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
  - i. Facilitate co-location of Telecommunications Facilities in order to avoid construction of a new Tower; or
  - ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

#### **Section 5.23.14 Abandonment**

1. If any Tower shall cease to be used for a period of 365 consecutive days, the Planning Commission shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Planning Commission that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Planning Commission shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.
2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

#### **Section 5.23.15. Action of the Board of Adjustment.**

1. Hamlin County shall approve or deny an application for collocation within ninety (90) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
2. Hamlin County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

## CHAPTER 5.24 AGRICULTURAL EASEMENT

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural, Lake Park and Planned Residential Districts.

Prepared by:

Hamlin County Zoning Officer (or by Grantor or Grantor's Attorney)  
Zoning Officer Address (or Grantor's or Grantor's Attorney's address)  
Madison, SD 57042 (or Grantor's or Grantor's Attorney's city)

### MODEL EASEMENT

1. Purpose. This easement is required in the Agricultural District.
2. Easement.

("Grantors") are the owners of real property described as follows:

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In accordance with the conditions set forth in the decision of Hamlin County, dated \_\_\_\_\_, 20\_\_\_\_, approving a permit for a dwelling on the above described property, and in consideration of such approval, Grantors grant to the owners of all property adjacent to the above described property, a perpetual nonexclusive easement as follows:

- a. The Grantors, their heirs, successors, and assigns acknowledge by the granting of this easement that the above described property is situated in an agricultural area and may be subjected to conditions resulting from commercial agricultural operations on adjacent lands. Such operations include the cultivation, harvesting, and storage of crops and livestock raising and the application of chemicals, operation of machinery, application of irrigation water, and other accepted and customary agricultural activities conducted in accordance with Federal and State laws. These activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Grantors hereby waive all common law rights to object to normal and necessary agricultural management activities legally conducted on adjacent lands which may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby grant an easement to adjacent property owners for such activities.
- b. Nothing in this easement shall grant a right to adjacent property owners for ingress or egress upon or across the described property. Nothing in this easement shall prohibit or otherwise restrict the Grantors from enforcing or seeking enforcement of statutes or regulations of governmental agencies for activities conducted on adjacent properties.

This easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third party enforcement of this easement.

IN WITNESS WHEREOF, the Grantors have executed this easement on \_\_\_\_\_, 20\_\_\_\_.

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Signature, Grantor

STATE OF SOUTH DAKOTA

SS:

COUNTY OF HAMLIN

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ (Grantors).

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## CHAPTER 5.25 CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS

### Section 5.25.01 Intent

An adequate supply of 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's environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

### Section 5.25.02 Animal Units

Animal species and number of a species required to equal 500, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.

#### **EQUIVALENT NUMBER OF A SPECIES TO EQUAL:**

<u>ANIMAL SPECIES</u>	<u>500 AU</u>	<u>1,000 AU</u>	<u>2,000 AU</u>	<u>ANIMAL UNIT EQUIVALENT SPECIES/AU</u>
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	357 hd	700 hd	1,400 hd	1.43
Finisher Swine (over 55 lbs)	1,250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	135 hd	270 hd	540 hd	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	1,064 hd	2,130 hd	4,260 hd	0.47
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,800 hd	55,000 hd	110,000 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,000 hd	60,000 hd	0.033
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

### **Section 5.25.03 Classes of Concentrated Animal Feeding Operations**

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

#### **ANIMAL UNITS**

Class A	1,000 or more	
Class B	500 to 999	
Class C	50 to 499	(Potential water pollution hazard)
Class D	10 to 499	(No pollution hazard)

### **Section 5.25.04 Concentrated Animal Feeding Operation Permit Requirements**

Owners of Class A, Class B, and Class C Concentrated Animal Feeding Operations are required to complete a permit application whenever any of the following occur:

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. A cumulative expansion by 500 animal units, after September 8, 1997, of existing concentrated animal feeding operation that does not have a permit.
4. A change in ownership of a Class A concentrated animal feeding operation that does not have a permit. This requirement does not apply if the transfer of ownership is between family members with one degree of consanguinity. Permitted operations may transfer permits to new owners after new owners sign the letter of assurances that was approved with the permit.
5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received and documented by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.
7. Class C may receive preliminary approval from the Board of Adjustment based on site location criteria (to include but not to be limited to type of construction, location of aquifer, nearest residences, communities, wind patterns, condition of roads, available infrastructure, etc.) Final approval will be given after submission and approval of a nutrient management plan, manure management and operation plan, and management plan for fly and odor control. Preliminary approval of site shall expire after one (1) year.

