

Recommended Changes to the Davison County Zoning Ordinance

Changes highlighted in yellow are changes made after the initial Public Hearing held February 7, 2017.

Introduction:

1. Page 2- Added an Acknowledgement page.
2. Page 3-Added ordinance page.
3. Page 4-Added table of contents.
4. Page 5-Updated Ordinance History.

Article 1: Definitions

5. Page 27-Changed the definition of a shelterbelt from 5 rows to 3.
6. Page 29-Sign, off-site. Added a max of 600 SF and added the requirement to comply with § 31-29 if located along a state or federal highway.
7. Page 29-Sign, On-site, Exterior. Added a max of 100 SF.
8. Page 30-Clarified that a grain bin/silo is a structure and that concrete is not a structure.
9. Page 30-Added a definition of a survey.

Article 2: Administration

10. Page 34-Merged several administrative Articles (Article 1, 2, 3, 4, and 12) together into one “Administration” Article.
11. Page 34-Added a directory to the beginning of each chapter.
12. Section 2:02-Clarified Loomis is unincorporated.
13. Section 2:02-Met with the City Planner on the boundaries of the ETJ. We did not make any changes, but did remove 6 sections from the original ordinance that were actually entirely inside city limits and not in the ETJ District.
14. Section 2:03-Added a comment regarding terms of by-laws being the responsibility of the property owner and/or developer. (all Districts)
15. Section 2:07-Added two districts (CL and ETJ) that were identified on previous zoning maps, but not in the ordinance. (No chapter, due to no jurisdiction)
16. Section 2:10-Clarified the step by step process of amending the regulations. Also verified the size of the notice signs meets the requirements of the recent Supreme Court decision.
Added any SDCL updated by the legislature shall apply.
17. Added section 2:13 about moving a house, and having to bring it up to code.
18. Changed the title and reworded Section 2:14 about Nuisance Property.
 - a. Vehicle restriction applies to AR and ETJ (Jim, can we include ETJ?).
 - b. Remainder of “nuisance” issues are for all districts, but protect farming operations.
19. Section 2:16-Clarified 20,000 SF vs. 1 acre needed for lots. Also cited the Administrative Rule on septic systems.

20. Section 2:17. Changed Ag Use Covenant required for the following three reasons; all residential or commercial building permits, plats intended for residential dwellings or commercial use, or requests for rezoning of agricultural land. (re-worded)
21. Section 2:18-Added tracts and roads, clarified process of naming. Added, at the request of the R.O.D.: Naming of Plat shall not include an initial along with a name. (For Example: J.A. Johnson 1st Addition).

Article 3: Agriculture District

22. Section 3:02 (15)-Added rental property of less than three (3) units as a permitted use.
23. Section 3:04 (27)-Added rental property of three (3) or more units required to have a Conditional Use Permit.
24. Section 3:04 (37)-Added Solar Energy Systems over 100 square feet required to have a Conditional Use Permit.
25. Section 3:07 (5)-Added comment giving the commission(s) the authority to grant a variance for less than 25 acres for reasons other than previously listed (new option).
26. Section 3:08 (1) (d)-Added additional side-yard setback requirement of 75' for site triangle from the side yard right of way (on the road side only). (will repeat for several chapters)
27. Section 3:08 (2-6)-Added additional setback requirement of buildings 5' apart, structures (bales/trees/crops, etc.) in the right-of-way past November 1st of each year as in accordance with § 13-31-56. Changed the date to be the same as state law. (will repeat for several chapters)
28. Section 3:09 (3) (g), Section 3:09 (11) (g), and Section 3:09 (12) (h)-added SFHA as prohibited for animal feeding operations and manure application.
29. Section 3:09 (11) (f) and Section 3:09 (11) (j)-changed from 10 feet to 0 feet for manure application incorporated or injected.
30. Section 3:09 (11) (h) and Section 3:09 (12) (i)-added unincorporated communities.
31. Section 3:10 (11) (f) and Section 3:10 (11) (j)-changed from 10 feet to 0 feet for manure application incorporated or injected.
32. Section 3:10 (11) (h) and Section 3:10 (12) (i)-added unincorporated communities.
33. Section 3:11-added recommendations for Wind Energy Systems.

