

# Davison County Zoning Ordinance

**{Enter Date}**

# ACKNOWLEDGEMENTS

## DAVISON COUNTY PLANNING & ZONING

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Mark Jenniges, Deputy Director

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Gary Stadlman, Vice-Chairperson  
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## DAVISON COUNTY DEPUTY STATES ATTORNEY

James D. Taylor, P.C.

**AN ORDINANCE IN NINTH REVISION OF THE ZONING ORDINANCE  
OF DAVISON COUNTY, SOUTH DAKOTA**

An Ordinance entitled “An Ordinance in Ninth Revision of the Ordinances of Davison County, South Dakota”.

BE IT ORDAINED by Davison County, and in pursuance of the authority conferred in § 7-18A and § 11-2 of the South Dakota Code as amended and supplemented, the Board of County Commissioners of Davison County, South Dakota, does hereby ordain and enact into law the following ordinances and revision of the ordinances of Davison County, South Dakota; that same which are hereby read, approved and adopted as follows:

First Reading: February 7, 2017  
Second Reading: Enter Date  
Approved and Adopted: Enter Date  
Notice of Adoption Published: Enter Date  
Effective Date: Enter Date

\_\_\_\_\_  
Chairperson, Davison County Commission

ATTEST:

\_\_\_\_\_  
Susan Kiepke, Davison County Auditor

**NOTICE OF ADOPTION  
AN ORDINANCE IN NINTH REVISION OF THE ZONING ORDINANCE  
OF DAVISON COUNTY, SOUTH DAKOTA**

NOTICE IS HEREBY GIVEN that Ordinance No. \_\_\_\_\_ being an Ordinance in Ninth Revision of the Zoning Ordinance of Davison County, South Dakota, was duly adopted by the Board of County Commissioners of Davison County on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless the referendum shall have been invoked.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Susan Kiepke, Davison County Auditor

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## **ORDINANCE HISTORY**

Pursuant to § 11-2-10, the Davison County Board of Commissioners created the Davison County Temporary Zoning Ordinance on May 1, 1996. A permanent Ordinance was passed on April 1, 1998. Since then, the Ordinance has been amended nine times; March 7, 2000, October 24, 2000, December 14, 2004, November 15, 2005, April 1, 2008, January 16, 2009, August 14, 2009, May 11, 2010, and this amendment passed on {Enter Date} with an effective date of {Enter Date}.

The Planning Commission is comprised of two County Commissioners and five residents of the county from various locations and backgrounds; serving three year terms of office. The Davison County Planning Commission will follow the Davison County Zoning Ordinance to make decisions in the best interests of the County. The Planning Commission will hear all Variance Applications, Conditional Use Applications, and Appeals; then make a recommendation to the Board of Adjustment. The Board of Adjustment consists of the County Commissioners and will render the final approval.

The Davison County Planning Commission will also consider all plats, comprehensive plans, and Tax Increment Financing District requests in the county, then make a recommendation to the County Commissioners. The County Commissioners have the final approval. Any decisions the Board of Adjustment or County Commissioners make will stand unless taken to a Court of Law.

The purpose of the oversight by the Planning Commission, Board of Adjustment, and County Commission is to protect the integrity and intended use of property in Davison County. The Planning Commission, Board of Adjustment, and County Commission must follow the South Dakota Codified Law, and provide unbiased decisions in the best interests of Davison County.

## **ARTICLE 1 DEFINITIONS**

For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall means mandatory, 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.

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

Abut - Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement.

Accessory Agricultural Structure - A structure customarily incidental and necessary to farming and the raising of animals including barns and other animal shelters, corrals and fences, silos, grain bins and storage sheds for machinery and crops.

Accessory Building - A subordinate building, the use of which is purely incidental to the main building, is less than one hundred (100) percent of the area of the largest floor of the principal building, and is unattached from the principal building at least five (5) feet.

Accessory Use or Structure - A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

Actual Construction - 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 an existing building has been substantially commenced, preparatory to building, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Addition - Any construction that increases the size of a building such as a porch, attached garage or carport, or a new room.

Adult Entertainment - Any premises or part thereof in which a principal feature or characteristic is the nudity or partial nudity of any person; to include a place or part thereof where, in pursuance of a trade, calling, business or occupation, goods or services appealing to or designed to appeal to erotic or sexual appetites or inclination.

Agriculture - The planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards along with the raising and/or feeding of less than five hundred (500) animal units of livestock and/or poultry. An animal feeding operation as defined by this ordinance is not considered an agricultural use. The processing and/or storage of raw agricultural products, including facilities such as grain elevators and ethanol plants, shall not be considered an

agricultural use if such use constitutes the main or principal use on a lot or parcel.

Agriculture Product Processing Facility - A business activity customarily designed to process raw agricultural products into value added products. Agricultural processing facilities include, but are not limited to; feed mills, ethanol plants, soy bean processing facilities, cheese plants, milk processors, packing plants and rendering facilities.

Agricultural Use and Industrial Development Covenant Running with the Land - An agreement required by ordinance by which the grantee, a United States term in legal conveyancing for the party receiving title or encumbrance, often referring to the purchaser, acknowledges that adjacent land may be subjected to conditions resulting from agricultural operations or industrial development. The Grantee is the Grantor of the covenant. Once executed, said agreement runs with the land and cannot be separated from the land nor transferred without it.

Alley - A way which affords only a secondary means of access to abutting property.

Amendment - A change in the wording or substance of this ordinance or a change in the boundaries or classifications upon the Official Zoning Map.

Animal Units - A unit of measure for livestock equated as follows; one animal unit is equivalent to:

Animal	Animal =Units		
Cow, feeder, or slaughter beef animal, excluding calves under 300 pounds	1	=	1
Horse	0.5	=	1
Mature dairy cattle, excluding dairy calves under 300 pounds	0.7	=	1
Farrow-to-finish sows	0.27	=	1
Swine in a production unit	2.13	=	1
Nursery swine less than 55 pounds	10	=	1
Finish swine over 55 pounds	2.5	=	1
Sheep, lambs, or goats	10	=	1
Chickens, laying hens or broilers	30	=	1
Ducks and/or geese	5	=	1
Turkeys	55	=	1

Animal Waste Facility - A structure designed and constructed to store and/or process animal waste. Animal waste facilities include but are not limited to holding basins, lagoons, pits and slurry storage.

Apartment - A portion of a multiple unit dwelling, used as a separate housing unit; having cooking facilities and a private bath.

Applicant - For purposes of this Ordinance a person shall be deemed to be an applicant if they are the owner of the proposed facility; an officer or director of the owner thereof; or an owner of any interest, direct or indirect, in any company, except a publicly traded company, which is the owner of the proposed development.

Aquaculture - Land devoted to the hatching, raising and breeding of fish or other aquatic plants or animals intended for sale or personal use.

Arcade - A place of business where an individual, association, partnership or corporation maintains four or more amusement devices for public use.

Auction Barn - Any premises used predominantly as a livestock auction facility and may include the auction of agriculturally related items on an incidental or accessory basis only. The term may also include a building or structure or lands used for the storage of goods and materials which are to be sold on the premises by public auction and for the sale of the said goods and materials by public auction and on an occasional basis.

Automobile-Machinery Service Station - Building and premises where motor fuel, oil, grease, batteries, tires, and vehicle accessories may be supplied and dispensed at retail; and where, in addition, customary repair services may also be rendered.

Automobile Wrecking Yard - Any premises on which two or more self-propelled vehicles not in running order or operating condition are stored in the open. See also Junkyard and Salvage Yard.

Bar - A building or part thereof where, in consideration of payment therefore, liquor, beer, or wine or any combination thereof are served for consumption on the premises, with or without food.

Basement - A portion of a building with the floor located below the mean grade level. For the purpose of this ordinance, any such basement with more than four (4) feet above grade level shall be counted as a story. No dwelling unit shall be situated in a basement having less than four (4) feet above grade level.

Bed and Breakfast - A dwelling occupied by a family and used incidentally to provide accommodation and meals to guests for compensation, but shall not include a boarding house, residential care facility, hotel, motel, or other similar uses.

Board of Adjustment - The Board of Adjustment is designated to hear all zoning appeals. The Davison County Commission shall serve as the Board of Adjustment.

Buildable Area - The portions of a lot remaining after required setbacks have been provided.

Building - The word "building" includes the word structure and is a structure that is entirely separate from any other structure by space or by walls in which there is no shared doors or windows or similar openings. A principal building, including covered porches and paved patios, is a structure in which the principal use of the lot is conducted. In any residential district, any dwelling shall be deemed to be the principal building on the lot on which the same is situated.