### **Section 5.25.05 Concentrated Animal Feeding Operation Control Requirements**

1. No Significant Contribution of Pollution

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

## 2. State General Permit

Class A Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County permit may be approved conditioned on receiving a State permit.

Classes B and C Concentrated Animal Feeding Operations will be required to obtain a State General Permit or approval from NRCS National Resource Conservation Service if the following occur:

- a. If an earthen storage basin or lagoon is used for manure storage.
- b. The Board of Adjustment decides potential environmental impacts dictate a State permit.

## 3. Nutrient Management Plan.

- a. Classes A, B, and C Concentrated Animal Feeding Operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.
- b. The Nutrient Management Plan is a conservation system for your animal feeding operation. It describes practices and management activities on how to best utilize animal manure as a fertilizer resource while protecting surface and groundwater. The plan deals specifically with managing the amount, source, placement, and timing of the application of manure nutrients to the land. The use of other nutrient sources (i.e. commercial fertilizer) also must be taken into account when planning manure applications. All nutrient management plans developed must meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standard (590) and all applicable DENR and Hamlin County Zoning Standards.
- c. A base nutrient management plan must be developed and approved as follows:
  - i. Class A CAFO – Nutrient Management Plan required with review and approval of DENR and Hamlin County Board of Adjustment.
  - ii. Class B and C CAFO - Nutrient Management Plan required for all new and expanding operations with review and approval of DENR or NRCS and Hamlin County Board of Adjustment.
  - iii. Class D - Nutrient Management Plan not required unless Hamlin County Board of Adjustment deems necessary in which case the plan must be reviewed by DENR or NRCS and Hamlin County Board of Adjustment.



- d. The following information is the minimum that will be included within any nutrient management plan submitted for approval.
  - i. Nutrient Management Plan Spreadsheets and Corresponding Field Maps
    - a. SD NRCS-CPA-7
    - b. Aerial Map should show field boundary, acres in field, and field ID
  - ii. Soil Survey Maps and County Crop Yield Tables
    - a. Soil map units that are highly erodible or have a high leaching potential should be avoided.
  - iii. Site Assessment and Land Treatment Information
    - a. Nitrate Leaching Matrix
    - b. Any fields in Zone A or B of shallow aquifer must be identified
    - c. Nitrogen Management Practices
    - d. Vulnerability for Phosphorus Loss to Shallow Water
    - e. Phosphorus Management Practices
    - f. NRCS SD-CPA-29 (Soil Loss Estimate Calculations)
  - iv. Manure Application Lease Agreements (On All Land Not Owned). Land spreading agreements (for 5-year plan) shall be provided if applicant does not have minimum acreage to apply animal manure.
  - v. Livestock Feed Management (Optional)
    - a. Plan to reduce nutrients in animal excretion.
  - vi. Odor and Insect Pest Control
  - vii. Holding Pond Pumping Plan
  - viii. Record keeping
    - a. Soil Sample Test Results
    - b. Manure Sample Test Results
    - c. Manure Application Records
    - d. Commercial Fertilizer Application Records
  - ix. Manure Application Planning
    - a. Schedule of fields that will receive manure application and planned amount of manure application by year.
    - b. Worksheets and Instructions to Calculate Manure Application Rates should include worksheets for each field whenever manure is applied.

d. Required follow up for all approved nutrient management plans:

- i. All fields included in plan will be soil tested at least one (1) time every three (3) years.
- ii. Manure samples must be taken at least one (1) time per year or whenever manure from lagoon or lots is applied.
- iii. A copy of all record keeping will be provided to the Hamlin County Zoning Officer every five (5) years or whenever requested.
- iv. All lease agreements for manure application must be kept up-to-date and if agreements are not renewed new land must be found to replace acres.
- v. Any changes to original nutrient management plan must be filed and approved by the Hamlin County Zoning Officer with concurrence from DENR or NRCS.

