TITLE 1 SHORT TITLE

Chapter 1 Short Title

1.1 This Ordinance may be known and may be cited and referred to as "The Zoning Ordinance of Marshall County, South Dakota," to the same effect as if the full titles were stated.

TITLE 2 DEFINITIONS

Chapter 2 Definitions

2.1 **Definitions.** 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", 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.

2.2 **Accessory Buildings and Uses. Or Accessory Use or Structure**. A subordinate building or portion of the principal building, the use of which is incidental to and customary in connection with the principal building or the main use of the premises and which is located on the same lot with such principal building or use. An accessory use is a use which is incidental to the main use of the premises.

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 includes intensive agricultural activities such as concentrated animal feeding operations but not commercially based agribusiness activities.

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.

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

Alter or Alteration. Any change, addition or modification in construction.

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

Animal Manure. Poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.

Animal Unit. (See Appendix B).

Antenna Support Structure. Means any building or structure other than a tower which can be used for location of Telecommunications Facilities.

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

Application. The process by which the applicant submits a request to use, 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 Marshall County concerning such a request.

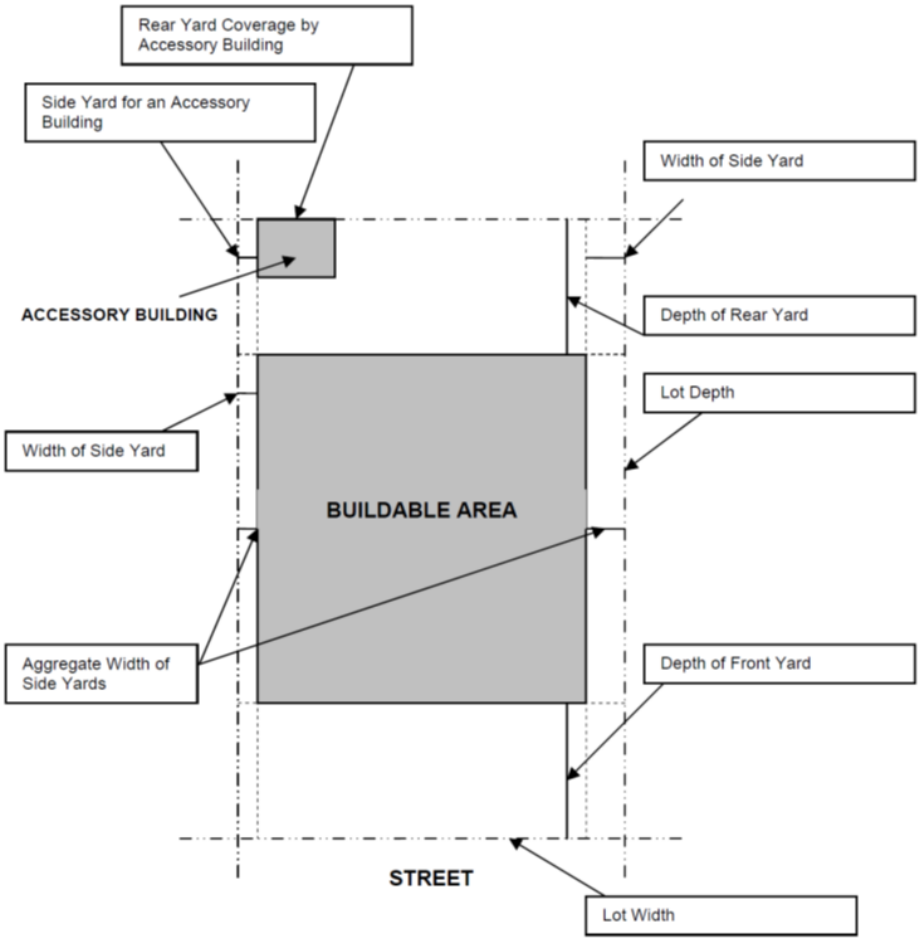
Approach. A public or private roadway or driveway connection between the outside edge of the shoulder or curb line and the right-of-way line of a public or county road, intended to provide vehicular access to, from, or across said public or county road and the adjacent or adjoining property.

Aquifer. A geologic formation, group of formations or part of a formation capable of storing and yielding groundwater to wells or springs.

Board of County Commissioners. The governing body of Marshall County.

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. (See illustration below).

Buildable Area Illustration



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. A principal building including covered porches and paved patios is a building which is of primary use. In any residential district, any dwelling shall be deemed to be the principal building on the lot.

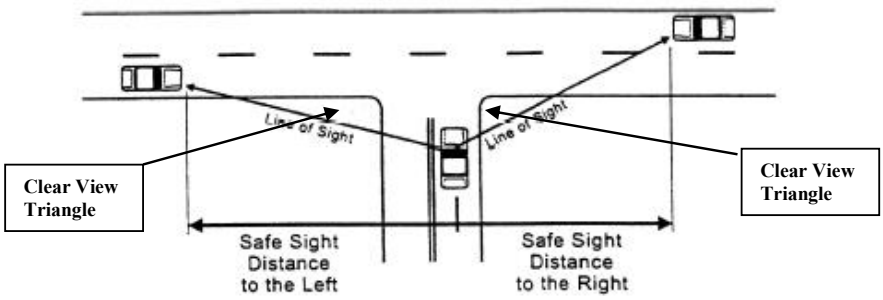
Campground. A commercial recreation facility open to the public, for a fee, upon which two (2) or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters.

Change in Operation. A cumulative increase of more than 300 animal units, after February 1, 1997, which are confined at an unpermitted Concentrated Animal Feeding Operation.

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.

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). A clear view triangle is formed by measuring the area formed by the intersection road right-of-way lines and a straight-line connecting point on said road right-of-way line at a prescribed distance.

Clear View Triangle Illustration



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.

Common Ownership. A single, corporate, cooperative, joint tenancy, tenancy in common or other joint operation venture.

Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of Marshall County.

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 forty-five (45) days or more during any twelve (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 (2) or more animal feeding operations under common ownership are considered a 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 land application of manure. For full definition and regulations, (See Appendix B).

Conditional Use. A conditional use is any use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district. Conditional uses are subject to the evaluation and approval by the Board of Adjustment and are administrative in nature.

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

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.

Quantity Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.

District, Zoning. A section of the county and/or municipalities for which the regulations governing the construction and location of buildings and occupancy of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

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

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.

Dwelling, Multiple-Family. A residential building designed for or occupied by two (2) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

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

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.

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

Erosion. The process of the gradual wearing a way of land masses.

Essential Public Services. Overhead or underground electrical, gas, petroleum products (i.e., gas, natural gas, oil), 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, main drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.

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.

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

Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household 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.

Farm. An area with or without a 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 all of the foregoing farm products and animals are raised for income. 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.

Farm Unit. All buildings and structures needed in agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm and other family members.

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.

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 materials and is used as a barrier of some sort. See CHAPTER 14.7.

Filling. Filling in low-lying ground with soil.

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.

Garage, Private. An accessory building used for the storage of vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, trailers, and boats. No more than 4 vehicles.

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Marshall County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

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.

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

Haul Road - means a road constructed for the principal purpose of hauling construction materials, or to provide access to one or more construction sites or industrial operations.

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 fires 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.

Height of Building. The vertical distance from the established average sidewalk grade or street grade, or finished grade at the building line, whichever is the highest, to the highest point of the building.

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, or point one (1) foot above where permanent vegetation begins, 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.

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

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

2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. No more than 30 percent of the floor area is allowed for such occupation.

3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding TWO SQUARE FEET in area, non-illuminating and mounted flat against the wall of the principal building.

4. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.

5. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot.

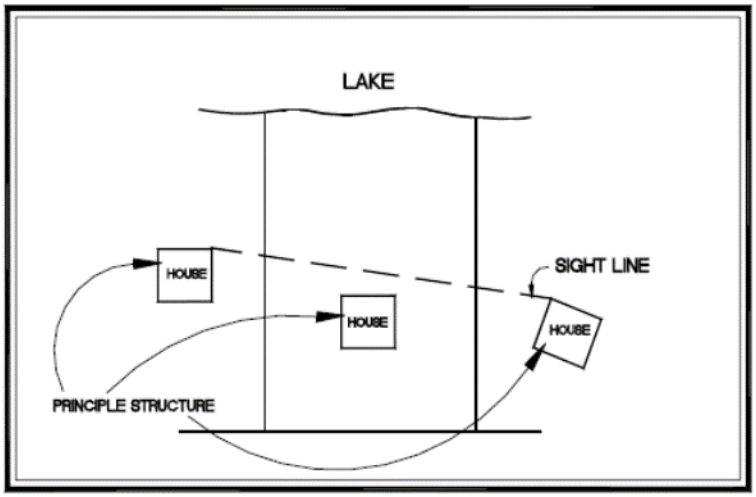
Horticultural Services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Junk Yard. The use of more than fifty (750) square feet of any land, building, or structure, whether for private or commercial purposes, or both, where waste, discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same.

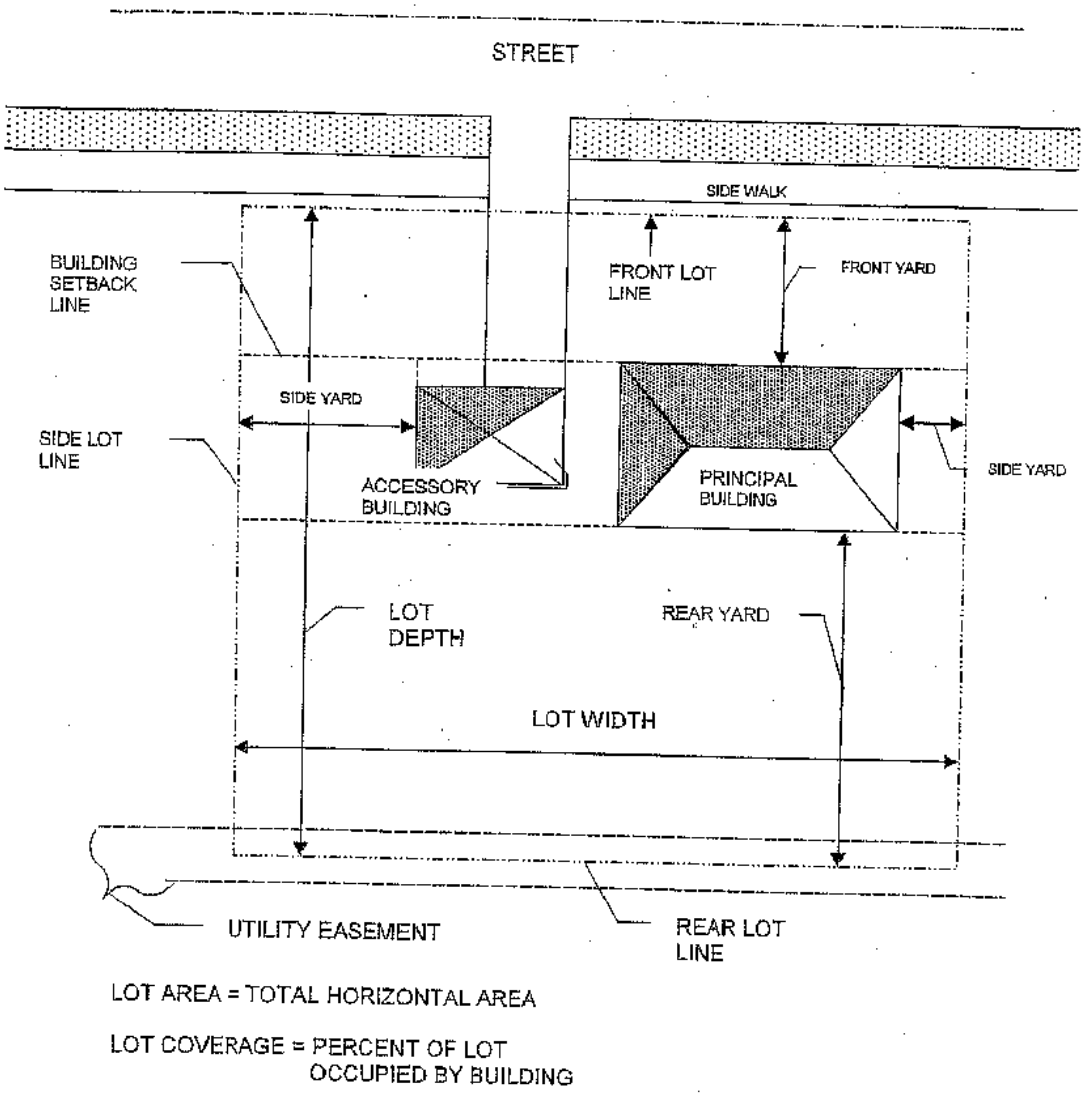
Kennel. Any premise or portion thereon where dogs, cats, or other household pets are bred, raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

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

Line of Sight. A line across the width of a lake lot which connects the point closest to the lake on the edge of the principal structure on either side of the lot or parcel of land upon which proposed structure is to be constructed. See illustration below.