Building Line, Front - A line parallel to the street, or right-of-way intersecting the foremost point of the building, excluding uncovered steps.

Building Setback Lines - A line parallel or approximately parallel to the lot lines at a specified distance there from, marking the minimum distance from the lot line that the building may be erected. All front setbacks are measured from the lot line or edge of the right of way, not from the center of the right away.

Building Site - A lot or parcel, or portion thereof, whether a lot of record or described by metes and bounds, used or intended to be used as the location of a structure.

Building, Alterations of - Any change or rearrangement of the supporting members (such as bearing walls, beams, columns, or girders) of a building, an addition to a building, or movement of a building from one location to another. See Structural Alterations.

Building, Height of - The vertical distance measured from the average grade of the building level of the highest and lowest elevations of the site covered by the building to the top of the roof or parapet of the highest story.

Building, Principal - A building in which is conducted the main use of the lot on which said building is located.

Bus Depot - A building or premises where commercial motor vehicles pick up and discharge fare-paying passengers. Accessory uses may include ticket offices, luggage checking facilities and similar uses.

Camper - See Travel Trailer.

Campground - Any premises where two (2) or more camping units are parked or placed for camping purposes, or any premises used or set apart for supplying to the public camping space for two (2) or more camping units for camping purposes, which include any buildings, structures, vehicles or enclosures, uses or intended for use or intended wholly, or in part, for the accommodation of transient campers.

Camping Unit - Any vehicle, tent, trailer or portable shelter used for camping purposes.

Car Wash - An establishment having facilities for washing motor vehicles by production line methods which may include a conveyor system or similar mechanical devices, as well as a self-service operation.

Casino - A room or rooms in which legal gaming is conducted.

Cellar - A portion of a building between two floor levels which is partly or wholly underground and which has more than one-half ( $\frac{1}{2}$ ) of its height, from finished floor to finished ceiling or to the underside of the floor joints of the story next above, as the case may be, below the average finished grade level adjacent the exterior walls of the building.

Cemetery - Land that is set apart or used as a place for the interment of the dead or in which

human bodies have been buried. Cemetery may include a structure for the purpose of the cremation of human remains and may include facilities for storing ashes of human remains that have been cremated or the interment of the dead in sealed crypts or compartments.

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.

Clinic - A building or part of a building used solely for the purpose of consultation, diagnosis and treatment of patients by one or more legally qualified physicians, dentists, optometrists, podiatrists, chiropractors, or drugless practitioners, together with their qualified assistants, and without limiting the generality of the foregoing, the building may include administrative offices, waiting rooms, treatment rooms, laboratories, pharmacies and dispensaries directly associate with the clinic, but shall not include accommodation for in-patient care or operating rooms for major surgery.

Club - A building owned, leased, or hired by a non-profit association of persons the use of which is generally restricted to due-paying members and their guests. Such club may periodically be rented, or leased, to non-members for gathering such as weddings, anniversaries, and dances, but no portion of the building shall continuously be used for business purposes.

Company - For purposes of this ordinance the term, “company” includes, but is not limited to, any corporation, partnership, Limited Liability Company, limited liability partnership, limited partnership, business trust and any other business entity.

Comprehensive Plan - Any legally adopted part or element of the Davison County Comprehensive Plan.

Concentrated Animal Feeding Operation - A facility where more than five hundred (500) animal units are stabled, confined, fed, or maintained in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more facilities under common ownership are a single animal operation if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure.

Conditional Use - A conditional use is a use that would not be appropriate, generally or without restriction, throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, convenience, appearance, prosperity or general welfare. Such uses may be permitted in such zoning district as conditional uses, if specific provision for such conditional use is made in this Ordinance.

Congregate Housing - Housing units that provide a semi-independent living environment, which offers residential accommodations, central dining facilities (where at least one (1) meal a day is provided seven (7) days a week), related facilities, and supporting staff and services to persons of at least sixty-two (62) years of age or with disabilities.

Construction Services - A yard, structure, or combination thereof of any general contractor or builder where equipment and materials are stored or where a contractor performs shop or assembly work but does not include any other yard or establishment otherwise defined or classified herein.

Contiguous - Next to, abutting, or touching and having a boundary, or portion thereof, which is adjoining.

Contractor - The person who contracts with an individual or developer to construct a building on a parcel of land prepared by a developer.

Convenience Store - A retail store in which articles for sale are restricted to gasoline sales and a limited range of food items such as milk, bread, soft drinks, ice cream, canned and bottled goods, snacks and candy. Retail sales may also include the limited sale of magazines, books, house wares, toiletries, bait, alcoholic beverages and tobacco.

Court - Any open space, unobstructed from ground to sky, other than a yard, that is on the same lot with and bounded on two or more sides by the walls of a building.

Covenant - An agreement, convention, or promise of two or more parties, by deed in writing, signed and delivered, by which either of the parties pledges himself to the other that something is either done, or shall be done, or shall not be done. The term is currently used primarily with respect to promises in conveyance or other instruments relating to real estate.

Cul-de-sac - A local right-of-way with only one outlet that terminates in a vehicular turnaround and having an appropriate terminal for the safe and convenient reversal of traffic turnaround.

Day Care - The providing of care and supervision of children or adults as a supplement to regular parental or home care, without transfer of legal custody or placement for adoption, with or without compensation, on a regular basis for a part of a day.

Day Care Center - Any type of group day care programs including nurseries for children of working parents, nursery schools for children under minimum age for education in public schools, parent cooperative nursery schools, playgroups for pre-school children, programs covering after-school care for school children provided such establishment is licensed by the State and conducted in accordance with State requirements.

Day Care, Family - The provision of regular care and supervision of no more than twelve (12) children including the provider's own children who are under the age of six (6) years for part of a twenty-four (24) hour period as a supplement to regular parental care.

Day Care, Group Family Home - The provision of regular care and supervision of thirteen (13) to twenty (20) children either in the provider's home or in a facility outside the provider's home for part of a twenty-four (24) hour period as a supplement to regular parental care.

Deck - A structure abutting a dwelling with no roof or walls except for visual partitions and railings that is constructed on piers or a foundation above-grade for use as an outdoor living area.

Deck, covered - A structure abutting a dwelling with a roof, which may include walls.

Developer - The owner of the property being platted or re-platted or the person designated by the owner as being responsible for the development of the property. The terms “sub-divider” and “developer” are synonymous and used interchangeably, and shall include any person, partnership, firm, association, corporation and/or any officer, agent, employee and trustee thereof who does or participates in the doing of any act toward the subdivision of land within the intent, scope and purview of this Ordinance. The developer shall also be defined as the builder or contractor if they are responsible for the construction of buildings and/or structures or permanent improvements.

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

Dormitory - A building or part of a building operated by an institution and containing a room or rooms forming one or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

Drive-in Restaurant or Refreshment Stand - Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

Due Diligence - Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.

Dwelling - A building or portion of a building designed for residential purposes, including one and two family dwellings but not including hotels, motels or lodging houses.

Dwelling Unit - A room or suite of rooms designed for and occupied by one family and having not more than one kitchen facility.

Dwelling, Efficiency Unit - A dwelling unit having only one room exclusive of bathroom, kitchen, laundry, pantry, foyer, communicating corridor, closets, or any dining alcove. An efficiency unit shall be permitted in a multi-family dwelling.

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

provided.

Dwelling, Single Family - A detached residential dwelling unit other than a manufactured home designed for or occupied by one (1) family only.

Dwelling, Two Family - A building containing two dwelling units designed exclusively for occupancy by two families living independently of each other.

Easement - Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of their property. For the purposes of this Ordinance the term shall primarily be used to describe utility access.

Employee(s) - In regard to off right-of-way parking requirements, all who work in the enterprise, including owners.

Exhibition Areas - A building, group of buildings, or place where art, objects, articles, or livestock or agricultural projects are placed on display for the public.

Extraterritorial Zoning Jurisdiction - The area illustrated within the Official Zoning Map of Davison County not exceeding one (1) mile in width immediately adjoining the City of Mitchell.

Facility - A building, piece of land or any combination thereof owned and operated by the same owner and dedicated to a specific use or uses. The term shall include those operations where indoor and outdoor activities may be conducted in concert and are integral or compliment the operation as a whole. An example may be an automobile dealership with office spaces, a small indoor display area, separate maintenance facility, and an outdoor display area.

Fairground - An agricultural fairground where farm produce is on display for judging and for sale, and livestock shows, horseracing and other sports events are held and on occasion for auctions, flea markets and concession stands.

Family - Any number of individuals living together as a single housekeeping unit, in which not more than four (4) individuals are unrelated by blood, marriage, or adoption. This definition shall not include foster families as regulated by the State.