4. Manure Management and Operation Plan

Classes A, B, and C Concentrated Animal Feeding Operations shall submit a Manure Management and Operation Plan.

a. Plan must include:

- i. The location and specifics of proposed animal manure facilities.
- ii. The operation procedures and maintenance of manure facilities.
- iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Waste treatment facilities will require inspection by an engineer and as-built plans to be submitted to the County Zoning Officer.
- iv. Animal manure shall not be stored longer than two (2) years unless approved by Board of Adjustment.
- v. Manure containment structures shall provide for a minimum design volume of 270 days of storage
- vi. Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields.
- vii. As a condition of the permit, the County Board of Adjustment may require the producer to participate in environmental training programs and become a certified livestock manager.

## 5. Management Plan for Fly and Odor Control

Classes A, B, and C Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The County Board of Adjustment will review the need for control measures on a site specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors should be considered in a management control plan.

- a. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.
- b. Methods to be utilized to dispose of dead animals should be included in the management plan.
- c. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.
- d. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
- e. Remove manure from open pens as frequently as possible to minimize odor production.
- f. Consider use of covers on open storage systems for liquid manure systems to reduce odor production.
- g. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.
- h. Store solid manure in containment areas having good drainage to minimize odor production.

6. Required Setbacks and Separation Distance for New Concentrated Animal Feeding Operations and those Expanding by 500 or More Animal Units after September 8, 1997.

**REQUIRED MINIMUMS**

	<b>CLASS A</b>	<b>CLASS B</b>	<b>CLASS C &amp; D</b>
Established Residences, Churches and Commercially Zoned Areas, Planned Residential Districts	2,640 feet	1,760 feet	1,320 feet
Incorporated Municipality Limits, Schools, Town Districts and Lake Park Districts	10,560 feet plus 440 feet for each addnl 1000 AU over 2000	10,560 feet	1,320 feet
Private Wells other than the operator	2,640 feet	1,760 feet	1,320 feet
Lakes and Streams classified as Fisheries as identified by the State	500 feet	500 feet	200 feet
Federal, State & County Road ROW Confinement	300 feet	300 feet	200 feet
Federal, State & County Road ROW Open Lot	150 feet	150 feet	50 feet
Township Road ROW Confinement	150 feet	150 feet	150 feet
Township Road ROW Open Lot	150 feet	150 feet	50 feet

7. Exemptions to Separation Distance Requirements

Concentrated Animal Feeding Operation will not be reviewed for separation distance when the following apply:

- a. A Concentrated Animal Feeding Operation constructed prior to September 8, 1997, which does not comply with the recommended distance separation, which continues to operate, but is not expanded by more than 500 animal units.
- b. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefiting from the recommended distance separation executes a written waiver with the title holder of the land where the structure is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The benefited land is the residence, commercial enterprise, bonafide religious institution, educational institution from which separation is recommended.

- c. A Concentrated Animal Feeding Operation constructed or expanded closer than the recommended separation distance within the corporate limits of a city, if the incorporated community approves a waiver which shall be stated in writing. The written waiver becomes effective only after recording with the Register of Deeds.
- d. A Concentrated Animal Feeding Operation structure which is located within any distance from an educational institution, commercial enterprise, bonafide religious institution, incorporated community, if the educational institution, commercial enterprise or bonafide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.
- e. Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum recommended setbacks and separation distance on a site specific review, based on one or more of the following considerations.

- i. Considerations To Increase Setbacks And/or Separation Distances

- 1. A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern.
- 2. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
- 3. A Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

- ii. Considerations To Decrease Setbacks And Separation Distances.

An existing Concentrated Animal Feeding Operation proposes to expand but does not meet suggested setback or separation distances, the Board of Adjustment may reduce suggested setbacks and separation distances after:

- 1. Review of past management practices and proposed improvements to waste handling facilities.
- 2. Due to the type of waste handling and management of the CAFO little or no impact on adjacent property is expected.
- 3. Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected.
- 4. Due to the limited number of animal units no adverse impacts are expected.