Livestock Sales 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.



LOT TERMS

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

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

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

Lot Measurements.

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

2. WIDTH – of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot.

Lot of Record. A 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.

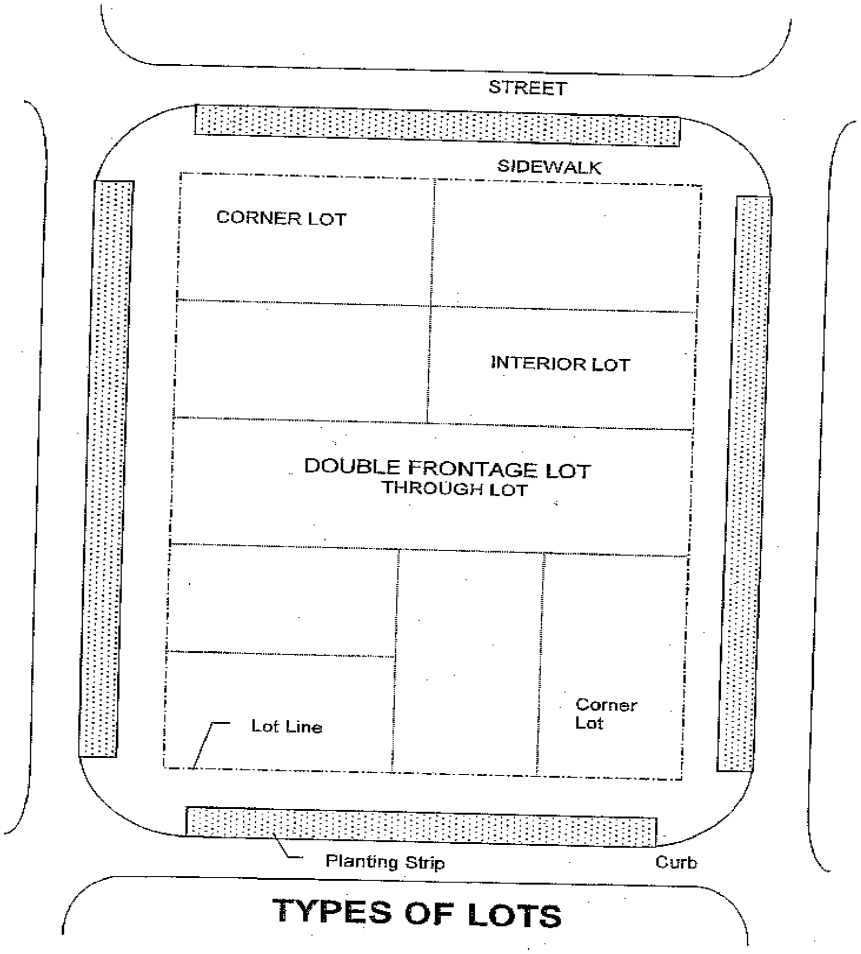
Lot Types. Any lot within the jurisdiction of this Ordinance shall be one of the following types:

1. Corner Lot. A corner lot is defined as a lot located at the intersection of two or more streets. A lot abutting a curved street will be considered a corner lot if the interior angle of the side lot lines are less than 135 degrees.

2. Interior Lot. An interior lot is defined as a lot other than a corner lot with only one frontage on a street.

3. Through Lot/Double Frontage Lot. A through lot is defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Lot width. The mean horizontal distance between side lot lines measured at right angles to the lot depth.



TYPES OF LOTS

Manure. Manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

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 are 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.

Milling. The processing or enhancing of a mineral.

Meteorological Tower. A structure used to collect meteorological data, including wind data and/or weather conditions.

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.

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.

Mobile Home. A detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. A travel trailer is not to be considered as a mobile home. This definition also includes prefabricated, precut residences or those manufactured in sections or parts away from the site and transported thereto for erection, provided that when completely erected, said residences are on a permanent foundation and in all respects comply with the current regulations stated in the Uniform Building Code (See Appendix A).

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

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.

Nonconforming Building or Structure or Use. Any building or use of land, land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendment.

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.

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.

Owner. Means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County.

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.

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.

Permit. A permit required by these regulations unless stated otherwise.

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

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

Potential Pollution Hazard. A Concentrated Animal Feeding Operation of 10 to 300 Animal Units may be classified as a Class D Operation by the County Zoning Officer when a Potential Pollution Hazard exists. Factors to be considered by the County 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 sitting over a Shallow Aquifer or drainage which contributes to the Waters of the State.

Principal Building. The structure in which the principal use of the lot is conducted. For Example, a dwelling on a residential lot.

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

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.

Process Generated Wastewater. Water directly or indirectly used in the operation of a Concentrated 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.

Process Wastewater. 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 Concentrated Animal Feeding Operation. The term includes runoff from an open lot.

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

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.

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.

Retail Sales and Service. 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.

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

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

Service Station, Automobile. 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.

Setback. The setback of a building and/or shelterbelt is the minimum horizontal distance between street or property line and the front line of the building or any projection thereof, except cornices and unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 ½) feet from the building and not more than fifty (50) square feet in area, and which do not extend above the first story of the building.

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.

Sewage Disposal Regulations. It is the responsibility of the landowner to conform to State and Federal sewage disposal regulations. The landowner must contact the Department of Environment and Natural Resources (DENR) for the proper regulations.

Shall. Shall means that the condition is an enforceable requirement of this regulation.

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 and 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.

Shallow Well. A well which is located in a Shallow Aquifer.

Shelterbelt. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, with each tree separated by a distance of forty (40) feet or less. Ornamental and/or shade trees, generally used in front yards and spaced further than fifteen (15) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Shelterbelts shall comply with Section 14.8.

Should. Means that the condition is a recommendation. If violations of this regulation occur, the County will evaluate whether the party implemented the recommendations contained in this regulation that may have helped the party to avoid the violation.

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.

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.

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.

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.

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

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 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.

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

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.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Plan of Marshall County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Plan of Marshall County, South Dakota.

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

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.

Structurally Altered. 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.

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.

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.

Tower. Means 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, or meteorological towers.

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.

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.

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

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

Utility (in reference to Wind Energy Systems). Any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor-owned utility, cooperatively owned utility, and a public or municipal utility.

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 nonconforming in the zoning district or uses in an adjoining zoning district.

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.

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

Waters of the State. Means 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.

Wetlands. Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WIND ENERGY SYSTEM (WES); Full definition and regulations found in Appendix D.

WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES; Full Definition and Regulations found in Appendix E.

Yard. An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line. 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. (See Front, Side, and Rear Yard Illustration Below) A required open space unoccupied and unobstructed by any structure or portion of a structure from thirty (30) inches above the grade of the lot upward.

Yard, Front. A yard extending across the front of a lot between the side yard 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. (See Front, Side, and Rear Yard Illustration Below)

Yard, Rear. A yard across the whole width of a lot, extending from the rear line of the building to the rear line of the lot. (See Front, Side, and Rear Yard Illustration Below)

Yard, Side. A yard between the building and the adjacent side line of the lot which separates it from another lot, extending from the front lot line to the rear yard. (See Front, Side, and Rear Yard Illustration Below) Front, Rear and Side Yard Illustration

Yard, Corner Lots. In the case of corner lots which do not have reversed frontage, a front yard of the required depth shall be provided in accordance with the prevailing yard pattern and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of reversed frontage corner lots, a front yard of required depth shall be provided on either frontage, and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of corner lots with more than two (2) frontages, the administrative official shall determine the front yard requirements, subject to the following limitations:

1. At least one front yard shall be provided having the full depth required generally in the district; and

2. No other front yard on such lot shall have less than half the full depth required generally.

Depth of required front yards shall be measured at right angles to a straight line joining the fore most points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be parallel.

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

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

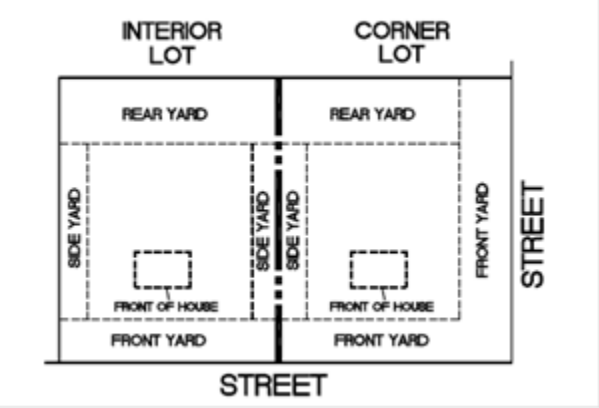
Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by the district regulations with its inner edge parallel with the side lot line.

Yard, Rear. A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

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

Yard, Special. A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed to perform like functions as a side yard, but next to a lot line so located or oriented that neither the term side yard nor the term rear yard clearly applies. In such cases, the administrative official shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be placed to the adjoining lot(s), with due consideration to the orientation and placement of structures and buildable areas thereon.

Front, Rear and Side Yard Illustration



Zoning Administrator. The individual(s) appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

TITLE 3 JURISDICTION

Chapter 3 Jurisdiction

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

The provisions of this ordinance shall be acted on jointly by Marshall County and Britton City, as well as the respective governing bodies (in applicable cases) in an area as follows not within the Britton corporate limits: Miller Township T127—R58 Sections 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36. In Pleasant Valley Township T127—R57 Sections 18, 19, 30 and 31.

3.2 Provisions of This Ordinance Declared to be Minimum Requirements. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. All provisions of this ordinance, must at a minimum, be met in all circumstance. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rule, ordinance, or Board of Adjustment decision, the most restrictive or that imposing the higher standards, shall govern.

TITLE 4 OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

Chapter 4 Official Zoning Map and Boundary Interpretation

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

4.2 Zoning Map Changes. If, in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matter portrayed 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. The minutes of the Board of Commissioners Meeting and the Planning Commission Meeting must reflect the DATE, CHANGES MADE, and DESCRIPTION OF THOSE CHANGES.

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

Any unauthorized change to the Official Zoning Map made by any person or persons shall be considered a violation of this ordinance and punishable as provided under Section 21.2.

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

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

"This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted _____ (date of adoption of old Map) as part of Resolution #____ of Marshall County, South Dakota".

4.4 Rules for Interpretation of District Boundaries. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines;

2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

3. Boundaries indicated as approximately following City limits shall be construed as following such limits;

4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

5. Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following center line of streams, river, canals, lakes, or other bodies of water shall be construed to follow such center lines;

6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

7. Where physical or cultural features existing on the ground are at variances with those shown on the official Zoning Map or in other circumstances not covered by subsections 1 through 6 above, the County Planning and Zoning Commission shall interpret the district boundaries; and

8. Where a district boundary line divides a lot, which was in single ownership at the time of passage of this ordinance, the County Board of Adjustment may permit, as a conditional use, the extension of the regulation for either a portion of the lot not to exceed fifty (50) feet beyond the district line into the remaining portion of the lot.

TITLE 5 APPLICATION OF DISTRICT REGULATIONS

Chapter 5 Application of District Regulations

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

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

5.3 Performance Standards. No building or other structure shall hereafter be erected or altered:

1. To exceed the height or bulk;

2. To accommodate or house a greater number of families;

3. To occupy a greater percentage of lot area; and

4. To have narrower or smaller rear yards, front yards, side yards, or other open spaces;

5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

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

5.4 Open Space or Off – Street Parking or Loading Space. No part of a yard or other open space or off-street parking or loading space required about or in connection with any building for the purpose of complying with in the Ordinance shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building.

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

5.6 Unclassified or Unspecified Uses. Unclassified or unspecified uses may be permitted by conditional use permit by the Board of Adjustment has made a review and recommendation provided that such uses are similar in character to the principle uses permitted in the district.

TITLE 6 ESTABLISHMENT OF DISTRICTS

Chapter 6 Establishment of Districts

6.1 Districts Established. For the purposes of this Ordinance, these are hereby created seven (7) types of districts by which the jurisdictional area defined in TITLE 3 shall be divided:

Agricultural Fringe Protection District (AGFP)

Agricultural District (AG)

Residential District (R-1)

Lake Front Residential District (R-3)

Commercial District (C)

Highway Commercial District (HC)

General Industrial District (I)

TITLE 7 AGRICULTURAL FRINGE PROTECTION DISTRICT (AGFP)

Chapter 7 Agricultural Fringe Protection District

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

7.2 Permitted Uses and Structures. The following uses and structures shall be permitted in the Agricultural Fringe Protection District:

1. Any form of agriculture including the raising of crop, horticulture and kennels; including Class E Concentrated Feeding Operations. (see APPENDIX B)
2. Farm Units;
3. Railroad track right-of-way;
4. Living quarters of persons employed on premises;
5. Roadside produce stands in conjunction with a bona fide farm operation on the premises;
6. Artificial lakes;
7. Home occupations
8. Fisheries services
9. Public Parks and recreation areas; and
10. Farm related agricultural business or agriculture related sales.