Farm, Ranch, Orchard - An area of not less than twenty five (25) acres of un-platted land which is used for growing usual farm products, vegetables, fruits, trees, and grain, and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle, hogs and sheep, and including accessory uses for raising, treating, and storing products raised on the premises; but excluding an Animal Feeding Operation.

The processing and storage of raw agricultural products, such as grain elevators and ethanol plants, shall not be considered a farm, ranch or orchard if such constitutes the main or principal use on the lot or parcel.

Farm Building - All buildings and structures, to include grain bins and silos, needed in

agricultural operation, including dwellings for owners, operators, farm laborers employed on the farm, and other family members.

Farm Drainage Systems - The term shall include all waterways, ditches, flood control, watershed, and erosion control structures and devices provided each individual system or structure comply with the applicable local, state, and federal regulations.

Farm, Hobby - An activity carried out in rural residential areas, which includes the planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards.

The raising and feeding of livestock and poultry shall be considered as part of a hobby farm if the area, in which the livestock or poultry is kept, is one (1) acre or more in area for every one (1) animal unit, and if such livestock does not exceed ten (10) animal units.

Farm Occupation - A business activity customarily carried out on a farm by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal farm operations, without the employment of more than the equivalent of two (2) full time employees not residing in the home, which does not cause the generation of additional traffic in the area. Farm occupations include, but are not limited to, seed sales and custom combining support facilities.

Farmstead - The area surrounding and adjacent to the house and main buildings, including, the driveway and the land lying between the farmstead and the road. For the purposes of this ordinance a farmstead shall include a residential structure fit for human habitation and the customary outbuildings such as barns, sheds, grain bins, shelterbelt, etc.

Farm Unit - All buildings and structures needed in an agricultural operation, including dwellings for owners, operators, and other family members.

Fence - An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

Financial Institutions - The premises of a bank, trust, finance, mortgage, or investment company.

Fireworks, Sales - A building, structure, or place where fireworks are sold, pursuant to all applicable state statutes.

Fishery - As defined by South Dakota Administrative Rules, Sections 74:51:02 and 74:51:03 (January 27, 1999) and Davison County as described in Section 74:51:02:20. Lake Mitchell (Sections 74:51:02:01 and 74:51:02:02) is beneficial for fish and wildlife propagation, recreation, stock watering, immersion recreation and limited contact recreation. Section 74:51:02:20 identifies Lake Mitchell as a domestic drinking water supply and warm water permanent fish life propagation waters. Section 74:51:03:01 assigns all streams in South Dakota the beneficial uses of irrigation, fish and wildlife propagation, recreation and stock watering. Within Davison County the James River is defined as warm-water semi-permanent fish life propagation waters and limited contact recreation waters. Enemy, North Fork of Enemy, and

Morris (Dry Run) Creeks are defined as warm-water marginal fish life propagation waters and limited contact recreation waters. Firesteel Creek from the James to West Fork Firesteel Creek includes domestic water supply warm water permanent fish life propagation waters, and limited contact recreation waters.

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

1. The overflow of wetlands, lakes, streams, tributaries, or other water bodies; and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Hazard Boundary Map (FHBM) - Official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood, mudflow, and related erosion areas having special hazards have been designated.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without an accumulative increase in the water surface. The floodway shall be defined and designated by the most recent Flood Hazard Boundary Map as defined herein.

Food Product Processing Facility - A commercial establishment in which food or food-related products are processed, packaged, or otherwise prepared for human consumption but not consumed on the premises.

Footprint - The land area covered or occupied by a building and a facility as defined herein. The term shall also include any land area dedicated to a use such as outdoor storage or any area utilized for storage, display, or livestock confinement as part of or in support of the building or use.

Game Farm - An area of five (5) acres or more, which is used for producing hatchery, raised game and non-domestic animals for sale to private shooting preserves.

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

Gaming Device or Gaming Equipment - Any mechanical contrivance or machine used in connection with gaming or any game.

Gaming or Gambling - The dealing, operating, carrying on, conducting, maintaining, or exposing for pay of any game.

Gaming or Gambling Establishment - Any premises wherein or whereon gaming exists.

Garage - An accessory building or portion of a building including a carport which is designed or

used for the sheltering of private motor vehicles and the storage of household equipment incidental to the residential occupancy and in which there are no facilities for repairing or servicing of such vehicles for remuneration or commercial use.

Garage, Public - A building or portion thereof used for the housing or care of motor vehicles for the general public or where such vehicles are equipped or repaired for remuneration or kept for hire or sale. This may include premises commonly known as gasoline stations or service stations.

Gasoline Station - Any area of land, including structures thereon, that is used for the sale of gasoline or other motor vehicle fuel, and oil or other lubrication substances; and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning such vehicles.

Golf Course - A public or private area operated for the purpose of playing golf, and may include a par 3 golf course, club house, recreational facilities, driving ranges, miniature golf courses, and similar uses.

Grain Elevator - Grain storage facilities, which are the principal and primary use of the lot. Said facilities are generally equipped with devices for housing and discharging significant quantities of grain. This definition does not include normal farm product storage and warehousing facilities such as grain bins and where such storage is an accessory use to the parcel.

Grandfather - For the purposes of this ordinance the term “grandfather” shall be defined as a lay term used to describe structures, land uses, facilities, operations or similar activities in existence prior to adoption of the May 1, 1996 Zoning Ordinance. The term is generally applied to uses not allowed or further regulated within the new ordinance. The act or condition of grandfathered is more fully addressed in the non-conforming Article herein.

Greenhouse, Commercial - A building for the growing of flowers, plants, shrubs, trees, and similar vegetation which are not necessarily transplanted outdoors on the same lot containing such greenhouse, but are sold directly from such lot at wholesale or retail.

Hazardous Materials - Which may include:

1. Flammable material is any material that will readily ignite from common sources of heat, or that will ignite at a temperature of 600°F or less.
2. Flammable liquid is any liquid having a flash point below 100°F and having vapor pressure not exceeding forty (40) pounds per square inch (absolute) at 100°F.
3. Combustible liquid is any liquid having a flash point at or above 100°F.
4. Hazardous material includes any flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hyperbolic materials, pyrophoric materials, and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

Home, Group - See Residential Care Facility.

Home, Manufactured - A moveable or portable dwelling which is eight (8) feet or more in width and thirty-two (32) feet or more in length, constructed on a permanent steel frame chassis, which is designed to be towed, designed for year-round occupancy, primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. It may consist of one or more units, separately transportable, but designed to be joined together into one integral unit. Manufactured homes are built according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976 and will included a Title. Manufactured homes are not mobile homes. The following shall not be included in this definition:

1. Travel trailers, pickup coaches, motor homes, camping trailers, or other recreational vehicles.
2. Manufactured modular homes which is designed to be set on a permanent foundation, and which uses standard sheathing, roofing, siding, and electrical, plumbing, and heating systems.

Home, Mobile - A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Mobile Homes are commonly referred to as a Trailer House and will include a Title.

Home, Modular - A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. A Modular Home will not include a Title. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

Home Occupation - A business activity customarily carried on in the home or outbuildings by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations, without the employment of more than the equivalent of two (2) full time employees not residing in the home, which does not cause the generation of traffic in excess of that experienced on an average right-of-way of similar design, noise, electrical interference, fumes, odors, etc.

Home Park, Manufactured - A parcel of land under single ownership, which has been planned and improved for the placement of, manufactured homes for non-transient use.

Home Park, Mobile - Having three or more mobile homes on one parcel. Since Mobile Homes are not authorized in any district, a Mobile Home Park will also not be authorized.

Horticulture - The science or art of cultivating fruits, vegetables, flowers, and plants.

Hospital - An institution devoted primarily to the operation of facilities of the diagnosis,

treatment, and cure of disease, illness, injury, or other abnormal physical conditions with provisions for keeping patients overnight.

Hotel - An establishment of transient guests having sleeping rooms without individual cooking facilities for more than six (6) persons for compensation and may or may not provide meals.

Industrial Development - The planning and building of new industries in special areas.

Interchange - A grade-separated intersection with one (1) or more direct connections for vehicular travel between the intersecting right-of-ways.

Irrigation Systems - This term shall include all canals, ditches, piping, center pivot, and other methods utilized to irrigate cropland. This term does not include systems designed to land apply waste or water from animal feeding operations as defined herein. All irrigation systems shall comply with local, state, and federal regulations.

Junkyard - A place where scrap is collected before being discarded, reused, or recycled.