## 8. Manure Application Setbacks

- a. The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

### **COUNTY MANURE APPLICATION SETBACKS**

<u>CATEGORY</u>	<u>SURFACE OR IRRIGATION APPLIED</u>	<u>INCORPORATED OR INJECTED</u>
Lake, Rivers and Streams Classified as Fisheries	300 feet	100 feet (lake)* 50 feet (river & stream)*
Streams and Lakes classified as Drinking Water Supplies	1000 feet	300 feet*
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	10 feet from right-of-way
Area of 10 or more Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1000 feet	1000 feet
Private Shallow Wells	250 feet	250 feet
A Residence other than the Operator	300 feet (surface)** 1,000 feet (irrigation)	300 feet
Natural or Manmade Drainage	200 feet	50 feet

\* From normal high water mark

\*\*Injected within 24 hours

- b. The County Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- c. Requests for application of liquid manure by means of irrigation shall require a conditional use permit.

## 9. Standards for Conditional Uses

- a. The County Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- b. The County Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- c. Conditional uses shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

- d. When considering an application, the County Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
- e. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the Zoning Officer and signed by both the applicant and the Zoning Officer. The permit for the Concentrated Animal Feeding Operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of the regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. Permit applicants will be notified by registered mail and a hearing before the Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.
- f. Permit applicants for a Class A Concentrated Animal Feeding Operation shall be responsible for notifying all property owners within one mile of a proposed Class A operation. Notice shall be mailed ten days prior to the public hearing by the Board of Adjustment by certified mail. The notice shall provide the adjoining landowners with information on the proposed operation along with the date and time of hearing. Documentation of mailing shall be provided to the Zoning Officer.

10. Information Required for Class A Concentrated Animal Feeding Operation Permit.

- a. Legal descriptions of site and site plan.
- b. Number and type of animals.
- c. Nutrient management plan.
- d. Manure management and operation plan.
- e. Manure management and operation plan.
- f. Management plan for fly and odor control.
- g. Information on ability to meet designated setback requirements including site plan to scale.
- h. General permit from South Dakota Department of Environment & Natural Resources if available for animal species.
- i. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources.
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.
- l. Any other information as contained in the application and requested by the County Zoning Officer.

11. Information Required for Class B and C Concentrated Animal Feeding Operation Permit.

- a. Owner's name, address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. Nutrient management plan.
- e. Manure management and operation plan.
- f. Management plan for fly and odor control.
- g. Information on ability to meet designated setback requirements, including site plan to scale.
- h. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.
- i. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- j. Notification of whomever maintains the access road (township, county and state). Notification of public water supply officials.
- k. Any other information as contained in the application and requested by the County Zoning Officer.

**CHAPTER 5.26. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).** The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. 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 hundred ten percent (110%) the system height, unless written permission is granted by the affected entity.
3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.



4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.
5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

#### **CHAPTER 5.27 WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural Zoning District which is located within one-half mile of an existing concentrated animal feeding operation the Agricultural Zoning District (See 3.04.03.9.b)

Prepared by:

Hamlin County Zoning Officer (or by Grantor or Grantor's Attorney)  
 Zoning Officer Address (or Grantor's or Grantor's Attorney's address)  
 Madison, SD 57042 (or Grantor's or Grantor's Attorney's city)

#### **WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See 3.04.03.9.b)

1. Purpose. This waiver is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Hamlin County Zoning Ordinance.
2. Waiver:

("Grantors") are the owners of real property described as follows:

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In accordance with the conditions set forth in the decision of Hamlin County, dated \_\_\_\_\_ 20\_\_\_\_, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation located at the following property, \_\_\_\_\_ and in consideration of such approval, Grantors agree to the perpetual non-exclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation. This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Hamlin County Zoning Ordinance.
2. Further, the grantors hereby waive all common law rights to appeal any decision of Hamlin County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, \_\_\_\_\_, 20\_\_

Grantors (Print)\_\_\_\_\_

Grantors (Signature) \_\_\_\_\_

STATE OF SOUTH DAKOTA

SS:

COUNTY OF LAKE

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_  
(Grantors).