7.3 Conditional Use. After notice and appropriate safeguards, the Board of Adjustment may permit the following conditional uses in the AGFP District, providing no new facilities are closer than one thousand feet (1,000') from any occupied dwelling unless written permission is granted by owner or owners of such dwelling:

1. Fairgrounds, racetracks, and amusement parks;
2. Utility Substations;
3. Airports;
4. Churches and Cemeteries;

5. Golf courses, country clubs, and golf-driving ranges;

6. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;

7. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;

8. Schools;

9. Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations. See Concentrated Animal Feeding Operations, see APPENDIX B;

10. Operation and maintenance terminals for trucks and other equipment;

11. Junkyards and salvage yards provided they are set back one thousand feet (1,000') from state and federal right-of-way; if not, they must be screened and not visible to main traveled ways;

12. Sanitary landfill sites, rubble sites, composting sites, waste tire sites, restricted use sites and other sites governed by the South Dakota Department of Environment and Natural Resources and federal guidelines.

13. Wireless Telecommunication Towers and Facilities provided they meet requirements of APPENDIX E.

14. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of TITLE 14.

15. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs.

16. Wind Energy System (WES) provided they meet the requirements of APPENDIX D.

17. Veterinarian's offices and animal hospitals;

18. Livestock sales barn;

19. Animal husbandry service and kennels;

20. Horticulture Services; and.

21. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing.

22. Commercial storage garages or units.

23. Unattached garages with sidewalls greater than 14 feet.

7.4 Maximum Number of Approaches. All new approaches on a County Road must obtain a permit and approval from the County Highway Superintendent. Approaches on a Township Road shall be under the jurisdiction of the local township boards. Approaches on State Highway shall be under the jurisdiction of the SD Department of Transportation.

7.5 Minimum Yard Requirements. All structures shall be set back not less than sixty (60) feet from all public right–of-ways measured from the road right-of-way. The minimum lot area shall be two (2) acres. There shall be a frontage of not less than two hundred (200) feet across the front yard. There shall be a setback from all adjacent property lines of not less than seven (7) feet as measured from the outermost edge (or overhang) of the structure.

7.6 Concentrated Animal Feeding Operations. The provisions of APPENDIX B on Concentrated Animal Feeding Operations shall apply to Property in the Agricultural Fringe Protection District.

7.7 Minimum Shelterbelt Setback. Shelterbelts consisting of one or more rows when parallel to the right-of-way shall be set back in accordance with Section 14.8. Replacement trees in existing shelterbelts are exempt from minimum shelterbelt requirements as long as its nonconformance is not increased.

7.8 Service Roads. Service roads may be required at the discretion of the Department of Transportation (DOT) and the Planning and Zoning Board.

7.9 Fences

a. 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.

b. Permit Required.

1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls shall require a building permit. Customary farm and animal fencing are exempt from the requirements of this

TITLE 8 AGRICULTURAL DISTRICT (AG)

Chapter 8 Agricultural District

8.1 Statement of Intent. The intent of Agricultural Districts is to protect the agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial and industrial development to those areas where they are best suited for reasons of practicality.

8.2 Permitted Uses and Structures. The following uses and structures shall be permitted in Agricultural Districts:

1. Any form of agriculture including the raising of crop, horticulture and kennels; including Class E Concentrated Feeding Operations (see APPENDIX B)
2. Farm Units;
3. Railroad track right-of-way;
4. Living quarters of persons employed on premises;
5. Roadside produce stands in conjunction with a Bonafede farm operation on the premises;
6. Artificial lakes;
7. Home occupations
8. Fisheries services
9. Public Parks and recreation areas; and
10. Private parks and campgrounds;
11. Farm related agricultural business or agriculture related sales.

8.3 Conditional Use. After notice and appropriate safeguards, the Board of Adjustment may permit the following conditional uses in the AG District, providing no new facilities are closer than one thousand feet (1,000') from any occupied dwelling unless written permission is granted by owner or owners of such dwelling:

1. Fairgrounds, racetracks, and amusement parks;
2. Utility Substations;

3. Airports;

4. Churches and Cemeteries;

5. Golf courses, country clubs, and golf-driving ranges;

6. Amphitheaters, stadiums, drive-in movies, arenas, and field houses;

7. Go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, automobile parking;

8. Schools

9. Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations. See Concentrated Animal Feeding Operations, APPENDIX B.

10. Operation and maintenance terminals for trucks and other equipment;

11. Junkyards and salvage yards provided they are set back one thousand feet (1,000') from state and federal right-of-way; if not, they must be screened and not visible to main traveled ways;

12. Sanitary landfill sites, rubble sites, composting sites, waste tire sites, restricted use sites and other sites governed by the South Dakota Department of Environment and Natural Resources and federal guidelines.

13. Wireless Telecommunication Towers and Facilities. (See Appendix E).

14. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of TITLE 14.

15. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs.

16. Wind Energy System (WES) (See Appendix D)
17. Veterinarians' offices and animal hospitals;

18. Livestock sales barn;

19. Animal husbandry service and kennels;

20. Horticulture Services; and

21. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing.

22. Commercial storage garages or units.

8.4 Approaches: Maximum Number; Variances; Design; Township Roads. All new approaches on a County Road must obtain a permit and approval from the County Highway Superintendent. Approaches on a Township Road shall be under the jurisdiction of the local township boards. Approaches on State Highway shall be under the jurisdiction of the SD Department of Transportation.

8.5 Minimum Yard Requirements. All structures shall be set back not less than sixty (60) feet from all public right –of-ways measured from the road right-of-way. The minimum lot area shall be two (2) acres, for both platted and unplatted lots. There shall be a frontage of not less than two hundred (200) feet across the front yard. There shall be a setback from all adjacent property lines of not less than seven (7) feet as measured from the overhang of the property line in question.

TITLE 9 RESIDENTIAL DISTRICT (R-1)

Chapter 9 Residential District (R-1)

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

9.2 Permitted Uses and Structures. The following uses and structures shall be permitted in the Residential District:

1. Single-family dwellings and twin homes;

2. horticultural uses;

3. Home occupations and professional offices;

4. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district; and

6. Mobile homes under the conditions prescribed in Appendix A of this Ordinance.

7. Commercial or non-commercial agricultural uses that do not exceed 1 Animal Unit Equivalent as defined in Appendix B;

9.3 Conditional Uses. After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit as a conditional use in the Residential District (R-1):

1. Multiple-family dwellings;

2. Mobile home parks as defined in Appendix A;

3. Churches, synagogues, and temples;

4. Nursery, primary, intermediate, and secondary schools;

5. Public recreational uses and park facilities;

6. Golf courses and country clubs;

7. Cemeteries;

8. Utility substations;

9. Convalescent, nursing, and rest homes;

10. Medical and other health facilities; and

11. Governmental services.

12. Kennels

13. Commercial or non-commercial agriculture uses that exceed one Animal Unit Equivalent, but is less than Class E Concentrated Animal Feeding Operation as defined in Appendix B.

14. Commercial storage garages or units.

15. Unattached garages with sidewalls greater than 14 feet.

9.4 Minimum Lot Requirements. The minimum lot area shall be fifteen thousand (15,000) square feet for single and multi-family dwellings. The minimum lot area per dwelling unit in a multi-family dwelling shall be three thousand five hundred (3,500) square feet for the first two units and one thousand five hundred (1,500) square feet for each additional dwelling unit. The minimum lot width shall be one hundred (100) feet.

9.5 Minimum Yard Requirements. There shall be a front yard setback of not less than a depth of thirty (30) feet. There shall be a rear yard setback of not less than a depth of seven (7) feet. Each side yard setback shall not be less than seven (7) feet. All distances shall be measured from the outermost edge (or overhang) of the structure to the property lines.

9.6 Height and Fencing Material Restriction. No person shall construct, erect or maintain or cause to be constructed, erected or maintained any perimeter fences of any character or material exceeding six feet in height, unless otherwise permitted or required within this Code. Unslatted chain-link fences and wrought iron fences shall be exempt from the visibility requirements of this section, providing they are kept free of vegetation, debris and any obstacle obscuring vision.

9.7 Agriculture Animals. No person shall allow any agriculture animals, which includes but is not limited to, cows, goats, sheep, horses, ducks, geese, chickens, or other domestic animals not classified as a pet to run at large nor shall any person keep enclosed or housed any agriculture animals in any house, pen, coop, or enclosure situated within the distance of one hundred (100) feet of any dwelling house or store or other building used or occupied as the residence of any person, or within one hundred (100) feet of any church Enclosure shall be maintained at all times in a clean and sanitary condition. For purposes of this ordinance, the County Commissioners have full discretion on determining if an animal is a pet in complying with this ordinance.

TITLE 10 LAKE FRONT RESIDENTIAL (R-3)

Chapter 10 Lake Front Residential District (R-3)

10.1 Intent. The intent of the Lake Front Residential District (R-3) is to provide for residential uses of shoreline land without altering natural surroundings of the district.

10.2 Permitted Uses and Structures. The following uses and structures shall be permitted in the Lake Front Residential District:

1. Single-family residential dwellings, including mobile homes, and twin homes;
2. Agricultural or horticultural uses excluding concentrated animal feeding operations;
3. Home Occupations;
4. Public parks;
5. Unattached private garages with sidewalls 14ft or less,
6. Accessory structures such as piers and docs and uses to include but not limited to boathouses and sheds.
7. Essential public services;
8. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District

10.3 Conditional Uses. After the provisions of this Ordinance relating to conditional uses have been fulfilled, the County Planning Commission Board of Adjustment may permit as a conditional use in the Lake Front Residential (R-3):

1. Golf courses and country clubs;
2. Resorts;
3. Grocery, convenience, and sporting goods stores; and
4. Private parks and campgrounds;
5. Multiple family dwellings, including condominiums.
6. Commercial storage garages or units.

7. Unattached garages with sidewalls greater than 14 feet.

10.4 Minimum Lot Requirements. Each lot shall have a depth of not less than two hundred (200) feet and shall have a shoreline frontage width of not less than one hundred (100) feet. The minimum lot road frontage shall not be less than one hundred (100) feet in width. All lots without shoreline frontage shall have a minimum width of fifty seventy-five (75) feet and a minimum depth of one hundred fifty (150) feet.

Minimum Lot Requirements for New Lots – For new lots that have not been platted at the time of the passage of this ordinance, each lot shall have a depth of not less than two hundred (200) feet and shall have a shoreline frontage width of not less than one hundred (100) feet. The minimum lot road frontage shall not be less than one hundred (100) feet in width. All lots without shoreline frontage shall have a minimum width of seventy-five (75) feet and a minimum depth of one hundred fifty (150) feet.

10.5 Minimum Yard Requirements. Each structure shall be setback not less than fifty (50) feet from the normal high-water mark. If there is a principal structure located less than fifty (50) feet from the normal high-water mark on properties contiguous to the lot or parcel upon which a proposed structure is to be constructed, the setback from the normal high-water mark will be established utilizing a sight line that averages the setback of the principal structures on the adjoining lots. If there is not a principal structure within three hundred (300) feet on either side of the lot on which the proposed structure is to be built, the setback shall be not less than fifty (50) feet. The road setback shall not be less than sixty (60) feet from federal and state highways and not less than thirty (30) feet from other roads. Private dedicated easements are not considered road for purposes of this ordinance. Each side yard shall not be less than seven (7) feet as measured from the outermost edge (or overhang) of the structure to the property line of the lot in question.

10.6 Previously Platted Lake Lot. Recognizing that many lakefront plats have lots that cannot conform with the new lake lot requirements and that none of the lots around the lake are perfectly square along north, south, east, and west lines, the council passes this ordinance for previously platted lakefront lots. For any lake lot that is previously platted, it may continue as is indefinitely. Anyone who owns multiple contiguous lots may sell each lot individually. If a party buys a portion of a lot (for example, the east 25’ of a lot), they may do so. However, to obtain a building permit for that portion of a lot, they must replat the lot in order to clearly establish property boundary lines. To obtain a building permit, the new platted lot must minimally have the same width or shoreline as other neighboring lots that have been platted before the passage of this ordinance. The Zoning Director will make the determination on what the minimum lot size needs to be by comparing the new lot with neighboring lots that had been previously platted. The new

lot shall not be less conforming than the neighboring lots. No variance for lot size is needed in order to conform with this ordinance.