Kennel - Any place where more than twelve (12) dogs, cats, or other domesticated animals of breeding age are housed, groomed, bred, boarded, trained, harbored, kept, or sold for commercial purposes.

Lagoon - Any pond, basin, or other impoundment made by excavation or earthen fill for storage or treatment of human sewage or animal waste.

Landing Strip - A strip of ground used or capable of being used for the landing and take-off of aircraft.

Loading Area - A completely off right-of-way, space, or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public right-of-way.

Loading Space, Off Right-of-Way - Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off right-of-way loading space is not to be used as off right-of-way parking space in computation of required off right-of-way parking space.

Locker - A meat processing plant and any other facility where meat, poultry or eggs are cooked, cured, smoked, or otherwise processed or packed, provided that all activities are carried out indoors. This term shall not include a delicatessen, stockyard, slaughterhouse, tannery, a poultry killing establishment, an animal food factory, or an animal by-products plant.

Lot - For purposes of this ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public right-of-way, or on an approved private right-of-way, and may consist of a single lot of record; a portion of a lot of record; a combination of complete lots of record and portions of lots of record, a

parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

Lot Coverage - The percent of the area of a lot occupied by buildings, or structures, including accessory building or structures.

Lot Depth - The average horizontal distance between the front and rear lot lines.

Lot Frontage - The portion of the lot nearest the right-of-way; for the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to right-of-ways shall be considered frontage, and yards shall be provided as indicated under "Yards" in this ordinance.

Lot Frontage, Pie Shaped - A lot usually abutting a cul-de-sac. For the purpose of determining frontage, said distance shall be measured perpendicularly to the said lot lines at a point thirty (30) feet from the front line.

Lot Line - The legally defined limits of any lot.

Lot, Corner - A lot situated at the intersection of two (2) right-of-ways, the interior angle of such intersection not exceeding one hundred thirty five (135) degrees.

Lot, Double Frontage - A lot having frontage on two (2) non-intersecting right-of-ways, as distinguished from a corner lot.

Lot Line, Exterior - The side lot line, which abuts the right-of-way on a corner lot.

Lot Line, Rear - The lot line or point of intersection of the side lot lines farthest from and opposite the front lot line.

Lot Line, Side - A lot line other than a front or rear lot line.

Lot of Record - A lot which is part of a subdivision recorded in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded. For the purposes of this Ordinance, a legally transacted parcel prior to adoption may be considered as a lot of record.

Lot Width - The mean horizontal distance between the side lot lines of a lot measured at right angles to the depth or the same distance measured at the front building line.

Lot, Corner - A corner lot is defined as a lot located at the intersection of two (2) or more right-of-ways. A lot abutting on a curved right-of-way(s) shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees.

Lot, Interior - An interior lot is defined as a lot other than a corner lot with only one frontage on a right-of-way.

Lot, Through - A through lot is defined as a lot other than a corner lot with frontage on more than one right-of-way. Through lots abutting two right-of-ways may be referred to as double frontage lot.

Lot, Reversed Frontage - A reversed frontage lot is defined as a lot on which the frontage is at right angles or approximately right angles, interior angle less than one hundred thirty-five (135) degrees, to the general pattern in the area. A reversed frontage lot may also be a corner or a through lot.

Major Road Plan - The Transportation Plan in the Davison County Comprehensive Plan.

Major Recreational Equipment - Major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and case or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Manufacturing - The use of land, buildings or structures for the purpose of manufacturing, assembly, making, preparing, inspecting, finishing, treating altering, repairing, warehousing or storing or adapting for sale of any goods, substance, article, thing or service.

Massage Establishment - Any premises or part thereof where massages are given, offered or solicited in pursuance of a trade or calling, business or occupation provided that the service is rendered by a person duly trained, licensed and registered under the appropriate statute.

Motel - A group of attached or detached buildings on the same lot containing sleeping quarters for rental to transients.

Museum - A building or buildings used, or to be used, for the preservation of a collection of paintings and/or other works of art, and/or of objects of natural history, and/or of mechanical, scientific and/or philosophical inventions, instruments, models and/or designs and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and/or other offices and premises used or to be used in connection therewith.

Navigable Waters - A body of water presently being used or is suitable for use for transportation and commerce, or if it has been so used or was suitable for such use in the past, or if it could be made suitable for such use in the future by reasonable improvements.

Nonconforming Lot - A lot of record existing on the date of passage of this ordinance which does not have the minimum width or contain the minimum area for the zone in which it is located.

Nonconforming Structure - A lawful structure which exists on the date of passage of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on

area, lot coverage, height, yard setbacks, or other characteristics of the structure.

Nonconforming Use - A land use or building or structure or portion thereof lawfully existing at the effective date of this ordinance or at the time of any amendment thereto, which does not conform to the regulations of the zone in which it is located.

Noxious - When used with reference to any use or activity in respect of any land, building or structure or a use or activity which, from its nature or from the manner of carrying on same, creates or is liable to create, by reason or destructive gas or fumes, dust, objectionable odor, noise or vibration or unsightly storage of goods, wares, merchandise, salvage, machinery parts, junk, waste or other material, a condition which may become hazardous or injurious as regards to health or safety or which prejudices the character of the surrounding area or interferes with or may interfere with the normal enjoyment of any use of activity in respect of any land, building or structure.

Nuisance - Any condition existing that is or may become injurious or dangerous to health or that prevents or hinders or may prevent or hinder in any manner the suppression of a disease.

Nursery - A facility confining a specific number of small and/or young swine averaging ten (10) to fifty-five (55) pounds in size.

Nursing Home, Rest Home, Convalescent Home - A place which undertakes through its ownership or management to provide maintenance, personal, or nursing care for three or more persons who by reason of illness, physical deformity, or old age are unable to care for themselves.

Obstruction - Any structure or vegetation that blocks the complete vision of people.

Office - A building or part thereof, designed, intended or used for the practice of a profession, the carrying on of a business, the conduct of public administration, or, where not conducted on the site thereof, the administration of an industry, but shall not include a retail commercial use, any industrial use, clinic, financial institution or place of amusement or place of assembly.

Open Sales Area - Any open land or area used or occupied for the purpose of displaying for sale new or secondhand merchandise, including but not limited to, passenger cars or trucks, farm machinery, construction machinery, motor scooters or motorcycles, boats, trailers, aircraft, and monuments. No repair work is done except for incidental repair of times to be displayed and sold on the premises.

Outdoor Storage Area - Any open land or area used for the purpose of storage of any product or part of a product before, during, or after manufacturing, servicing, or repairing and not displayed for retail sale. This does not include open sales areas.

Owner - The record owners of the fee or a vendee in possession, including any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided.

Ownership Line - A line defining ownership of property under one owner of record.

Parcel - A legally defined piece of property including a platted lot, legally described portion, or similarly described piece of property primarily used as an identifier within taxation.

Park - An area consisting largely of open space, which may include a recreational area, playground, or similar use but shall not include a mobile home park, a campground or trailer park.

Parking Space - An off right-of-way space available for parking of a motor vehicle and which is held to be an area for dimension of which are ten (10) feet by twenty (20) feet or which covers two hundred (200) square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto. Off right-of-way parking shall be on or adjacent to the property on which the principal use is located.

Parking Space, Off Right-of-Way - For the purposes of this ordinance, an off right-of-way parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a right-of-way and maneuvering room. Required off right-of-way parking areas for three (3) or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any right-of-way, and so that any automobile may be parked and un-parked without moving another.

For purposes of rough computation, an off right-of-way parking space and necessary access and maneuvering may be estimated at three hundred (300) square feet, but off right-of-way parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the County.

Pawnshop - An establishment where money is loaned on the security of personal property pledged in the keeping of the pawnbroker.

Percolation Test - A test to determine the absorption rate of soil for a septic drain field or leach field. The results of a percolation test are required to properly design a septic system.

Performance Standards - Criterion established for the purposes of:

1. Assigning proposed land uses to proper districts; and
2. Controlling noise, odor, glare, smoke, toxic matter, aesthetics, vibration, fire/explosive hazards generated by, or inherent in, uses of land or buildings.

Permitted Use - A use by right, which is specifically authorized in a particular zoning district.

Person - Any individual or group of individuals, or any corporation, general or limited partnership, joint venture, unincorporated association, or governmental or quasi-governmental entity.

Places of Assembly - Places where people gather or congregate for amusement, worship, learning, etc. This includes schools, churches, theaters, playgrounds, etc.

Planning Commission - The Planning Commission of Davison County. The term Planning Commission shall be synonymous with Planning and Zoning-Commission and Commission, but shall not include Board of Adjustment or Zoning Board.