Article 4: Agriculture Residential District

34. Section 4:03-Added Accessory agriculture structures as a Permitted Accessory Use.
35. Section 4:02 (14)-Added rental property of less than three (3) units as a permitted use. (repeat)
36. Section 4:04 (30) - Added rental property of three (3) or more units required to have a Conditional Use Permit. (repeat)
37. Section 4:04 (38)-Added Solar Energy Systems over 100 square feet required to have a Conditional Use Permit.
38. Section 4:07 (5) - Added comment giving the commission(s) the authority to grant a variance for less than 25 acres for reasons other than previously listed (new option). (repeat)

39. Section 4:08 (1) (d)-Added additional side-yard setback requirement of 25' for site triangle from the side yard right of way (on the road side only). (repeat)
40. Section 4:08 (2-6)- Added additional setback requirement of buildings 5' apart, structures (bales/trees/crops, etc.) in the right-of-way past November 1st of each year as in accordance with § 13-31-56. Changed the date to be the same as state law. (repeat)
41. Section 4:09 (8) - Highway authority clarified.
42. Section 4:10-added manure application prohibited in SFHA. Should we keep manure out of ETJ and AR, or a set distance? Should we include unincorporated?
43. Section 4:10 (3) (g), Section 4:10 (11) (g), and Section 4:10 (12) (h)-added SFHA as prohibited for animal feeding operations and manure application. (repeat)
44. Section 4:10 (11) (f) and Section 4:10 (11) (j)-changed from 10 feet to 0 feet for manure application incorporated or injected. (repeat)

Article 5: Rural Estate District (only one is a small area north of the MV track-see zoning map)

45. Section 5:01-Explained the intent.
46. Section 5:02 (6)-Added rental property of less than three (3) units as a permitted use. (repeat)
47. Section 5:04 (14)-Added rental property of three (3) or more units required to have a Conditional Use Permit. (repeat)
48. Section 5:04 (19)-Added Solar Energy Systems over 100 square feet required to have a Conditional Use Permit.
49. Section 5:07-Added a section for Minimum Lot Requirements. Moved the Minimum Lot Width and area information to Lot Requirement Section to be consistent with other Sections. (just format issue)
50. Section 5:08 (1) (d)-Added additional side-yard setback requirement of 25' for site triangle from the side yard right of way (on the road side only). (repeat)
51. Section 5:08- Added additional setback requirement of buildings 5' apart, structures (bales/trees/crops, etc.) in the right-of-way past November 1st of each year as in accordance with § 13-31-56. Changed the date to be the same as state law. (repeat)

Article 6: Rural Residential District (None in the county, and not even identified on the current Zoning Map.)

52. Section 6:02 (6)-Added rental property of less than three (3) units as a permitted use. (repeat)
53. Section 6:04 (10) - Added rental property of three (3) or more units required to have a Conditional Use Permit. (repeat)
54. Section 6:04 (14)-Added Solar Energy Systems over 100 square feet required to have a Conditional Use Permit.
55. Section 6:08 (1) (d)-Added additional side-yard setback requirement of 25' for site triangle from the side yard right of way (on the road side only). (repeat)

56. Section 6:08- Added additional setback requirement of buildings 5' apart, structures (bales/trees/crops, etc.) in the right-of-way past November 1st of each year as in accordance with § 13-31-56. Changed the date to be the same as state law. (repeat)

Article 7: Platted Town Site Residential District (Loomis)

57. Section 7:02 (6)-Added rental property of less than three (3) units as a permitted use. (repeat)

58. Section 7:04 (3) - Added rental property of three (3) or more units required to have a Conditional Use Permit. (repeat)

59. Section 7:04 (7)-Added Solar Energy Systems over 100 square feet required to have a Conditional Use Permit.

60. Section 7:07-Changed the minimum area to 3,550 square feet.

61. Section 7:08 (1) (d)-Added additional side-yard setback requirement of 25' for site triangle from the side yard right of way (on the road side only). (repeat)

62. Section 7:08- Added additional setback requirement of buildings 5' apart, structures (bales/trees/crops, etc.) in the right-of-way past November 1st of each year as in accordance with § 13-31-56. Changed the date to be the same as state law. (repeat)

Article 8: Planned Unit Development (None in Davison County)

63. Section 8:01-To have consistent format with other Articles, re-worded the Intent of the chapter.

64. Section 8:03 (2)-Corrected an error in referencing another part of the ordinance.

65. To be consistent in format with other Articles, deleted Subsequent Performance and Performance Standards; and added Section 8:04 Minimum Lot Requirements and Section 8:05 Minimum Setback Requirements.