1. For example, if lots in a subdivision on Clear Lake are all fifty (50) feet of shoreline, the newly platted lot must at least have fifty (50) feet of shoreline in order to obtain a building permit. But if the lots in another subdivision on Clear Lake are all sixty-five (65) feet wide, then the new lot must minimally be sixty-five (65) feet of shoreline in order to obtain a building permit.

10.7 Height and Fencing Material Restriction. No person shall construct, erect or maintain or cause to be constructed, erected or maintained any perimeter fences of any character or material exceeding six feet in height, unless otherwise permitted or required within this Code. Unslatted chain-link fences and wrought iron fences shall be exempt from the visibility requirements of this section, providing they are kept free of vegetation, debris and any obstacle obscuring vision.

10.8 Service Roads. Service roads may be required at the discretion of the Board of Adjustment.

TITLE 11 COMMERCIAL DISTRICT (C)

Chapter 11 Commercial District

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

11.2 Permitted Uses and Structures. The following uses and structures shall be permitted in the commercial District (C):

1. All retail sales and services;
2. Finance, insurance, and real estate services;
3. Lodges and fraternal organizations;
4. Wholesale trade;
5. Eating and drinking places;
6. Public buildings and grounds;
7. Churches, welfare, and charitable services; and
8. Other uses which are in the same general character as those enumerated in this Section.
9. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District.

11.3 Conditional Uses. After the provisions of this Ordinance relating to Conditional Uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Commercial District (C):

1. Grain Elevators;
2. Other trade and service uses which are similar to the permitted uses and which are in harmony with the intent of this Ordinance;
3. Structures containing both commercial and residential uses;
4. Multi-family and single-family dwellings (excluding manufactured homes).

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

11.5 Minimum Yard Requirements. All permitted structures located on the lot shall have a front yard setback of a least ten (10) feet, minimum side yard setback of ten (10) feet, and a minimum rear yard setback of twenty (20) feet. All distances shall be measured from the outermost edge (or overhang) of the structure to the property lines.

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

TITLE 12 HIGHWAY COMMERCIAL DISTRICT (HC)

Chapter 12 Highway Commercial District (HC)

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

12.2 Permitted Uses and Structures. The following uses and structures shall be permitted in Highway Commercial Districts (HC):

1. None

12.3 Conditional Uses.

1. All retail sales and services;
2. Finance, insurance, and real estate services;
3. Lodges and fraternal organizations;
4. Wholesale trade;
5. Eating and drinking places;
6. Public buildings and grounds;
7. Churches, welfare, and charitable services;
8. Grain elevators;
9. Seed sales and grain storage, fertilizer and chemical storage and sales;
10. Welding and machine shops;
11. Gas, oil, liquid, propane, and liquid hydrogen stations, including bulk stations;
12. Motels/Hotels;
13. Veterinary clinics;
14. Convenience store/service station;

15. Wireless Telecommunication Towers and Facilities provided they meet requirements of APPENDIX E;

16. Seasonal retail stands utilizing a permanent structure;

17. Off premise signs;

18. Commercial animal husbandry service;

19. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing;

20. Light industry and manufacturing;

21. Other uses which, in the opinion of the County Planning Commission, are in the same general character as those enumerated in this Section; and

22. Those accessory uses and structures normally appurtenant to the permitted uses and structures when established within the space limits of this District.

12.4 Minimum Lot Requirements. The minimum lot area for permitted uses shall be thirty thousand (30,000) square feet. The minimum lot width for permitted uses shall not be less than one hundred fifty (150) feet.

12.5 Minimum Yard Requirements. There shall be a front yard setback of not less than forty (40) feet. There shall be a rear yard setback of not less than twenty (20) feet. Each side yard setback shall be not less than 10 feet. All distances shall be measured from the outermost edge (or overhang) of the structure to the property lines.

TITLE 13 GENERAL INDUSTRIAL DISTRICT (I)

Chapter 13 Industrial District

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

13.2 Permitted Uses and Structures. The following uses and structures shall be permitted in the General Industrial District (I):

1. None

13.3 Conditional Uses.

1. Contractor offices, shops and yards—such as building, cement, electrical, heating, ventilation and air conditioning, masonry, painting, plumbing, refrigeration and roofing;

2. Fuel and bulk sales;

3. Greenhouses & wholesales;

4. Highway maintenance shops and yards;

5. Packing and crating;

6. Printing and publishing;

7. Public utility and service uses;

8. Accessory uses, incidental to and on the same zoning lot as principle uses;

9. Wholesaling of all commodities, except commercial explosives, automotive and other mechanical equipment salvage;

10. Office;

11. Fruit and vegetable concentration, preservation, and preparation;

12. Grain elevators, grain and mill products;

13. Poultry and small game dressing and packing

14. Blacksmith shop, body and fender works; bottling works; wholesale; bus terminal;

15. Cabinet shop; carpenter shop; carpet or rug cleaning; clothes cleaning and dyeing;

16. Auto and truck rentals;

17. Public garage;

18. Machine shops, metal processing and fabrication;

19. Parking lot; public buildings; public transit yard;

20. Sand blasting; service station; signs, outdoor advertising; sign painting; stone monument works; stone masonry shop;

21. Veterinary;

22. Novelties;

23. Optical goods;

24. Photographic equipment;

25. Rubber and/or metal stamps;

26. Venetian blinds, window shades and awnings;

27. Food and kindred processing, wholesale; confections, honey extractions;

28. Dairy products;

29. Toiletries;

30. Manufacture, compounding, assembling or treatment of articles of merchandise from the following previously prepared materials: canvas, cellophane, cloth, cork;

31. Feathers, felt, fiber, fir;

32. Glass and plastics;

33. Signs, per Section 14.5

34. Leather; and

35. Any use listed under Commercial or Highway Commercial District.

13.4 Conditional Uses. All industrial uses and structures will be allowed by a conditional use permit. The Board of Adjustment may permit as a conditional use in general industrial districts any use which is consistent with the intent of this district. The Performance Standards found in Section 13.7 may be used as guidelines in determining conditions for the use.

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

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

In the case of corner lots, the side yard setbacks shall be half of the front yard setback.

13.7 Performance Standards

1. Physical Appearance. All operations shall be carried on within an enclosed building except that new material or equipment in operable condition may be stored in the open.

2. Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from the street.

3. Fire Hazard. No operation shall involve the use of highly flammable gases, solids, acids, liquids, grinding processes or other inherent fire hazard. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with other City ordinances.

4. Noise. No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the high traffic hour. Noise shall be measured by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

5. Sewage and Liquid Waste. No operation shall be carried on which

involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installation.

6. Air Contaminants. Due to the fact that the possibilities of identifying all air contaminants cannot reasonably be covered in this section, there shall be applied the general rule that there shall be no discharge from any source whatsoever such quantities of air contaminants or other material as may cause injury, detriment, nuisance, or annoyance to any person, or to the public in general or as to endanger the comfort, repose, health or safety of residents or to cause or have a natural tendency to cause injury or damage to business, vegetation, or property.

7. Vibration. All machines including punch presses and stamping machines shall be mounted so as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths (.003) of an inch measured at the property line.

8. Glare and Heat. All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the property lines. No heat form furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

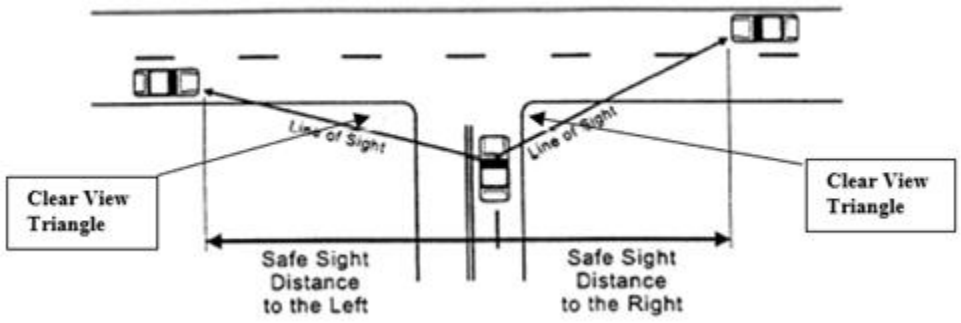
TITLE 14 GENERAL REQUIREMENTS

Chapter 14 General Requirements

Pursuant to the purpose of this ordinance are certain general requirements that are required for all Zoning Districts. These requirements are to be followed unless there is a more specific rule in the specific Zoning District. These requirements are set forth under this article.

14.1 Vision Clearance on Corner Lots. On any corner lot in any zoning district, no planting, structure 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 point 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 Residential District and Lakefront District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight-line connecting point on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

Clear View Triangle Illustration



14.2 Screening. Where any Commercial and/or Industrial Zoning Districts use is adjacent to any residential development, that use (building, parking or storage) shall be appropriately screened from the residential development by a fence or planting, approved by the Board of Adjustment, except where such fence or planting may be in conflict with Vision Clearance - Section 14.1 above.

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

14.4 Exceptions to Height Regulations. The height limitations contained in this title shall not apply to spires, belfries, cupolas, antennas, ventilators, domes, chimneys or other appurtenances usually required to be placed

above the roof level and not intended for human occupancy; provided, that the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) regulations are met.

SIGNS

14.5 On-premise and Off-premise Signs

1. Prohibited

   a. No sign shall be erected or maintained which 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. Signs shall not project over public property.

   c. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Section 14.1.

   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 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.

f. 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 codes relating to outdoor advertising.

14.6 On-premise Signs: Each sign erected as an on-premise sign in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:

a. Unless otherwise specified herein, 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. Each sign shall meet clear view triangle standards identified in Section 14.1. The maximum cumulative amount of all on-site signage allowed shall not exceed eighty (80) square feet.

b. No on-premise sign may be converted to an off-premise sign.

4. Off-premise Signs: Off-premise signs erected in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:

a. Each sign shall have a maximum surface area of one hundred (100) square feet.

b. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.

c. Stacked signs (two or more signs stacked vertically on a single sign structure are prohibited.

d. Each sign shall not be closer than the street or road right-of-way line, in exception to signs adjacent a State Highway must follow state requirements.

FENCES

14.7 Fences

a. 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.

b. Permit Required.

1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls shall require a building permit. Customary farm and animal fencing are exempt from the requirements of this Chapter.

c. Location/Construction Requirements.

1. Notwithstanding other provisions of this Ordinance fences, walls, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall meet the requirements of Chapter 14. Further, the aforementioned fence, wall, or hedge shall not be constructed within thirty (30) feet of a public right-of-way or private road, in exception for fences which do not exceed four (4) feet and are less than thirty (30) percent solid. Fences, walls and hedges shall be set back a minimum of fifty (50) feet from high water mark or from a point as determined by the Board of Adjustment.

2. The County does not provide surveying services. The property owner is responsible for locating property lines.

3. The “finished side” of the fence shall face neighboring properties or the road.

4. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire fences shall be allowed in conjunction with residential uses in the Residential and Lakefront Districts.

5. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.

6. Fences can be built on the property line when the fence is shared between property owners. Otherwise, fences may be placed up to the property line, ensuring that the owner of

the fence keeps the structure within their property boundaries. Proof of a shared fence must be disclosed in the building permit if applicable.

14.8 Shelterbelt Setback Requirement. Shelterbelts consisting of one or more rows when parallel to the right-of-way shall be set back a minimum of seventy-five (75) feet from the right-of-way line. Field belts consisting of one or two rows perpendicular to the right-of-way shall be set back a minimum of seventy-five (75) feet from the right-of way line. Shelterbelts for existing farmstead purposes are exempt from minimum setback requirements.

14.9 Sand, Gravel or Quarry Operation; Rock Crushers; Mineral Exploration and Development and Concrete and Asphalt Mixing Plants Requirements

A. Application

1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:

A. A description of the mineral or minerals which are the subject of the mining or milling.

B. A detailed site Map(s) showing;

i. The general area within which the mining or milling operation will be conducted.

ii. Present topography, soil types, and depth to groundwater.

iii. Location of existing water drainage, existing buildings, existing shelterbelts.

iv. Identification of roads leading to the site.

v. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

vi. Proposed monitoring wells.

B. State and Federal Requirements

1. All applicants for sand, gravel or quarry operations; mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants shall demonstrate prior to the commencement of operation that the site meets the requirements of the State Department of Environment and Natural Resources.

2. 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 conditional 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 Board of Adjustment.

C. Setbacks

1. Sand, gravel or quarry operation; 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.

2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right-of-way.