Plat - A map, or representation on paper of a piece of land subdivided into lots, parcel, tracts or blocks, including streets, commons, and public grounds, if any, all drawn to scale.

Plaza - A public square or similar open area.

Portable Processing Plant - Any equipment for the crushing, screening or washing of sand and gravel aggregate materials, but not including a concrete batching plant or an asphalt plant, which equipment is capable of being readily drawn or readily propelled by a motor vehicle and which equipment is not considered permanently affixed to the site.

Principal Use - The main use of land or structures as distinguished from a secondary or accessory use.

Private Recreation Area - Any open space or recreational area, other than a public park, owned and operated or maintained in whole or in part for profit by a private individual(s), club or fraternal organization for members only, and may include therein one or more of the following activities: swimming, boat facilities, picnic area, tennis courts, outdoor skating rinks, athletic fields, walking, riding and cross-country skiing, snowmobiling, but does not include the racing of animals, motor vehicles, motorcycles or snowmobiles.

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

Property Line - The division between two parcels of land, or between a parcel of land and right-of-way.

Public - Promotion of a public cause or service, including utilities having a franchise from Davison County or other governmental entity, but excluding other for-profit organizations.

Public Building - Any building which is owned, leased, primarily used, and/or primarily occupied by a school district or municipal, county, state, or federal government, or any subdivision or agency of the school district, municipal, county, state, or federal government.

Publicly Traded Company - For purposes of this Ordinance a “publicly traded company” means a company, the shares or other interests in which are regularly traded on the New York Stock Exchange, the American Stock Exchange, NASDAQ or similar recognized security market.

Quarry - A place where consolidated rock has been or is being removed by means of an open excavation to supply material for construction, industrial, or manufacturing purposes, but does not include a wayside quarry or open pit metal mine.

Ranch Building - See Farm Building.

Ranch Occupation - See Farm Occupation.

Ranch Unit - See Farm Unit.

Recreational Equipment - The term recreational equipment shall include boats and boat trailers, jet skis, snowmobiles, travel trailers, pick-up campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and case or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Recycling Center - A building and/or area in which used material is separated and processed prior to shipment to others who will use those materials to manufacture new products.

Remote Fuel Depots - A structure, usually unmanned, that is used for the sale of gasoline, diesel, or other motor vehicle fuel.

Rent-All Shop - A building or part of a building where residential and commercial equipment is kept for rental to the general public and includes such things as lawn and garden tools, floor cleaning equipment, masonry tools, painting and decorating equipment, moving tools, plumbing tools and power tools.

Repair Shop - Maintenance, mechanical, restoration, welding, body, paint or other repair.

Repair Shop, Auto Body - A general industrial establishment for the repair of damage to a motor vehicle caused by collision, accident, corrosion or age, and, without limiting the generality of the foregoing, includes the reconstruction of motor vehicles, the painting or repainting of motor vehicles and the rebuilding or conversion of automotive engines or engine parts, but does not include a motor vehicle repair shop, an impounding yard, an automobile service station or a gas station.

Repair Shop, Motor Vehicle - A service commercial or general industrial establishment for the repair or replacement of parts in a motor vehicle and without limiting the generality of the foregoing, shocks, transmissions, gears, brakes, clutch assemblies, steering assemblies, radiators, heating or cooling systems, ignition systems, mechanical or electrical parts or systems, the installation of undercoating, engine tuning, lubrication and engine conversion or replacement, but does not include an auto body repair shop, an impounding yard, an automobile service station or a gas station.

Residential Care Facility - A family home, group care facility, or similar facility for twenty-four (24) hour non-medical care of persons in need of personal services, supervision or assistance for sustaining the activities of daily living or for the protection of the individual.

Restaurant - A business establishment consisting of a kitchen and dining room, whose primary purpose is to prepare and serve food to be eaten by customers seated in the dining room.

Restaurant, Drive-In - A business establishment consisting of a kitchen, with or without a dining room, where food is prepared and packaged to eat either off the premises or within automobiles parked on the premises.

Restaurant, In-House - A private business establishment consisting of a kitchen, with or without a dining room, whose primary purpose is to prepare and serve food to be eaten by employees of the principal employer. For the purposes of this ordinance, the term “cafeteria” shall be synonymous with “Restaurant, In-House.”

Rest Home - See Nursing Homes.

Retail Sales - A building where goods, wares, merchandise, substances, articles, or items are offered or kept for sale at retail, including storage of limited quantities of such goods, wares, merchandise, substances, articles, or items sufficient only to service such store.

Retail Store - A building where goods, wares, merchandise, substances, articles or items are offered or kept for sale at retail, including storage of limited quantities of such goods, wares, merchandise, substances, articles or items sufficient only to service such store.

Retaining Wall - A structure constructed to hold back or support an earthen bank.

Riding Stable - Any place that has more than fifteen (15) stalls or horse spaces to board, train, or provide recreational equine activities.

Right-of-Way - An area of land that is legally described in a registered deed for the provision of public access within which there is usually a road or street. The term right-of-way shall include any defined access route or point including but not limited to public and private accesses, road easements, streets, roads, and drives other than a private drive serving a single owner.

Right-of-Way Line - A dividing line between a lot, tract, or parcel of land and the public right-of-way.

Roadside Stand - A structure having a ground area of not more than three hundred (300) square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products produced on the premises, bait, and other approved products.

Rodeo Grounds - A building or place where rodeo events such as roping and riding are done for

practice or competition.

Row of Trees - Ten (10) or more trees planted in a line, separated by a distance of forty (40) feet or less.

Running Gear - The parts which allow a manufactured home to be mobile including the tires, wheels, axles, running lights, and hitch. This definition shall include all mobility items exclusive of the parts of the chassis that make up the structural integrity of the manufactured home.

Salvage Yard - A place for the storage, keeping, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

Satellite Dish/Receiver - A device incorporating a reflective surface that is solid, open mesh, or bar configured and is the shape of a shallow dish or cone designed and used for the reception of television signals related back to earth from a terrestrially and/or orbital based communications satellite.

School, Boarding - A school under the sponsorship of a private agency, corporation, or religious entity, having a curriculum generally equivalent to public elementary or secondary schools, accredited by the State of South Dakota and provides room and board for its students; but excluding private trade or commercial schools. Day Care Centers as herein defined, shall not be considered schools as applicable to this definition.

School, Denominational or Private - A school under the sponsorship of a private agency, corporation, or religious entity, having a curriculum generally equivalent to public elementary or secondary schools and accredited by the State of South Dakota; but excluding private trade or commercial schools. Day Care Centers as herein defined, shall not be considered schools as applicable to this definition.

School, Public - A school under the sponsorship of a public agency providing elementary or secondary curriculum, and accredited by the State of South Dakota; but excluding private trade or commercial schools.

School, Trade or Commercial - An establishment other than an accredited or licensed public, private or denominational school, offering training or instruction in art, occupation or trade.

Screening - A continuous fence, wall, compact evergreen hedge or combination thereof, supplemented with landscape planting, which would effectively screen the property which it encloses, and is broken only by access drives and walks.

Secondhand Shop - The use of land, or building or structure or part thereof where used goods, wares, merchandise, substances, or articles are offered or kept for sale but shall not include a pawnshop.

Security Dwelling Unit - A building or portion thereof designed for occupancy by a security employee.

Self-Storage Units - A building containing separate, individual self-storage units divided from the floor to the ceiling by a wall with an independent entrance from the exterior of the building, designed to be rented or leased on a short-term basis to the general public for private storage of personal goods, materials and equipment.

Semi-Portable Agricultural Structures - Anything that requires placement on the ground for agriculture related purposes. Semi-portable agricultural structures include, but are not limited to, feed bunks, calving, lambing, or farrowing sheds, and temporary grain storage facilities.

Services - Establishments, primarily engaged in providing services for individuals, business and government establishments and other organizations, including hotels and other lodging places, establishments providing personal business, repair, and amusement services, health, legal, engineering, and other professional services, educational institutions, membership organizations, and other miscellaneous services.

Service Establishment - Establishments primarily engaged in providing services for individuals, business and government establishments and other organizations, including hotels and other lodging places, establishments providing personal business, repair, and amusement services, health, legal, engineering, and other professional services, educational institutions, membership organizations and other miscellaneous services.

Setback - The minimum horizontal distance from a lot line, to a wall of the building, exclusive of permitted projections. The setback shall be measured at right angles to such lot lines.

Shelterbelt - Three or more rows of trees and/or shrubs that reduce erosion and protects against the effects of wind and storms.

Shelterbelt Restoration - The removal and replacement of two or more rows of trees or of trees totaling one-half acre or more, whichever is greater, in an existing shelterbelt.