Article 9: Rural Commercial District (Betts/I-90-Lemke, Buchholz, Schorzmann, Constant, Millan, Betts/HWY 16-Boyds Gunstock area)

66. Section 9:01-Added requirement of an Ag Use Covenant in the Commercial District.

67. Section 9:04 (7) - Added rental property of three (3) or more units required to have a Conditional Use Permit. (repeat)

68. Section 9:04 (12)-Added Solar Energy Systems over 100 square feet required to have a Conditional Use Permit.

69. Section 9:06-Corrected an error in referencing another part of the ordinance.

70. Section 9:08 (1) (d)-Added additional side-yard setback requirement of 75' for site triangle from the side yard right of way (on the road side only). (repeat)

71. Section 9:08- Added additional setback requirement of buildings 5' apart, structures (bales/trees/crops, etc.) in the right-of-way past November 1st of each year as in accordance with § 13-31-56. Changed the date to be the same as state law. (repeat)

72. Section 9:09-added recommendations for Wind Energy Systems. (repeat)

Article 10: Procedures and Enforcement

73. Section 10:02-Changed to require a building permit prior to pouring concrete. This is to protect the builder. "You told me I didn't need a permit prior to construction. How would I know what the setback was?"
74. Section 10:02-Penalty for failure to purchase a building permit will be double the permit, plus any lost property tax, and interest.
75. Section 10:03-Applicant is responsible for knowing where property lines are.
76. Section 10:05-Removed the Grandfather clause for building permits to be issued on land described by measurements for deeds filed prior to May 1, 1996. All land described by measurements will need to be platted.

Article 11: Planning Commission

77. Section 11:01-11:04-Included/Organized information about members, terms, meetings, rules.
78. Section 11:01-Clarifies % needed, and present at the meeting vs. on the board.
79. Section 11:02-Referenced SDCL on filling a vacancy.
80. Section 11:05-Added TIFs to the list. Changed notification from 7 days to 10 days to be consistent with other notifications.
81. Section 11:06-Clarified the power of the Planning Commission.
82. Section 11:06-Clarified the statement for a recommendation of denial (CUP).
83. Section 11:06-Added a statement about the conservation of agriculture and trees.
84. Section 11:06-Clarified the statement for a recommendation of denial (Variance).
85. Section 11:06-Clarified the statement for a recommendation of denial (Re-Zone).
86. Section 11:06-Clarified the right to have property taxed as agriculture.
87. Section 11:06-New section explaining recommendation of approval of a plat (these are separate actions and go directly to the County Commission, not BOA) as well as clarified the statement for a recommendation of denial (Plats).
88. Section 11:06-New section explaining recommendation of approval of a Comp Plan.
89. Section 11:06-New section explaining recommendation of approval of a TIF.

Article 12: Board of Adjustment

90. Section 12:01-12:04-Included/Organized information about members, terms, meetings, rules
91. Section 12:01-Clarifies % needed, and present at the meeting vs. FULL membership of the board.
92. Section 12:06-Explained what a quasi-judicial board is.
93. Section 12:06 (B) and (C)-Listed requirements of each, rather than reference other chapters.
94. Section 12:06 (C) (1)-Added the BOA has the authority to hear a request for a second time if the case meets certain criteria, so long as the request is made prior to the minutes being published.

Article 13: County Commissioners

95. Section 13:01-13:04-Included information about members, terms, meetings, rules.

96. Section 13:01-Clarifies members needed, and present at the meeting to define a quorum.
97. Section 13:05-Explained what a quasi-judicial board is.
98. Section 13:05-New section explaining approval of a plat, to include allowing a Deputy to sign and filing within one year of approval.
99. Section 13:05-New section explaining approval of a Comp Plan.
100. Section 13:05-New section explaining approval of a TIF.