3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:

   a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.

   b. No excavation is allowed within five (5) feet of any rear or side property line.

c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

TITLE 15 NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING STRUCTURES, NONCONFORMING USES OF STRUCTURES AND PREMISES, AND NONCONFORMING CHARACTERISTICS OF USES

Chapter 15 Nonconformance

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

1. Lots;

2. Structures;

3. Uses or land and structures; and

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

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

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

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

yard requirements shall only be obtained through action of the Board of Adjustment.

15.3 Nonconforming Uses of Land (or Land with Minor Structures Only). Where at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.

2. If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the District in which such land is located.

3. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

15.4 Nonconforming Structures. Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure maybe enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease it nonconformity.

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its reasonable fair market value/replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

4. No additional building permits will be approved for any applicant who has an existing structure that remains noncompliant and has not received the required approvals.

15.5 Nonconforming Uses of Structures or of Structures and Premises in Combination. If the nonconforming use involving individual structures with a replacement cost of one thousand ($1,000) dollars or more, or of structure and premises in combination, exists at the effective date of

adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;

2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;

3. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;

4. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of more than one (1) year (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and

5. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to replacement cost at the time of destruction.

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

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not

thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the District in which it is located.

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

15.7 Conditional Uses Shall Not be Nonconforming Uses. Any use which is permitted as a conditional use in a District under the terms of this Ordinance (other than a change through the Board of Adjustment action from a nonconforming use to another use not generally permitted in the District) shall not be deemed a nonconforming use in such District but shall without further action to considered a conforming use at the date of adoption of this Ordinance.

TITLE 16 ADMINISTRATIVE PROCEDURES AND ENFORCEMENT- BUILDING PERMITS

Chapter 16 Administration and Enforcement

16.1 Administration and Enforcement.

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

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

16.2 Building Permits Required. No building, structure or driveway shall be erected, partially erected, moved, added to, or structurally altered without a permit issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Article, unless he/she received a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this Article.

Building permits are required in the following instances:

1. For any improvements on or to any structure/building in which the market value (net worth) of the improvements exceeds $3,000.

2. For any structure or building, regardless of cost, if additional land or area is required for it to be sited on.

3. For any storage sheds or structures, including decks, with an area of 80sq ft (8x10) or larger. Sheds less than 80sq ft in size do not require a building permit, but need to meet the setback requirements of the applicable district. Including, but not limited to, portable or moveable sheds or buildings.

4. For any concrete, asphalt, paved or graveled driveway erected, partially erected, moved, added to, or structurally altered that abuts any county road or located in a county right -of -way.

5. For any change of use or occupancy within a building or structure.

16.3 Application for Building Permits. To obtain a building permit, the applicant shall apply at the office of the Zoning Administrator. Every applicant shall:

1. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

2. Identify and describe the type of work or building to be covered by the permit for which application is made.

3. Indicate the proposed use or occupancy and work proposed.

4. Be accompanied by a site plan.

Plans shall be drawn to scale upon substantial paper and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this article and all relevant laws, ordinances, rule, and regulations.

The submitted site plan must be clear and legible and must include the following: An arrow showing North; property lines and actual lot dimensions; the exact sizes and location on the lot of buildings, structures and driveways already existing; the location and dimensions of the proposed building, structure, driveway or alteration; and exact setbacks measured in feet from all property lines, right-of-ways, and normal high-water marks (if applicable).

Building permit applications accompanied by a variance application should also include, but not limited to, site limitations and appropriate topography. A site plan conducted by a professional draftsman is preferred.

An inadequately prepared site plan may result in the deferral of the application until an appropriate plan has been completed.

Exception: The Zoning Administrator may waive the submission of a site plan, if he/she finds that the nature of the work or change in land use applied for is such that reviewing of plans is not necessary to obtain compliance with this article.

5. Give an estimated cost of the construction, alteration or repairs.

6. Be signed by applicant, or his authorized agent, who may be required to submit evidence to indicate such authority. If applicant is not the landowner of the property, the application must also be signed by the owner or his authorized agent.

7. Give such other data and information as may be required by the

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

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

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

If the work described in any building permit has not been completed within three (3) years of the date of issuance thereof, said permit shall expire and be canceled by the Zoning Administrator; 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 permit had been obtained.

16.5 Construction and Use to be Provided in Applications and Permits. Building permits issued on the basis of applications approved by the Zoning Administrator authorized only the use, arrangement, and construction set forth in such approved application and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Article and punishable as provided by CHAPTER 21.1 hereof.

16.6 Building Permit Fees. It is the owner's responsibility to obtain a permit prior to construction on his/her property, owned or leased. Initial fees shall be based on the estimated cost of the construction, alteration or repairs. If at the completion of the construction, alteration or repair, the estimated cost as given in the application appears inadequate to the Zoning Administrator; he/she may demand bills or receipts to substantiate such value and additional fees may be assessed accordingly.

Chapter 16, SECTION 2 ZONING ADMINISTRATOR

16.7 Zoning Administrator

1. The provisions of this Ordinance shall be administered and enforced by a County Zoning Administrator appointed by the Board of County Commissioners, who shall have the power to make

inspection of buildings or premises necessary to carry out his/her duties in the enforcement of this Ordinance.

Duties. The powers and duties of the Zoning Administrator shall be as follows:

1. Issue all building/use 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. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Marshall County Planning Commission and/or the Marshall County Board of Adjustment and/or Marshall County Commissioners.

8. Provide public information relative to all matters arising out of this Ordinance.

9. Forward to the Planning Commission all plats and/or applications for amendments to this Ordinance.

10. Forward to the Board of Adjustment, applications for appeals, conditional uses, variances, or other matters on which the Board of Adjustment is required to pass under this ordinance.

11. 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.

12. The Zoning Administrators shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.

    a. For building permits, the Zoning Administrator shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.

    b. For Conditional Uses and Variances, the Zoning Administrator shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.

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

Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this regulation, or whenever the Zoning Administrator or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises a regulation violation, the Zoning Administrator 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 Administrator 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 Administrator or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Zoning Administrator 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 Administrator or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

Stop Order. Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Administrator 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 Administrator to proceed with the work.

Occupancy Violation. Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Administrator 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.

TITLE 17 PLANNING COMMISSION

Chapter 17 Planning Commission

17.1 Establishment.

1. The Planning Commission shall consist of the membership of the Board of County Commissioners.

17.2 Term of Office

1. The terms shall run concurrent with the terms of the membership of the Board of County Commissioners.

17.3 Meetings of the Planning Commission

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.

2. The Planning Commission 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 office of the Zoning Administrator and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

17.4 Per Diem and Expenses of Commission.

1. Per diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

17.5 Powers and Duties of the Board

1. The Planning Commission may initiate proposed amendments to this Ordinance.

2. The Planning Commission shall review all proposed amendments to this Ordinance and make recommendations to the Board of County Commissioners.

3. The Planning Commission shall have all other responsibilities designated to it by this Ordinance and South Dakota Law.

TITLE 18 BOARD OF ADJUSTMENT AND APPEALS

Chapter 18 Board of Adjustment and Appeals

18.1 Establishment Within Marshall 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 County Commissioners, shall act as the Board of Adjustment.

   In lieu of appointing the board of adjustment provided by § 11-2-49, the board of county commissioners having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of the board of adjustment. When acting as the board of adjustment, the chair of the board of county commissioners is chair of the board of adjustment. See SDCL 11-2-60.

2. The Board of County Commissioners may appoint two (2) alternates to the Board of Adjustment. If a County Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent County Commissioner's place. The term of the Alternates shall be for three (3) years.

18.2 Procedures for Meetings

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

2. 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 office of the Zoning Administrator and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

18.3 Powers and Duties of the Board.

1. The board of adjustment may:

   a. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an

administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to this chapter;

b. Authorize upon appeal in specific cases a variance from the terms of the ordinance that is not contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and

c. Hear and determine conditional uses as authorized by the zoning ordinance. The uses shall be determined by an affirmative majority vote of the present and voting members of the board of adjustment. See SDCL 11-2-53.

18.4 Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Zoning Administrator

1. 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 Zoning Administrator from whom the appeal is taken.

2. The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or to affect any variation in the ordinance. An initial conditional use determination of the board of adjustment shall be determined by the vote set forth in § 11-2-17.3. See SDCL 11-2-60.

18.5 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 Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator 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 affected by any decision of the zoning officer. The applicant shall file with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days.

An appeal to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county adversely affected by any decision of the administrative officer to grant or deny the permit. No other appeal such as any relating to a ministerial act or other preliminary act to bring an application or matter before the board for hearing and a final decision is authorized by this section. The appeal shall be taken within a reasonable time not to exceed twenty-one days, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal. The officer from whom the appeal is taken shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard on an expedited basis. See SDCL 11-2-55.

3. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator 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.

6. 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 Administrator 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.

18.6 Public hearing of appeal--Notice. The board of adjustment shall hold at least one public hearing of the appeal. Notice of the time and place shall be given at least ten days in advance by publication in a legal newspaper of the county, and due notice shall be given to the parties in interest. The board of adjustment shall decide the appeal within sixty days of receiving a notice of appeal. Any party may appear at the hearing in person or by agent or by attorney. See SDCL 11-2-57.

18.7 Appeals to a Court of Record. Any person or persons, jointly or severally, or any officer, department, board, or bureau of the county, aggrieved by any decision of the board of adjustment 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 a petition for writ of certiorari presented to the court within thirty days after the filing of the decision in the office of the board of adjustment. The board of adjustment shall respond to the petition within thirty days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ. A petitioner to the circuit court under this section shall pay all transcript costs required to complete the record of proceedings of the board appealed from. See SDCL 11-2-61.

18.8 Expedited determinations. Upon filing of a petition for writ of certiorari, the court shall expedite any petition determination. Within thirty days of the filing of the response and the record, or as soon as reasonably practicable, the court shall schedule and hold a hearing on the matter to determine the merits, and the cause shall be speedily heard and determined. See SDCL 11-2-62.1.

18.9 Court may reverse or affirm decision of board--Costs. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. On motion, the court may award reasonable attorneys' fees and costs of the action in an action brought to the court under this chapter against any non-prevailing party relative to the petition for writ of certiorari. Costs and attorneys' fees are not allowed against the board of adjustment unless the court determines that the board of adjustment acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. See SDCL 11-2-65.

18.10 Aggrieved persons Requirements.

For the purposes of this chapter, a person aggrieved is any person directly interested in the outcome of and aggrieved by a decision or action or failure to act pursuant to this chapter who:

1. Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;

2. Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;

3. Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;

4. Shows that the injury is unique or different from those injuries suffered by the public in general. See SDCL 11-2-1.1.

TITLE 19 PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS

Chapter 19 Procedures for Conditional Uses, Variances and Zoning Amendments

19.1 Special permitted use, conditional use, variance--Expiration. Any special permitted use, conditional use, or variance granted under this chapter does not expire for a period of three years following completion of any final appeal of the decision. Any county zoning ordinance provision to the contrary is invalid or unenforceable and the special permitted use, conditional use, or variance shall be allowed if actual construction as approved is commenced within this period. The authority constitutes a lawful use, lot, or occupancy of land or premises existing at the time of the adoption of a zoning ordinance amendment or replacement within this period or while an appeal is pending regardless of the commencement of actual construction, so that the approved use shall be allowed if upheld on final appeal.

For purposes of this section, the term, actual construction, means that construction materials are being permanently placed and the construction work is proceeding without undue delay. See SDCL 11-2-65.1.

Special permitted uses. A zoning ordinance adopted under this chapter may also establish a process for certification of certain uses upon meeting specified criteria for that use. A use certified as a special permitted use under the zoning ordinance shall be approved if the applicant demonstrates that all specified criteria are met. See SDCL 11-2-17.5

Special permitted uses--Exceptions. Any land use that meets the specified criteria for certification under any county zoning ordinance shall be considered a special permitted use. A special permitted use applicant is not subject to the requirements set forth in § 11-2-17.4. A special permitted use is not subject to any public hearing or other requirements for review and approval of conditional uses. Upon adoption of certification provisions, the land use is a permitted use subject to the criteria and enforcement in the same manner as a permitted use. See SDCL 11-2-17.6.

19.2 Conditional use of real property--Ordinance--Content--Approval or disapproval. A county zoning ordinance adopted under this chapter that authorizes a conditional use of real property shall specify the approving authority, each category of conditional use requiring approval, the zoning districts in which a conditional use is available, the criteria for evaluating each conditional use, and any procedures for certifying approval of certain conditional uses. The approving authority shall consider the stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance and the relevant zoning districts when making a decision to approve or disapprove a conditional use request. Approval of a conditional use request requires the affirmative majority vote of the members of the approving authority. See SDCL 11-2-17.3.