Shooting Range - An area or structure specially designed for the safe discharge and use of firearms and/or archery on a regular basis by shooters other than the land owner.

Sight Triangle - The triangular space formed by the right-of-way lines of a corner lot and a line drawn from a point in one right-of-way line to a point in the other right-of-way line. The side yard setback for a site triangle will only apply to the road side.

Sign - Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:

1. Signs not exceeding one (1) square foot in area and bearing only property numbers, post office box numbers, names of occupants of premises, or other identification or premises not having commercial connotations;

2. Flags and insignias of any government, except when displayed in connection with commercial promotion;
3. Legal notices, identification, informational, or directional signs erected or required by governmental bodies;
4. Integral decorative or architectural feature of buildings, except letters, trademarks, moving parts, or moving lights; and
5. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

Sign, Advertisement - An advertisement sign, billboard, or poster panel which directs attention to a business, commodity, service, or entertainment not exclusively related to the premises where such advertising sign is located or to which it is affixed, but does not include those business signs which direct attention to the business on the premises to a brand name of a product or commodity with which the business is specifically identified and which is sold on the premises.

Sign, Banner - A temporary sign, which has a maximum area of twelve (12) square feet, composed of lightweight material either enclosed or not in a rigid frame, secured or mounted so as to allow movement of the sign caused by movement of the atmosphere (i.e., pennants, twirling signs, balloon, or other gas-filled figures, ribbons, or other similar moving devices) and intended to be displayed for a limited period of time.

Sign, Bulletin Board - An exterior sign, which has a maximum area of thirty-five (35) square feet, used by public, charitable, and religious institutions for the purpose of informing the public about activities of their organization.

Sign, Business - A sign which directs attention to a business or profession conducted or to a commodity, service, or entertainment sold or offered upon the premises on which such sign is located or to which it is affixed. See also on-site and off-site signs.

Sign, Directional Off-Site - An exterior sign that is generally informational, that has a purpose secondary to the use of the primary use on a property that is not adjacent to the property on which the directional off-site sign exists. Said sign shall include those signs placed by a political subdivision and those signs standardized by the South Dakota Department of Transportation.

Sign, Directional On-Site - An exterior sign that is generally informational, that has a purpose secondary to the use of the property on which it is located, such as “no parking,” “entrance,” and “loading only.” Said sign shall conform to standards adopted or approved by the regulating public agency.

Sign, Easement and Utility - An exterior sign, a maximum area of five (5) square feet, used to identify the location of easements, property lines, utilities, hazards, or providing restrictions of public access.

Sign, Flag - Any fabric or bunting containing distinctive colors, patterns, or symbols, which has a maximum area of twenty (20) square feet and is used as a symbol of government, political subdivision, or other entity.

Sign, Ground and Monument - An exterior sign permanently attached to the ground to identify churches, schools, institutional, and public uses. Said sign may also identify a specific neighborhood by displaying the name of the tract. Ground and monument signs:

1. Are generally constructed of concrete or other masonry material;
2. Shall not exceed twenty (20) feet in height above the mean right-of-way centerline or grade;
3. Shall meet a minimum of one-half (½) of the yard requirements for the district in which it is located; and
4. Shall not exceed one hundred (100) square feet on one (1) side or two hundred (200) square feet on all sides of any one (1) premise.

Sign, Mounted Wall - A sign, which has a maximum area of one hundred (100) square feet, that is attached to or erected against a wall of a building and shall project no more than twelve (12) inches from the wall of the building. Said sign is intended to be read from directly in front of the face of the building.

Sign, Name and Address Plate - A sign, which has a maximum area of two (2) square feet, that is affixed to the side of a building informing the public as to the residents, occupation, and/or address of the building.

Sign, Off-Site - A sign other than an on-site sign, which has a maximum area of six hundred (600) square feet. Off-site signs are conventionally know as billboards regardless of size, which also need to comply with § 31-29 if located along a state or federal highway right of way.

Sign, On-site, Exterior - An exterior sign, which has a maximum area of one hundred (100) square feet, relating in subject to the premises upon which it is located, or to products, accommodations, services, or activities on the premises. Exterior on-site signs do not include signs erected by outdoor advertising industry in the conduct of the outdoor advertising business, such as billboards, which are classified as off-site signs.

Sign, Portable - Any sign, which has a maximum area of twenty (20) square feet, not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A or T-frames; menu and sandwich board signs. Signs attached to or painted on vehicles parked and visible from the public right-of-way shall not be included in this definition and shall be prohibited unless said vehicle is used in normal day-to-day operations of the business. Said sign is intended to be displayed for a limited period of time.

Sign, Projecting - Any sign, which has a maximum area of one hundred (100) square feet, that is affixed to a building or wall in such a manner that its face is perpendicular to the face of the building and the sign extends more than twelve (12) inches beyond the surface of such building or wall.

Sign, Real Estate - An exterior sign for the purpose of advertising the sale, rental, lease of real property. Said sign is located on the premises for sale, rental, or lease and shall be of a temporary nature and shall have a maximum area of four (4) square feet except in the Commercial, Highway Commercial, or Industrial Districts where the maximum area shall be thirty-two (32) square feet.

Sign, Roof - Any sign, which has maximum area of three hundred (300) square feet that is erected upon, against, or directly above a roof or on top of the parapet of a building.

Street - A right-of-way established by a recorded plat to provide the primary means of access to abutting property. The term shall also include the term "road" or other similar means of conveyance or access.

Street Line - The right-of-way line of a street.

Street, Arterial - A public street or highway intended to be used primarily for fast or heavy through traffic.

Structure - Anything constructed or erected which requires location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include, but are not limited to, buildings, farm buildings to include grain bins and silos, manufactured homes, and permanently mounted signs. This definition does not include semi-portable agricultural structures or pouring of concrete for driveways, etc., as long as a structure will not sit on the concrete.

Structural Alterations - Any change in the supporting members of a structure such as bearing walls, columns, beams or girders, foundations and poles. See Building, Alterations of.

Survey - the finished result of the technique and science of measuring positions and distances on Earth.

Swimming Pool - A water filled enclosure, permanently constructed or portable, having a depth of more than twenty four inches below the level of the surrounding land, or an above ground pool, having a depth of more than thirty inches, designed used and maintained for swimming.

Swine Production Unit - An operation confining a specific number of female breeding age swine for the purpose of farrowing. The operation shall farrow no more than an average of one-third (1/3) of the total herd at any one time and the total herd shall not farrow more than an average of two and one-half (2 ½) times within a twelve month period. All farrowed swine shall be relocated to an off-site nursery facility, as defined by this ordinance, at approximately ten (10) pounds or said swine shall be calculated as part of the total animal units.

Tank Farm - A facility having two or more storage containers for the transfer of inorganic liquids or gases and from which wholesale sales of fuel to the public is or may be conducted.

Temporary Construction Facilities - Parcels of land or structures where construction or mining support facilities are constructed or placed at or near a job site to provide materials and support mechanisms for construction or mining projects. The term shall include but is not limited to portable offices, signage, trailers, stationary and mobile equipment, and scales. Common uses include portable concrete, processing, or asphalt plants, job site trailers, and areas for equipment parking, material storage or stockpiling. The term temporary shall be flexible yet is generally tied to a related construction project with defined start-up and completion times.

Thrift Shop - A shop operated by a charitable organization, which sells, donated used merchandise only. All such merchandise shall be displayed and/or stored in an enclosed building.

Tower - A structure intended for transmitting or receiving television, radio, telephone communications or other electronic or electromagnetic signals, such structure being in excess of 100' in height or the base of which is located a distance less than the height of the tower from the property line.

Travel Trailer - A moveable vehicle with wheels designed or used as living and sleeping quarters or for recreation or business purposes, and such vehicles that have not had the wheels removed; to include campers, recreation vehicles, and trailer coaches.

Truck or Equipment Terminal - A building, structure or place where six (6) or more commercially licensed trucks are rented, leased, kept for hire, stored, or parked for compensation, or from which trucks or transports, stored or parked on the property, are dispatched for hire as common carriers, and which may include warehouse space.

Use - Use shall mean the purpose for which a lot or a building or structure, or any portion thereof, is designed, arranged, intended, occupies, or maintained, and "used" shall have a corresponding meaning.

Utility Facilities - Any above-ground structures or facilities, other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities, owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil, or electronic signals.

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 area and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining district

or because of conditions created by the landowner.

Veterinary Clinic - A building or part of a building used for the care, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention. Such clinics may or may not provide long-term lodging for ill or unwanted animals, or lodging for healthy animals on a fee basis. No outside runs, pens, or facilities shall be permitted.