Article 14: Non Conformance

101. Section 14:07-New section explaining mobile homes and parks.

Article 15: Violations & Penalties

102. No changes.

Article 16: Legal Status Provisions

103. No changes.

First Publication Date: 1-28-2017

First Public Hearing: 2-7-2017

Notes from the 2-7-17 Meeting:

1. Doug Greenway would like to thank Planning & Zoning, the Planning Commission, and the County Commission for updating the ordinance. He would like to see more commissioners at the meeting.
2. Mr. Greenway would like to encourage the County Commission, who primarily live inside the city limits, to value the recommendations of the Planning Commission, who primarily live in the rural areas.
3. Mr. Greenway also feels 45 dbs is restrictive, while other industry does not have noise restrictions. Due to the constant noise, vs. other industry that may have intermittent noise, the decibel restriction is advised.
4. Several chapters include a new regulation to restrict farming in the right of way. Mr. Greenway would like to see this enforced.
5. Peg Greenway asked if the Agriculture Use Covenant would be required for just new residences. This is addressed in Section 2:17, which explains an Ag Use Covenant will be required for three reasons; all residential or commercial building permits, plats intended for residential dwellings or commercial use, or requests for rezoning of agricultural land.
6. Tommy Greenway and John Jones stated they did not feel Section 3:11 and Section 9:09 were needed, as this is restrictive, while other industry does not have restrictions; with the exception of Concentrated Animal Feeding Operations (CAFO). These are the minimum regulations found to be industry standard in the area. The recommendation is to leave these restrictions in the ordinance.

Second Publication Date: 2-24-2017

Second Public Hearing: 3-8-2017

Notes from the 3-8-17 Meeting:

1. Deputy Director Jenniges acknowledged emails from Gene & Denise Stehly, Lance Koth, Jade Stehly, Glen Lowrie, Doug Hansen, Mike & Mavis Anderson, Harvey Kelley, Jerry Scott, Adrian Laurendeau, and Dan Koupal all in regards to Section 3:11. Emails were sent to Planning Commission and County Commission as well as available at the meeting for all to see and become part of public record.
2. Jerry Wadleigh spoke that there should be a 2 mile setback for the more populated area of Davison County.
3. Harvey Kelley stated the proposed ordinance online is hard to follow and confusing to find. He is not for wind towers and believes the setback should be 1 mile. There are 430 WES ordinances out there and Davison County's section is a "textbook ordinance" and needs to be more complicated and we need a better ordinance.
4. Darlene Wadleigh is against windmills. Wonders why we pass more laws and feels harassed about proposing an ordinance, the county is trying to inch them in. Reminded the board that the government works for the people.
5. Jerry Scott believes property values decrease and agrees with Walworth County, South Dakota's WES ordinance that has a 2 mile setback.
6. Doug Greenway believes being too restrictive can be dangerous and urges the commission to be cautious when doing so. Appreciated the Planning Commission and County Commission for being in attendance. Would like extend an offer for the commissions to take a tour of a wind tower. Had dBA reader at the stand with him and was speaking between 65 to 70 dBA for the most part, so felt the requirement of 45 dBA is sufficient.
7. Gene Stehly gave the Planning Commission a copy of Walworth County, South Dakota's Wind Energy System Requirements, Letcher Township, Sanborn County, South Dakota's WES Ordinance, and a paper on the impact of real estate value. He has been researching wind energy for a year and half and believes a 1000' setback is too close, should be 1 to 2 miles. Davison County is too populated for WES. Would like to see a property value guarantee. Closed with 3 things; it is the duty of the commission to take care of the people, electricity is not an Ag commodity, and a majority of the people don't want WES.
8. Rex Balcom wondered who really sees the money from WES? Farmers are important and put food on the table for everyone, what will WES do for everyone? Believes 1000' setback is too close, should be a 1 mile setback.
9. The floor was opened up for any final questions or comments. Ken Stach from Letcher, SD stated he has "no dog in the fight". Mr. Stach stated he has researched WES for two months and believes a 1 mile setback should be put in place. Letcher Township has adopted a WES ordinance with a 1 mile setback, Walworth County, SD WES ordinance setback is 2 miles, and Davison County should have a 1 mile setback.
10. Additional Comments from the Group-Chairman Haines thanked everyone for attending and giving their thoughts, comments, opinions and input.
11. Set date and time for next meeting – Regularly scheduled meeting of April 4, 2017 @ 7:00 P.M. at the Davison County North Office located in the Commissioners' Room of the Davison County North Offices, located at 1420 N. Main St., Mitchell, SD 57301.