19.3 Powers and Jurisdiction Relating to Conditional Uses. The 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 Administrator 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, at the discretion of the Zoning Officer, 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. Notice of hearing shall be provided to township. Written notice of any application for a conditional use for property located in the township, shall be provided to each township supervisor who has an oath filed in the office of the county auditor, at least ten (10) days prior to the Board of Adjustment public hearing.

5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

6. The 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.

7. Before granting any conditional use, the 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.

8. In granting any conditional use, the 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.

9. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a Conditional Use.

10. A conditional use permit shall expire three (3) years 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.

11. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance.

12. 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.

19.4 Appeal of grant or denial of conditional use permit. Any appeal of a decision of granting or denying a conditional use permit shall be brought under a petition, duly verified, for a writ of certiorari directed to the approving authority and, notwithstanding any provision of law to the contrary, shall be determined under a writ of certiorari standard regardless of the form of the approving authority. The court shall give deference to the decision of the approving authority in interpreting the authority's ordinances. See SDCL 11-2-61.1.

19.5 Conditional use application--Impact on neighboring land. Any alteration, construction, use of earthmoving equipment, or other change pursuant to a zoning permit or allowed land use on neighboring land that began after the date on which an application for a conditional use is received, and that causes the application to fail to meet one or more of the criteria or requirements for conditional use under the zoning ordinance, does not cause the request for a conditional use permit to be considered nonconforming until a final disposition of the conditional use request is determined pursuant to § 11-2-61 or 11-2-65 . If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance. See SDCL 11-2-17.7.

19.6 Powers and Jurisdiction Relating to Variances. The 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 Administrator may require the applicant for a variance to notify adjacent property owners by certified or registered mail, at the expense of the applicant, of the variance request or in lieu of this, at the discretion of the Zoning Officer, 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 Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall not be granted if the following occur:

    a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;

    b. The literal interpretation of the provisions of this ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

    c. The special conditions and circumstances do result from the actions of the applicant;

    d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.

    e. The granting the variance request would confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

    f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

6. In granting any variance, the 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 ordinance and punishable under the terms of this regulation.

7. Under no circumstances shall the 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.

8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.

9. A variance shall expire three (3) years 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.

19.7 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 rezoned. Initiated petitions which create amendments to this ordinance are required to submit signatures of twenty (20) percent of the landowners in the zoning district or districts requesting administrative change. 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 Ordinance 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 must be filed with the office of the county Zoning Officer. The county auditor shall forward the petition to the commission, or the Zoning officer as designated by the commission, for consideration at its

next regular or special meeting and provide a copy to the board, or the Zoning officer as designated by the board. 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. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.

c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.

d. A proposed time schedule for beginning and completion of development.

e. 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.

f. The Zoning Administrator 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.

g. The Zoning Administrator shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Administrator 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 and Zoning, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Administrator shall notify all owners of property within two hundred fifty (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.

h. 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.

i. The Planning Commission shall recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the Board of County Commissioners.

j. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in an official newspaper of the County.

k. 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.

l. 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.

19.8 Reapplication No application requesting a variance, conditional use, or zoning ordinance amendment or 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 of Adjustment (variances, conditional uses) or Board of County Commissioners (Zoning Amendments, Zoning District Boundary Changes), shall again be considered by the Planning Commission, Board of Adjustment or Board of County Commissioners before the expiration of six (6) months from the date of the final action of the Planning Commission, Board of Adjustment, or Board of County Commissioners.

TITLE 20 SCHEDULE OF FEES, CHARGES, AND EXPENSES

Chapter 20 Schedule of Fees, Charges, and Expenses

20.1 Schedule of Fees, Charges, and Expenses. The Board of County Commissioners shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Board of County Commissioners. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application for appeal. Any fees shall go into the Marshall County general fund.

TITLE 21 VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

Chapter 21 Violations, Complaints, Penalties, and Remedies

21.1 Building Permit Violations. Any person, firm, or corporation in violation of TITLE 16, CHAPTER 16.2, shall be fined one hundred ($100) dollars or two-tenths (2/10) of one (1) percent of the total cost of construction, whichever is greater. The Zoning Administrator may also take enforcement measures as given in TITLE 18, CHAPTER 18.5. Payment of all fines shall be made in the office of the Marshall County Zoning Administrator within ten (10) days after the person, firm, or corporation in violation of the above Ordinance has been notified by registered letter. If payment of the fine is not received at the end of the ten (10) day period, a late fee will be issued. If all fees, which include late fees, are not paid, the Marshall County States Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9, 7-19-1, and 11-2-25. Any fines collected shall be deposited in the Marshall County general fund.

21.2 Violation of This Ordinance. Any person, firm, or corporation in violation of the provision of these Ordinances, except CHAPTER 16.2, shall be punishable by a fine not less than fifty ($50) dollars nor more than one hundred ($100) dollars. The Zoning Administrator may also take enforcement measures as given in CHAPTER 16. Payment of all fines shall be made in the office of the Marshall County Zoning Administrator within ten (10) days after the person, firm, or corporation in violation of the above Ordinance has been notified by registered letter. If payment of the fine is not received at the end of the ten (10) day period, the Marshall County States Attorney shall have the power to prosecute, pursuant to SDCL 7-16-9, 7-19-1, and 11-2-25. Any fines collected shall be deposited in the Marshall County general fund.

21.3 Shelterbelts. May be removed at the discretion of the Board at the expense of the person responsible for planting the shelterbelt. Any person, firm, or corporation in violation of TTLE 21, CHAPTER 21.3, shall be fined one hundred ($100) dollars in addition to the cost of removing the shelterbelt in violation.

TITLE 22 LEGAL STATUS PROVISIONS

Chapter 22 Legal Status Provisions

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

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

22.3 Repeal of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with the provision of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

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

APPENDIX A

MOBILE HOME REGULATIONS

1.1 CREATION OF A MOBILE HOME PARK

Intent. This district is created to preserve and enhance property values in the County by providing designated, distinctive areas of not less than two (2) acres having a minimum of three hundred (300) feet in width in which mobile homes may be situated for residential dwelling purposes. It is the intent that this district be a desirable, prominent area providing adequate open space and essentially the same considerations given to citizens of other residential districts.

Minimum Lot Requirements. The minimum lot area for individual mobile homes shall be thirty-five hundred (3,500) square feet. The overall density of any mobile home park shall not exceed eight (8) units per gross acre.

Minimum Yard Requirements. The minimum distance required for the separation of a mobile home from any other mobile home shall be twenty (20) feet from side to side, twenty (20) feet from side to rear, and twenty (20) feet from rear to rear; front setback from private drive of fifteen (15) feet.

Mobile Home Parks. A mobile home park may be established by submitting the following information to the County Zoning Commission and Board of Commissioners.

1. The topography, legal description of the proposed mobile home park property, and a sketch of the proposed mobile home park, showing dimensions, driveways, purposed locations of mobile homes, the buildings and improvement;

2. Certification of compliance with all ordinances and regulations regarding mobile home park licensing and zoning, health, plumbing, electrical, building, fire prevention and all other applicable ordinances and regulations shall be a prior requirement; and

3. Property line easements and rights-of-way.

1.2 MOBILE HOME REGULATIONS WITHIN A MOBILE HOME PARK

1. Planned mobile home developments are permitted as a matter of right within Marshall County. However, to implement the statement of intent for this district, the following standards shall he met by any applicant:

a. The proposed property shall be located so that it shall not be necessary for excessive traffic movement from the park to pass through an existing single-family residential area or area suitable for future single-family residential development.

b. The property is not within an area used or planned for industrial development, nor will the occupants of the proposed park be in any way adversely affected by nearby existing or planned industrial uses.

2. Access and Street Requirements

a. All mobile home lots must be served from internal private streets within the mobile home parks, and there shall be no direct access from a mobile home lot to a public street or alley. The street must be at least gravel.

b. A minimum of two (2) off-street spaces shall be provided for each mobile home space; guest parking in the ration of one parking space per five (5) mobile home lots shall be interspersed throughout the mobile home park.

c. No internal private street access to public street shall be closer than one hundred (100) feet to any public street intersection.

d. All streets shall be lighted in accordance to the standards of the County.

e. Stop signs shall be placed at all public street intersections. Yield signs placed appropriately on internal private streets.

f. Entrance to mobile home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public roads.

g. Streets should be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street with ten (10) feet minimum moving lanes for collector streets, nine (9) feet minimum moving lanes for minor streets, and seven (7) feet minimum lanes for parallel parking.

h. Other requirements.

1. Applicants shall comply with appropriate requirements of the subdivision regulations.

2. Each mobile home park shall provide screened areas for refuse disposal of an adequate size for the disposal of such refuse on a regularly scheduled basis.

3. Additional development requirements may be prescribed as conditions when such requirements are determined to be necessary to ensure the protection of the character of the neighboring properties, the compatibility of land uses, and the health and safety of mobile home park occupants.

1.3 MOBILE HOME REGULATIONS

1. Have had the wheels and other parts of the structure needed for transportation, deemed appropriate by the Planning Commission, removed.

2. Comply with size requirements stated in the residential or other district the structure is proposed to be placed.

3. All structures must have adequate skirting material from bottom of coach to ground.

4. Ground Anchors – Mobile home ground anchors shall be required for each mobile home. Anchors shall he capable of withstanding five thousand seven hundred (5,700) pounds of pull and sunk to a depth of five (5) feet.

1.4 UNAUTHORIZED MOBILE HOME

No mobile homes shall be parked and occupied in an unauthorized district for more than seven (7) days except upon a special permit issued by the Planning Commission. Such permit shall be issued for a period not to exceed ninety (90) days and can be renewable within one year from the date of expiration. Provided, however, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants, during the construction of a house thereon for a period not exceeding one hundred eighty (180) days. However, if material progress with the house construction is not made within forty-five (45) days from the issuance of a permit, or if construction work ceases for a consecutive period of forty-five (45) days, said permit shall become void.

APPENDIX B

CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS

1.1 Concentrated Animal Feeding Operations

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.

Classification. Concentrated Animal Feeding Operations are divided into the following classes:

Class	Animal Units
Class A	2,000 or more
Class B	1,000 to 1,999

Permit Requirements. Owners of Class A and Class B Concentrated Animal Feeding Operations are required to complete, where applicable, a building permit, special permitted use permit and/or a conditional use permit application whenever any of the following occur:

1. A new Concentrated 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 300 animal units, after February 1, 1997, of existing feedlot that does not have a permit.

4. If a Class A or B concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.

5. An existing feedlot is to be restocked after being idle for five (5) or more years.

6. A signed complaint has been received by the County Zoning Administrator Department and an inspection reveals that the Concentrated Animal Feeding Operation is in violation of County or State regulations.

7. Expiration of Conditional Use CAFO Permit. Any Conditional Use permit issues for a Concentrated Animal Feeding Operation shall expire if construction of the permitted facility is not substantially completed within five (5) years of the date of issuance. Upon expiration, the applicant must submit a new application for approval prior to proceeding with construction or operation.

Control Requirements. Concentrated Animal Feeding Operations are subject to the following restrictions and controls:

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 as determined by the South Dakota Department of Agriculture and Natural Resources.

3. State Permits. All Concentrated Animal Feeding Operations shall obtain all permits required by the State of South Dakota pertaining to the animal species of the Concentrated Animal Feeding Operation. A permit may be approved conditioned on receiving a State permit. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.

4. Nutrient management plan(s) for Class A and Class B concentrated animal feeding operations shall be reviewed and approved by the South Dakota Department of Agriculture & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.

5. Exemption from Separation Distance.

   a. If a Concentrated Animal Feeding Operation is closer than the separation distances provided in these regulations, the applicant can request a written waiver from the separation distance. The residence, business, church, school, municipality, or public area may waive the distance requirement. The waiver is recorded with the County Register of Deeds in order that any future owners can be informed.

   b. Concentrated Animal Feeding Operation expansion of 2,000 or more animal units or more shall apply to County

Board of Adjustment for a variance to the required setback and separation distance regulations

6. Manure Application Setbacks. The manure application setbacks set forth in Appendix B-3 apply to all classes of Concentrated Animal Feeding Operations.

7. Standards for Conditional Uses.

   a. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.

   b. The 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 Board of Adjustment will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.

8. Information Required for Class A or B Permit

   a. Owner's name, address and telephone number.

   b. Legal description of site.

   c. Number and type of animals.

   d. Information on ability to meet designated setback requirements.

   e. General permit from Department if available for animal species.

   f. Review of Plans and Specifications and Nutrient Management Plan by the Department.

   g. Information on soils, Shallow Aquifers, designated wellhead protection areas, and 100-year floodplain designation.

h. Any other information as contained in the application and requested by the County Zoning Officer.