Veterinary Service - Shall be defined as a veterinary clinic except that outside pens and runs are allowed.

Video Rental Shop - The use of land, building or structure for the purpose of renting video cassette recorders and/or video disc players and/or the rental of video tapes and/or discs.

Vision Clearance - An unoccupied triangular space at the intersection of right-of-ways with other right-of-ways or at the intersection of right-of-ways with railroads. See Traffic Visibility Triangle.

Warehouse - A building or part of a building used for the storage and distribution of goods, wares, merchandise, substances, or articles and may include facilities for a wholesale or retail commercial outlet, but shall not include facilities for a truck or transport terminal or yard.

Waters of the State - All waters within the jurisdiction of the 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.

Wholesale - The sale of commodities to retailers or jobbers and shall include the sale of commodities for the purpose of carrying on any trade or business even if the said trade of business is the consumer or end user of the commodity.

Wind Energy System – Commercial - A single, or multiple, structure(s) or place(s), such as a wind turbine, designed and constructed to generate power from wind for distribution to off-site users.

Wind Energy System – Non-Commercial - A single structure or place, such as a wind turbine, designed and constructed to generate power from wind and primarily intended to generate power for on-site use.

Windbreak - Any non-opaque manmade structure constructed of any material and erected adjacent to an animal feeding, calving, or other such lot of which its principal use is that of protecting livestock from the effects of the wind.

Yard - An open space at grade, other than a court or plaza, between a structure and the adjacent lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward.

Yard, Front - An open, unoccupied space on a lot facing a right-of-way and extending across the front of the lot between the side lot lines; measured from the road right-of-way to the structure.

Yard, Rear - An open, unoccupied space extending across the rear of a lot from one side lot line to the other side lot line.

Yard, Side - An open, unoccupied space on the same lot with a building situated between the building and sideline of the lot and extending through from the front yard to the required rear yard. Any lot line not the rear line or a front line shall be deemed a sideline.

Zone - An area within which, in accordance with the provisions of this Ordinance, certain uses of lands, buildings, and structures are permitted and certain others are prohibited, where yards and other open spaces are required, where lot areas, building height limits, and other requirements are established, all of the foregoing being identical for the zone and district in which they apply.

Zoning Administrator - An official of the County appointed and confirmed by the County Commission, charged with the responsibility of administering this ordinance. Zoning Administrator may also mean Deputy Zoning Administrator or Planning and Zoning Department.

## ARTICLE 2

### ADMINISTRATION

- Section 2:01. General
- Section 2:02. Jurisdiction
- Section 2:03. Provisions of this Ordinance Declared to the Minimum Requirements
- Section 2:04. Zoning Affects Every Building and Use
- Section 2:05. Performance Standards
- Section 2:06. Yard and Lot Reduction Prohibited
- Section 2:07. Districts Created
- Section 2:08. Zoning Map Changes
- Section 2:09. Zoning Map Replacement
- Section 2:10. Regulation Amendments
- Section 2:11. Rules for Interpretation of District Boundaries
- Section 2:12. Erection of More than One Principal Structure on a Lot
- Section 2:13. Moving a Structure
- Section 2:14. Nuisance Property
- Section 2:15. Shelterbelts
- Section 2:16. Sewage Disposal or Treatment Sites
- Section 2:17. Agricultural Use and Industrial Development Covenant Required
- Section 2:18. Naming of Additions and Subdivisions
- Section 2:19. Flood Zones

#### Section 2:01. General

This Ordinance shall be known, cited, and referred to as “The Zoning Ordinance of Davison County, South Dakota,” to the same effect as if the full title were stated. The regulations, set forth by this Ordinance within each district, shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

#### Section 2:02. Jurisdiction

As established on the map entitled “The Official Zoning Map of Davison County, South Dakota”, the provisions of this Ordinance shall apply within the unincorporated areas of Davison County, South Dakota, to include Loomis but excluding Ethan, Mt. Vernon, and Mitchell.

In accordance with § 11-3-6, § 11-6-26.1 and any other authority provided by law or as such statutes may be amended, the City of Mitchell, under city code 10-1-2: Jurisdiction, hereby exercises the power and authority of zoning within the extraterritorial jurisdiction of the city and county as provided by law for such purpose.

The extraterritorial jurisdiction that has been mutually agreed upon by the city of Mitchell council and the Davison County board of commissioners documented in the October 4, 1998 Commission Minutes, which is depicted on the official zoning maps of the city of Mitchell and Davison County and as such limits now exist or as they may be changed, in accordance with the

City of Mitchell Codified Law 10-1-2, is an area of approximately one (1) mile outside of the Mitchell City limits, which includes all or part of the following sections:

Mitchell Township 103-60;

Sections 3, 4, 5, 6, 8, 10, W ½ 11, 14, 15, 17, E ½ 19, 20, 23, W ½ 24, NW ¼ 25, 26, 27, 29, E ½ 30, 32, 33, 34, 35; and

Perry Township 104-60;

Sections 27, 28, 29, E ½ 30, 31, 32, and 34.

#### Section 2:03. Provisions of this Ordinance Declared to the Minimum Requirements

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this Ordinance require a greater width or size of yards, courts or other spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required, in any other ordinance, the provisions of this Ordinance shall govern. Wherever the provisions of any other ordinance require a greater width or size of yards, courts, or other open spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the provisions of this Ordinance, the provisions of such ordinance shall govern.

Any restrictions on property included in covenants, reservations and restrictions, or by-laws are the responsibility of the property owner and/or developer.

#### Section 2:04. Zoning Affects Every Building and Use

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

#### Section 2:05. Performance Standards

No building or other structure shall hereafter be erected or altered, without obtaining a permit to:

1. Accommodate or house a greater number of families;
2. Occupy a greater area of the lot; or
3. Have narrower or smaller rear yards, front yards, side yards, or other open spaces.

#### Section 2:06. Yard and Lot Reduction Prohibited

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

date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

### Section 2:07. Districts Created

For the purpose of this Ordinance, there are hereby created nine (9) types of districts by which the jurisdictional area defined in Section 2:02 shall be divided. The County is hereby divided into zones, or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairman of the County Commissioners, attested by the Auditor, and bearing the seal of the County, under the following words: “This is to certify that this is the Official Zoning Map referred to in Ordinance **No. 17-XX** of Davison County, South Dakota,” together with the date of the adoption of this Ordinance.

1. Agricultural (AG)
2. City Limits (CL)
3. Agricultural Residential (AR)
4. Extraterritorial Jurisdiction (ETJ)
5. Rural Estates (RE)
6. Rural Residential (RR)
7. Platted Town Site Residential District (PTR)
8. Planned Unit Development (PUD)
9. Rural Commercial (RC)

### Section 2:08. 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, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the County Commissioners, with an entry on the Official Zoning Map as follows: “on [date], by official action of the Davison County Commission, the following [change(s)] were made in the Official Zoning Map: [brief description of nature of change],” which entry shall be signed by the Chairman of the Commission and attested by the Auditor. No amendment to this Ordinance which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made in the Official Zoning Map or matters shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Section 15:02.

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

#### Section 2:09. 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 Davison County Commission may, by resolution, adopt a new Official Zoning Map that shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Chairman of the County Commission, attested by the Auditor, and bearing the seal of the County, under the following words:

“This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted [date of adoption of map being replaced] as part of Ordinance **No. 17-XX** of Davison County, South Dakota.”

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

#### Section 2:10. Regulation Amendments

The regulations, restrictions, and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed, or repealed in accordance with § 11-2-18, provided that such modification or repeal in each instance be proposed in an Ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original Ordinance. **Any Codified Law cited herein, which may be updated from time to time by the South Dakota Legislature, shall apply.**

Prior to consideration of amending, supplementing, changing, modifying or repealing this Ordinance by the governing body, notice of public hearings shall be provided as follows:

1. If the proposed changes affect a particular piece of property a notice shall be posted in a conspicuous place on or near the property upon which action is pending. The sign must be at least twenty-four (24) inches wide and eighteen (18) inches tall with bold lettering to inform the public about the petition and hearing, in accordance with § 11-2-28.3. Such posted notice shall be so placed upon such premises that it is easily visible from the road and shall be so posted at least ten (10) days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy, or change such posted notice prior to such hearings.