\_\_\_\_\_  
**Notary Public**

My Commission Expires: \_\_\_\_\_

**CHAPTER 5.28. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; AND CONCRETE AND ASPHALT MIXING PLANTS REQUIREMENTS.**

1. The site meets the requirements of the State Department of Environment and Natural Resources.
2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells, etc.
  - f. A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).

- g. The applicant may be required to provide information regarding how potential air, noise, and water pollution would be minimized.
- 3. Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) feet of a residence. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. The exception to this standard would apply to residences owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants.
- 4. Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred fifty (150) feet from any public right-of-way.

**CHAPTER 5.29. SANITARY LANDFILLS, RUBBLE SITES, COMPOSTING SITES, WASTE TIRE SITES, AND RESTRICTED USE SITES REQUIREMENTS.**

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.
- 2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells, etc.
  - f. A minimum of one thousand (1,000) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence; excluding: the residence of the landfill operator.

**CHAPTER 5.30. DOMESTIC SANITARY SEWER TREATMENT PLANT/FACILITY REQUIREMENTS.**

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.
- 2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, and depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

- e. Proposed monitoring wells, etc.
- f. No sewage treatment plant/facility will be allowed within one thousand (1,000) feet from the property line of the sewage treatment plant/facility to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator

#### **CHAPTER 5.31. JUNKYARDS/SALVAGE YARDS REQUIREMENTS,**

1. Storage for junkyards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.
2. Junkyards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
3. No junkyards will be allowed within one thousand (1,000) feet from the property line of the junkyard/salvage yard to the nearest residence; excluding: the residence of the junkyard/salvage yard operator.
4. All junkyards must have a minimum lot of ten (10) acres.

#### **CHAPTER 5.32. SHORELINE ALTERATIONS, FILLING, GRADING, LAGOONING AND DREDGING**

These regulations shall apply to the CN, LP-1, and LP-2 Districts. These regulations are deemed necessary along the shores of natural waters to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland.

##### **1. Removal of Shore Cover**

Tree and shrub cutting in a strip paralleling the shoreline and extending twenty-five (25) feet inland from all points along the high water mark, or as determined by the Board of Adjustment shall be limited in accordance with the following provisions:

- a. Cutting shall leave sufficient cover to screen cars, dwellings, and accessory structures, except boathouses, as seen from the water, to preserve natural beauty and to control erosion.
- b. Trees and natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
- c. The removal of trees and natural shrubbery and its replacement shall require the granting of a permit by the Zoning Official. Application for such permit shall be accompanied by a plan showing the work to be accomplished. The granting of such permit shall be conditional upon a contract requiring the applicant to give to the Zoning Official, within one (1) year after the date of grant, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

## 2. Filling, Grading, Lagooning and Dredging

- a. Filling, grading, lagooning or dredging which would have a negative impact on adjoining property owners, or result in substantial detriment to natural waters by reason of erosion, sedimentation or impairment of fish and aquatic life is prohibited.
- b. Filling, grading, lagooning or dredging may require review from the Corps of Engineers, US Fish and Wildlife and/or any other applicable Federal, State or Local agencies.

### **CHAPTER 5.33. BED AND BREAKFAST REGULATIONS**

1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.
2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than two (2) square foot in area.
4. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four bedrooms in such dwelling structure shall be used for such purpose.
5. Off-street parking requirements shall be one space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.
6. The length of stay shall not exceed fourteen (14) days during any one hundred twenty-- (120) day consecutive period.
7. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.
8. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.

### **CHAPTER 5.34. HOME OCCUPATION REGULATIONS**

1. No person other than 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 of residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home 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 to exceed two (2) square feet in area, non-illuminated;
4. No home occupation shall be conducted in any accessory building.
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such home occupation shall be provided off the street and other than in a required front yard;
6. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
7. There is no commodity sold upon the premises, except that which is prepared on the premises in connection with such occupation or activity;