9. Accessory Agricultural Housing. Accessory Agricultural Housing dwellings may be allowed as an accessory use on site, to a Class A Concentrated Animal Feeding Operations. Any Accessory Agricultural Housing must be approved by the Board of Adjustment with a conditional use permit.

APPENDIX B-1
ANIMAL UNIT EQUIVALENTS

ANIMAL SPECIES	Class B # of Animals 1,000-1,999 AU	Class A # of Animals Over 2,000 AU	ANIMAL UNIT EQUIVALENT SPECIES/AU
Feeder or Slaughter Cattle [1, 2] Cattle other than mature dairy cows	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle [1]	700 hd	1,400 hd	1.43
Finisher Swine ***(over 55 lbs)***	2,500 to 4,999 hd	5,000 hd	0.4
Nursery Swine ***(less than 55 lbs)***	10,000 to 19,999 hd	20,000 hd	0.1
Farrow-to-Finish ***(sows)***	270 to 539 hd	540 hd	3.7
Swine Production Unit ***(Sows: Breeding, Gestating & Farrowing)***	2,130 to 4,159 hd	4,260 hd	0.47
Horses	500 to 999 hd	1,000 hd	2.0
Sheep, lambs, goats	10,000 to 19,999 hd	20,000 hd	0.1
Turkeys	55,000 to 109,999 hd	110,000 hd	0.018
Geese	30,000 to 59,999	60,000 or more	0.033
Laying hens, Chickens, & Pheasants	125,000 to 249,999	250,000 or more	.0122 **OR** 0.008
Laying Hens, Broilers & pheasants	30,000 to 59,999 hd	60,000 hd	0.033
Ducks	5,000 to 9,999	10,000 or more	0.2

1. Animals are counted individually once they are separated from the mother

2. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

APPENDIX B-2

REQUIRED SETBACK AND SEPARATION DISTANCES

The following are the minimum setback and separation distances by class from various types of existing buildings and uses:

	CLASS A	CLASS B
Dwellings, Churches, Schools, Businesses and Public Use Areas	One-half mile (2,640 feet)	One-half mile (2,640 feet)
Buildings within Municipal Areas and Populated Areas	One mile (5,280 feet)	One mile (5,280 feet)
Public Water Supplies	1,000 feet	1,000 feet
Private Shallow Wells	250 feet	250 feet
Lakes, Rivers and Streams classified as Fisheries	500 feet	200 feet
Federal, State & County Road Right-of-Ways	300 feet	300 feet
Township Road Right-of Ways	300 feet	200 feet
Designated 100-Year Floodplain	Prohibited	Prohibited

*Proposals for new feedlots, on a site-by-site basis, shall be set back from adjoining property lines as determined by the County Board of Adjustment.

APPENDIX B-3
MANURE APPLICATION SETBACKS

The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations:

CATEGORY	SURFACE OR IRRIGATION APPLIED	INCORPORATED OR INJECTED
Lakes, Rivers and Streams classified as Fisheries	300 feet	100 feet (lake), 50 feet (rivers and streams)
Streams and Lakes Classified as Drinking Water Supplies	1,000 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	1,000 feet	1,000 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

APPENDIX C

MARSHALL COUNTY SUBDIVISION and MINOR PLAT and REPLAT REGULATION REGULATIONS

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

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

ARTICLE I GENERAL PROVISIONS

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

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

1.3 Definitions. all definitions from Title 2 apply unless specifically defined below.

ARTICLE 2—PROCEDURES

2.1 Preliminary Application. Prior to the subdivision of any land, the subdivider or his/her agent shall discuss informally with the Planning and Zoning Administrator the proposed subdivision with reference to these Subdivision Regulations, the Zoning Ordinance, and the Comprehensive Plan.

2.2 Plat Inspection Fee.
The subdivider shall pay to the Zoning Administrator a plat inspection fee as stated in the approved fee schedule.

2.3 Plat Document. Prior to submission of a final plat, the subdivider shall note the following during plat preparation:

a. A date, scale, north point, and key map showing the general location of the proposed subdivision in relation to surrounding development.

b. Names and addresses of the developer, engineer, surveyor, or landscape architect responsible for the survey or design.

c. Location of boundary lines in relation to section or quarter section lines, including a legal description of the property.

d. Location, width, and name of existing or platted streets and alleys, railroads, utilities, rights-of-way or easements, parks, and existing structures within the proposed subdivision and their relationship to the same of adjacent subdivisions.

e. Zoning classifications and existing and proposed land use.

f. Written and signed statements by the appropriate officials, obtained by the developer.

g. Layout, numbers, and approximate dimensions of lots.

h. Existing flood hazard areas.

The subdivider shall prepare and submit to the Planning and Zoning Board the following, prepared by an engineer or land surveyor registered in the State of South Dakota:

1. Four (4) copies of the final plat at a uniform size of fifteen (15) inches by twenty-six (26) inches or eight and one-half (8-1/2) inches by fourteen (14) inches. All final plat submittals shall be in conformance with the design standards set forth in Article 3 of this Ordinance and shall include or be accompanied by the following information, in addition to that already submitted on the preliminary application:

   a. The exact location and layout of lots, streets, alleys, easements, and other public ground with accurate dimensions in feet and decimals of feet, interior angles, length of radii and/or arcs of all curves, together with the names of all streets.

   b. Location and description of all monuments.

   c. Location by section, township, range, county, and state, including descriptive boundaries of the subdivision, based on an accurate traverse giving angular and linear dimensions that must be mathematically close.

   d. Notarized certificate signed and acknowledged by all parties having any titled interest in or lien upon the land

subdivided consenting to the plat, including dedication of all streets, alleys and public ways, parks or other public grounds, or lands for charitable, religious, or educational purposes, if any, and granting easements.

e. Certificate signed by the County Treasurer stating that there are no regular or special taxes due or delinquent against the property described in the plat.

f. Certificate signed by the Director of Equalization approving the plat.

g. Proposed name of the subdivision, which shall not duplicate previously-filed plat names.

h. One copy of any private restriction or covenants affecting the subdivision or any part thereof.

1. Any subdivision of land containing one or more lots, no matter how described, must be submitted to the Planning and Zoning Board for approval. Any plat submitted for approval shall contain the name and address of a person to whom notice of hearing may be sent; and no plat or replat shall be acted upon by the County Commissioners without affording a hearing thereon, notice of the time and place of which shall be sent by mail to said address not less than five days before the date fixed therefore. Also, any plat submitted for approval shall require the signature of the Marshall County Auditor.

2. The plat shall be approved or disapproved within sixty (60) days after submission thereof; otherwise, such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the County Commissioners on demand; provided, however, that the applicant for the approval may waive this requirement and consent to the extension of such period. The ground of disapproval of any plat shall be stated upon the records of the County Commissioners.

3. The approval of a plat by the County Commissioners shall not be deemed to constitute or affect any acceptance by the municipality or public of the dedication of any street or other ground shown on the plat.

4. When any map, plan, plat or re-plat is tendered for filing in the office of the Register of Deeds, it shall be the duty of any such officer to determine whether such proposed map, plan, plat or re-plat is or is not subject to the provisions of the Ordinance and whether the endorsements required by this Ordinance appear thereon, and no register of deeds or deputy shall accept for record, or record, any such map, plan, plat or re-plat unless and

until the same shall have been approved by the County Commissioners.

2.4 Certificates Required.

In no specific order:

1. Owners Signature (SDCL 11-3-4)
   a. Acknowledgement; or Notary
2. Surveyor's Signature (SDCL 11-3-4)
3. County Plan Commission
4. Board of County Commission/Auditor (SDCL 11-3-8)
5. Director of Equalization (SDCL 11-3-9)
6. County Treasurer (SDCL 11-3-9)
7. Register of Deeds (SDCL 11-3-10 and 11)
8. When applicable; Highway or Road Authority (11-3-12.1)

EXAMPLE ONLY

Owners Certificate

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE THE ABSOLUTE AND UNQUALIFIED OWNER(S) OF (LEGAL DESCRIPTION), MARSHALL COUNTY, SOUTH DAKOTA. WE FURTHER CERTIFY THAT THE ABOVE-DESCRIBED PROPERTY WAS SURVEYED AND PLATTED AT OUR REQUEST AND UNDER OUR DIRECTION AND THAT THE DEVELOPMENT OF THIS LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION AND EROSION AND SEDIMENT CONTROL REGULATIONS. SAID PROPERTY AS SURVEYED AND PLATTED SHALL BE HEREAFTER KNOWN AS (LEGAL DESCRIPTION), MARSHALL COUNTY, SOUTH DAKOTA.

Signed this _____ Day of _____, 20_____.

Owners:

_____

EXAMPLE ONLY

Acknowledgment

STATE OF _____
COUNTY OF _____
ON THIS ___ DAY OF _____, 20___, PERSONALLY APPEARED
_____ WHO SATISFACTORILY PROVEN TO BE

THE PERSON(S) WHOSE NAME INSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

_____

MY COMMISSION EXPIRES: _____

EXAMPLE ONLY

Surveyor's Certificate

I, _____, A REGISTERED LAND SURVEYOR IN THE STATE OF SOUTH DAKOTA DO HEREBY CERTIFY THAT AT THE REQUEST OF THE OWNER(S), I HAVE SUPERVISED THE SURVEYING AND PLATTING OF (LEGAL DESCRIPTION), MARSHALL COUNTY, SOUTH DAKOTA AS SHOWN ON THE ATTACHED PLAT AND THAT I HAVE SUPERVISED THE SETTING OF IRON PINS WITH CAPS AS SHOWN AND THAT SAID SURVEY AND PLAT ARE TRUE AND CORRECT

DATED THIS ____ DAY OF _____, 20__

_____

Registered Land Surveyor

EXAMPLE ONLY

Resolution by the Board of Marshall County Plan Commission

ON MOTION MADE AND CARRIED THE FOLLOWING WAS ADOPTED: "BE IT RESOLVED BY THE COUNTY PLAN COMMISSION OF MARSHALL COUNTY, SOUTH DAKOTA IN REGULAR SESSION THAT THE PLAT OF (LEGAL DESCRIPTION), MARSHALL COUNTY, SOUTH DAKOTA BE APPROVED THIS ___ DAY OF _____, 20___ IN ACCORDANCE WITH THE PROVISIONS OF SDCL CHAPTER 11-2-2 AND ALL ACTS AMENDATORY THERETO." I _____, CHAIRMAN MARSHALL COUNTY PLAN COMMISSION CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE BOARD OF MARSHALL COUNTY PLAN COMMISSION AT A MEETING OF THE BOARD HELD ON THIS ___ DAY OF _____, 20___.

_____

Chairman Marshall County Plan Commission

EXAMPLE ONLY

Resolution by the Board of County Commission Marshall County South Dakota

ON MOTION MADE AND CARRIED THE FOLLOWING RESOLUTION WAS ADOPTED: "BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MARSHALL COUNTY, SOUTH DAKOTA IN REGULAR MEETING ASSEMBLED THAT

THE PLAT OF (LEGAL DESCRIPTION), MARSHALL COUNTY, SOUTH DAKOTA BE APPROVED THIS ___ DAY OF _____, 20___ IN ACCORDANCE WITH THE PROVISIONS OF SDCL 11-3 AND ALL ACTS AMENDATORY THERETO." I _____, COUNTY AUDITOR OF MARSHALL COUNTY, CERTIFY THAT THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE BOARD OF COMMISSIONERS OF MARSHALL COUNTY, SOUTH DAKOTA. DATED THIS ___ DAY OF _____, 20___.

_____
County Auditor, Marshall County, South Dakota

EXAMPLE ONLY

Director of Equalization

I, _____, DIRECTOR OF EQUALIZATION, MARSHALL COUNTY, SOUTH DAKOTA CERTIFY THAT I HAVE RECEIVED A COPY OF THE ATTACHED PLAT AS TO BE FILED. DATED THIS ___ DAY OF _____, 20___.

_____
Director of Equalization, Marshall County, South Dakota

EXAMPLE ONLY

County Treasurer's Certificate

I, _____, TREASURER OF MARSHALL COUNTY, SOUTH DAKOTA CERTIFY THAT ALL TAXES WHICH ARE LIENS UPON THE LAND INCLUDED IN THE ATTACHED PLAT ARE SHOWN BY MY RECORDS TO BE FULLY PAID. DATED THIS ___ DAY OF _____, 20___

_____
Treasurer Marshall County, South Dakota

EXAMPLE ONLY

Register of Deeds

I, _____, REGISTER OF DEEDS, MARSHALL COUNTY, SOUTH DAKOTA CERTIFY THAT I HAVE RECEIVED THE ORIGINAL COPY OF THE ATTACHED PLAT ON THIS ___ DAY OF _____, 20___ AT ___: ___ O'CLOCK _.M. ___CDL AND DULY RECORDED IN _____, PAGE _____.

_____
Register of Deeds Marshall County, South Dakota

EXAMPLE ONLY

Highway Authority Certificate
(If necessary, signed by township, state, or county authority)

I, _____, HIGHWAY SUPERINTENDANT, MARSHALL COUNTY, SOUTH DAKOTA CERTIFY THAT I HAVE REVIEWED THE ATTACHED PLAT, AND APPROVE OF IN-PLACE ACCESS ROAD(S) ONTO THE RIGHT-OF-WAY FOR MARSHALL COUNTY (ROAD).

DATED THIS ___ DAY OF _____, 20___.

_____
Highway Superintendent, Marshall County, South Dakota

APPENDIX D

WIND ENERGY SYSTEMS (WES)

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

1.2 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.

1.3 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 during the construction of 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, meteorological towers, assembled nacelles and all other heavy components to and from the site.

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 drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

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 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; detailed design features to maintain downstream water; 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 and Meteorological towers shall meet the following minimum spacing requirements.

a. Distance from an incorporated municipality shall be at least five thousand two hundred and eighty (5,280) feet or 1 mile. Distance to be measured from the incorporated municipality boundary to the base of the WES turbine.

b. Distance from existing off-site residences, business, churches, and buildings or structures 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 or one hundred ten percent (110%) times the system height, whichever distance is greater. Distance to be measured from the wall line of the neighboring principal building to the base of the WES turbine. For purposes of this section, "businesses" does not include agricultural uses.

c. Distance from centerline of public roads shall be five hundred feet (500) or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the turbine to the centerline of the public road.

d. Distance from any property line shall be five hundred feet (500) or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the turbine to the adjoining property line unless wind easement has been obtained from adjoining property

owner.

e. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the Marshall County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

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. Turbines shall be marked as required by the Federal Aviation Administration (FAA). With the exception of lighting to illuminate doorway to turbine hub, there shall be no lights on the turbines 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 turbine, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the turbine from the turbine 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 than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the turbines 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 to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the turbine hubs unless otherwise negotiated with the affected landowner.

7. Collector Lines. Collector lines are the conductors of electric energy from the WES 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. Changes in routes may be made as long as feeders remain on pubic rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. 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. Meteorological Towers. Permanent meteorological towers associated with a WES facility shall be permitted as part of the facility. A temporary meteorological tower shall require a separate conditional use permit, and shall be constructed in accordance with all applicable federal, state, and local requirements.

10. Decommissioning/Restoration/Abandonment.

a. 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 (b) below. The plan shall include 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.

b. 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 turbines, turbine generators, transformers, overhead and underground cables, 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 months after expiration.

c. 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.

d. Financial Assurance. After the tenth (10^{th}) 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.

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.

11. 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.

12. 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.

13. Turbine Hubs.

a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.

b. All turbine hubs shall be singular tubular design.

14. Noise. Noise level shall not exceed 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.

15. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.

16. 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. Wind system specifications, including rotor diameter, tower height and tower type.

c. Affidavit attesting that necessary easement agreements with landowners have been obtained.

d. Map of occupied residential structures, businesses and buildings.

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 transmission lines and/or utility interconnection.

g. Map of easements for WES.

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. Location of other WES in general area.

l. Final haul road agreements to be submitted sixty (60) days prior to construction.

APPENDIX E

WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

1.1 Purposes. 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:

a. To regulate the location of Towers and Telecommunications Facilities in the County;

b. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;

c. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;

d. To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;

e. 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;

f. 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

g. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

1.2 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 Marshall 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 (½) 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 collocate 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 collocate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially reasonable.

   f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot

be installed or collocated 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 Act gives the FCC 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.

1.3 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 set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

   c. Distance from any property line shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

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 herein, 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.

1.4 Structural Requirements. All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with applicable building codes, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

1.5 Separation of 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.

4. The separation requirements contained in 5.18.05 shall not be required of 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.

1.6 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.

1.7 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.

1.8 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.

1.9 Modification of Towers.

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the Count's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming 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.

2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

1.10 Certifications and Inspections.

1. 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.

2. 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.

1.11 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. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.

5. All Towers shall maintain compliance with current RF emission standards of the FCC.

6. 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.

1.12 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 collocation, 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.

b. The Board of Adjustment shall consider the Application for modification based on the following criteria:

i. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.

ii. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.

iii. 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.

2. In addition to the requirements of subparagraph (A) 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 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. Facilitates collocation 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.

1.13 Abandonment

1. If any Tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the Marshall County Board of Adjustment shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Board of Adjustment 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 Board of Adjustment 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.

1.14 Action of the Board of Adjustment

1. Marshall County shall approve or deny an application for co-location 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. Marshall 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.

APPENDIX F

FLOOD DAMAGE PREVENTION ORDINANCE

Findings of Fact, Purpose, and Methods

1.1 Findings of Fact.

The County Board finds as follows:

1. Based upon the disaster declaration made by the President of the United States affecting the State of South Dakota, which declaration was made because of unprecedented snowfall during the winter of 1996-97, Marshall County has a window of opportunity to participate in the national flood insurance program, and such participation requires passing a flood damage prevention ordinance,

2. The flood hazard areas of Marshall County are subject to periodic inundation which may result 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.

3. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard 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.

1.2 Statement of Purpose. It is the purpose of this article 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 hazard assume responsibility for their actions.

1.3 Methods of Reducing Flood Losses.

In order to accomplish its purpose, this Appendix uses the following methods:

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.

1.4 Definitions. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article it's most reasonable application.

Base Flood - The flood having a one percent chance of being equaled or exceeded in any given year,

Development - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

Flood or flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of water, and/or

2. The unusual and rapid accumulation or runoff of surface waters from any source.

Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Structure - A walled and roofed building or manufactured home that is principally above ground.

Substantial Improvement - Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

2. Any alteration of a "historic structure," provided that the alteration will not preclude he structure's continued designation as a "historic structure."

1.5 Jurisdiction. This article shall apply to all areas within the jurisdiction of Marshall County, except incorporated municipalities.

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

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

1.8 Interpretation.
In the interpretation of this article, 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 Statute.

1.9 Warning and Disclaimer of Liability. This article shall not create liability on the part of Marshall County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this article or any administrative decision lawfully made there under.

APPENDIX G

INDUSTRIAL PERFORMANCE STANDARDS

A. Physical Appearance. All operations shall be carried on within an enclosed building except that new material or equipment in operable condition may be stored in the open.

Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from the street.

B. Fire Hazard. No operation shall involve the use of highly flammable gases, solids, acids, liquids, grinding processes or other inherent fire hazard. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with other City ordinances.

C. Noise. No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the high traffic hour. Noise shall be measured by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

D. Sewage and Liquid Waste. No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installation.

E. Air Contaminants. Due to the fact that the possibilities of identifying all air contaminants cannot reasonably be covered in this section, there shall be applied the general rule that there shall be no discharge from any source whatsoever such quantities of air contaminants or other material as may cause injury, detriment, nuisance, or annoyance to any person, or to the public in general or as to endanger the comfort, repose, health or safety of residents or to cause or have a natural tendency to cause injury or damage to business, vegetation, or property.

F. Gases. The gases sulfur dioxide and hydrogen sulfide shall not exceed five (5) parts per million. All nitrous fumes shall not exceed one (1) part per million. Measurements shall be taken at the property line of the particular establishment involved.

G. Vibration. All machines including punch presses and stamping machines shall be mounted so as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths (.003) of an inch measured at the property line

H. Glare and Heat. All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the property lines. No heat form furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

APPENDIX H

SOLAR ENERGY CONVERSION SYSTEM (SECS)

The regulations regarding commercial Solar Energy Conversion Systems (hereafter referred to as SECS) shall be as follows:

1.1 Intent. The intent of regulations for Solar Energy Conversion Systems is to encourage the development of alternative sources of energy while protecting the health, safety and welfare of the public. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.

1.2 SECS Standards. The following standards apply to Commercial SECS:

a) Commercial SECS shall be permitted only on lands zoned (Ag) Agricultural, (AGFP) Agricultural Fringe Protection, (HC) Highway Commercial and (C) Commercial with the issuance of a conditional use permit.

b) Signs. No advertising signs or logos shall be permitted on the SECS. One (1) project identification sign, not to exceed twenty (25) square feet, shall be allowed.

c) An interconnection agreement must be completed with an electric utility.

d) Public Roads. The permittee shall obtain all locally required road permits for construction. Prior to commencement of construction, the permittees shall identify all state, county or township “haul roads” that will be used for the SECS project and shall notify the governing body having jurisdiction over the roads to determine if the hauls 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 SECS. Where practical all-weather roads shall be used to deliver all other heavy components to and from the SECS site.

The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate governmental body having jurisdiction over approved haul roads for construction of the SECS for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to

transportation of equipment and components. The permittees shall notify the County Planning Department of such arrangements.

e) Private Roads. The permittee shall promptly repair private roads, easements or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

f) Dust Control. The permittees shall utilize all reasonable measures and practices of construction to control dust.

g) Stormwater Pollution Prevention Plan (SWPPP) and Soil Erosion and Sediment Control Plan.

The permittees shall develop a SWPPP and Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County Board of Adjustment. The SWPPP and 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; 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.

h) Other standards and codes. All solar farms shall be in compliance with any applicable local, state and federal regulatory standards for solar energy systems.

Standards i through k must be provided as part of a complete Conditional Use Permit Application

i) Application Contents. Every application for a commercial SECS permit shall include the following information:

1. Name and address of the applicant.

2. Evidence that the applicant is the owner of the property involved or has written permission of the owner to make such application.

3. Site Plan. A plot and development plan drawn in sufficient detail to clearly describe the following:

4. Physical dimensions and locations of the property, existing structures, and proposed structures.

5. Location of electrical lines and facilities.

6. Existing topography.

7. Proposed grading and removal of natural vegetation.

8. Setbacks.

9. General information on the typical type, size, height, rated power output, performance, and safety, of each SECS model, and electrical transmission equipment.

10. A location map to scale of all occupied structures within ½ mile of the boundary of the property upon which the SECS is to be located.

11. An application including any SECS which is located within a 100-year flood plain area, as such flood hazard areas are shown on the maps designated by FEMA, shall be accompanied by a Flood Plain Development Permit.

12. Project schedule with anticipated construction date and completion date.

13. A Staging Area Plan depicting properties where materials and construction equipment will be stored during the installation process.

j) If the Planning Director determines it is necessary, the application shall be accompanied by a photograph or detailed drawing of each model of SECS; and one or more detailed computer or photographic simulation drawing showing the site fully developed with all proposed SECS and accessory structures. Such additional information as shall be required by the Planning Director.

k) Decommissioning/Restoration/Abandonment

1. Decommission Plan. Within 120 days of completion of construction, the permittees shall submit to the County Planning Department a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to

carry out the restoration requirements when they go into effect. The permitee of the SECS shall ensure that it carries out its obligation to provide the resources necessary to fulfill these requirements. The County Planning Department may at any time request the permitee of the SECS to file a report with the County Planning Department describing how the permitee is fulfilling this obligation. A Commercial SECS shall be deemed inoperable if it has not generated power for 12 consecutive months.

2. Site Restoration. Upon expiration of this permit, or upon earlier termination of operation of the SECS, the permitee shall have the obligation to dismantle and remove from the site all electrical generating equipment, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet. To the extent possible, the permitee 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 Planning Department and shall show the locations of all such foundations. All such agreements between permitee and the affected landowner shall be submitted to the County Planning Department prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition with eighteen (18) months after expiration.

3. Providing Surety. The Planning Director shall decide if it is prudent to include provisions that ensure financial resources will be available for decommissioning. This may include establishing an escrow account into which the project developer/permitee will deposit funds on a regular basis over the life of the project. The unit of government shall then have access to the escrow account for the explicit purpose of decommission. Financial provisions shall not be so onerous as to make SECS projects unfeasible.

1.3 Application Review

a) Conditional Use Permit. A conditional use permit is required for a Commercial SECS

b) Technical Issues and Expert Review.

Solar Energy Conversion Systems may involve complex technical issues that require review and input that is beyond the expertise of County staff. The Planning Director may require the applicant to pay reasonable costs of a third- party technical study of a proposed facility. Selection of expert(s) to review the proposal will be in the sole discretion of the County.

c) Building Permit. Conditional Use Permit approval of Solar Energy Conversion Systems is separate from the building permit process. Building permits for the construction of facilities cannot be issued until the facility is approved through the conditional use permit process.