2. At least ten (10) days before the date of the Planning Commission hearing, the County shall have published in a legal newspaper a notice of the time, place, and subject matter of such hearing in accordance with § 11-2-19.
3. The Zoning Administrator or their designee in the event of a re-zone shall notify by mail all owners of abutting property for which action is sought. Notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date. A single notice explaining the Planning Commission Public Hearing and the County Commission Public Hearing shall be mailed to all abutting property owners.
4. The Planning Commission shall hold the Public Hearing in accordance with § 11-2-29, review the proposed amendment(s), and make recommendations to the County Commission.
5. At least ten (10) days before the date of the County Commission hearing, the County shall have published in a legal newspaper a notice of the time, place, and subject matter of such hearing; in accordance with § 11-2-19.
6. The County Commission shall hold the Public Hearing, review the proposed amendment(s) and by resolution or Ordinance deny or pass the recommendations.
7. The Zoning Administrator or their designee shall prepare a summary of the changes, commonly referred to as a Findings of Fact.
8. Once the summary is prepared the States Attorney may review the changes and forward the changes to the County Auditor for publishing.
9. A notice of the fact of adoption (summary) must be published once in the legal newspaper(s) of the County in accordance with § 11-2-30. The changes will take effect twenty (20) days after publication.

#### Section 2:11. 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 city limits;

4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, 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 variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 6 above, the Planning Commission shall interpret the district boundaries.

#### Section 2:12. Erection of More than One Principal Structure on a Lot

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

#### Section 2:13. Moving a Structure

In any district, any residential structure moved in a horizontal direction, must come into compliance with the most recent Uniform Building Code and this ordinance.

#### Section 2:14. Nuisance Property

Property shall be free from any person unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. In any way renders other persons insecure in life, or in the use of property;
3. Renders the ground, water, air, or food a hazard or an injury to human health;
4. Allows property to contain clutter or safety hazards;
5. Fails to encourage aesthetic standards and design requirements to maintain and improve the county's visual appeal and image, to include towers and signage.
6. Allows open burning without first notifying the Davison County Sheriff's Department of the location, property owner, and contact information.

7. Allows the dumping, abandonment, or disposal of any solid waste that will not be regularly collected and deposited or directly disposed of at a permitted solid waste facility.
8. Allows the burning of solid waste except as provided by § 34A-6-1.6 and except in a manner and under conditions approved by the department or board pursuant to § 34A-1.
9. Allows motorized vehicles or trailers of any kind or type without current license plates *and* operable stored in the Agriculture Residential District (AR), other than in completely enclosed buildings.

No provision of this section, or § 34A-6-1.1 to § 34A-6-1.38, inclusive, may be construed so as to prohibit a farmer or rancher from disposing of solid waste from normal farming operations or ordinary domestic activities upon his own land; provided such disposal does not create a nuisance or hazard to public health, does not violate a local ordinance, will not unlawfully pollute ground or surface waters or does not violate § 34A-1 or § 34A-2 or the water or air pollution control laws of the United States.

#### Section 2:15. Shelterbelts

Shelterbelts shall be planted no closer than seventy-five (75) feet from the road, lot line, or street right of way.

#### Section 2:16. Sewage Disposal or Treatment Sites

All individual sewage treatment systems shall be prohibited when any portion of the system is located less than three hundred and fifty (350) feet of a lake, river, or stream classified as a local or downstream public drinking water supply. Sites located between three hundred and fifty (350) feet to six hundred sixty (660) feet shall be required to obtain a conditional use as described herein. Sites located greater than six hundred sixty (660) feet shall be exempt from the conditional use process and shall be eligible for construction as prescribed by this Ordinance.

Septic systems installed within Davison County must comply with all applicable South Dakota Department of Environment and Natural Resources and State Plumbing Code regulations, to include AR 74:53:01. Systems installed by someone other than the owner shall be completed by a person licensed to do such work within the State of South Dakota. All plumbing construction and major plumbing remodel shall have a Plumbing Installation Certificate, which can be purchased from the State Plumbing Commission and returned to the Commission with an appropriate fee.

A water-carriage wastewater system may not be installed or operated on a lot which is smaller than 20,000 square feet in surface area if supplied by a public water supply system. A water-carriage wastewater system may not be installed or operated on a lot which is smaller than 43,560 square feet (1 acre) when potable water is supplied by a private water supply system located on the lot. A water-carriage wastewater treatment system may be installed and operated on a lot which is 20,000 square feet in surface area or larger if the requirements of

AR 74:53:01:19 distance between on-site wastewater system components and pertinent ground features are met and the premises are supplied by a public water supply system, a private water supply system not located on the lot, or by hauling and storage of potable water in a cistern. The requirements of this section do not apply if wastewater is emptied into a holding tank or an unconventional system is used, in accordance with AR 74:53:01:16.

Individual or similar septic systems proposed where the concentration of development shall merit such review as determined by the Zoning Administrator, shall submit soil suitability and percolation tests prior to issuance of a building permit. A percolation test may also be a stipulation of the Planning Commission.

#### Section 2:17. Agricultural Use and Industrial Development Covenant Required

All residential or commercial building permits, plats intended for residential dwellings or commercial use, or requests for rezoning of agricultural land shall be accompanied by an Agricultural Use and Industrial Development Covenant as defined herein. Said Covenant must be approved by the County Zoning Administrator and recorded at the Register of Deeds office in accordance with South Dakota Codified Law prior to issuance of a residential or commercial building permit, approval of the plat, or approval of the rezoning process. A building permit to replace or enlarge an existing residence or commercial building is exempt from this requirement.

#### Section 2:18. Naming of Additions, Subdivisions, Tracts, and Roads

Every addition, subdivision, or tract within Davison County and subject to this Zoning Ordinance shall be uniquely named. Such name shall not duplicate, be the same in spelling, or alike in pronunciation, with or to any existing addition, subdivision, or tract in Davison County; unless it is an extension of or adjoining to an existing addition or subdivision recorded in Davison County. Naming of Plat shall not include an initial along with a name. Such addition, subdivision, and tract names are subject to the approval of the Davison County Register of Deeds whose decision shall be final. Plats which do not comply with this section and the general provisions of Section 13:02 (B) of this ordinance shall not be entitled to recording.

All new road names must be approved by the Register of Deeds, Local Emergency Planning Commission (LEPC), the Davison County Planning Commission, and the Davison County Commissioners.

#### Section 2:19. Flood Zones

No residential structures designed for human habitation including manufactured and modular homes shall be placed, sited, or constructed within a floodway as defined herein without meeting the criteria set forth in the Davison County Flood Damage Prevention Ordinance. Residential dwellings including manufactured and modular homes currently located within a floodway as defined herein shall not be allowed to expand without review pursuant to the requirements of this Ordinance and the Flood Damage Prevention Ordinance.

## ARTICLE 3

### AGRICULTURAL DISTRICT (AG)

Section 3:01. Intent

Section 3:02. Permitted Principal Uses and Structures

Section 3:03. Permitted Accessory Uses and Structures

Section 3:04. Conditional Uses and Structures

Section 3:05. Classification of Unlisted Uses and Structures

Section 3:06. Prohibited Uses and Structures

Section 3:07. Minimum Lot Requirements

Section 3:08. Minimum Setback Requirements for Structures

Section 3:09. Concentrated Animal Feeding Operation Standards (500 to 999 Animal Units)

Section 3:10. Concentrated Animal Feeding Operation Standards (1000 Animal Units or more)

Section 3:11. Wind Energy Systems

#### Section 3:01. Intent

The intent of Agricultural Districts (AG) is to protect 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 and service delivery.

#### Section 3:02. Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Agricultural District (AG):

1. Agriculture;
2. Bed and breakfasts;
3. Day cares, family;
4. Dwellings, additional farm;
5. Dwellings, single-family;
6. Farms;
7. Farm buildings;
8. Historic sites;
9. Kennels;
10. Manufactured homes;

11. Modular homes;
12. Orchards;
13. Parks;
14. Ranches;
15. Rental Property of less than three (3) units.
16. Storage Building;
17. Utility facilities;
18. Veterinary services; and
19. Wind energy system – non-commercial. (With towers up to 75’(ft))

#### Section 3:03. Permitted Accessory Uses and Structures

Permitted accessory uses and structures shall be allowed, as long as a permitted principle use or structure exists on the property.

The following accessory uses and structures shall be permitted in the Agricultural District (AG):

1. Accessory agricultural structures;
2. Accessory buildings;
3. Accessory uses, not specifically regulated by ordinance and structures customarily incidental to permitted uses and structures when established within the space limits of this district;
4. Farm drainage and irrigation systems, flood control, watershed structures and erosion control devices meeting all county, state, and soil conservation district regulations;
5. Farm occupations;
6. Home occupations;
7. Roadside stands for sales of farm products, fish bait, and other approved products;
8. Shelterbelts;

9. Signs, on-site;

10. Stock dams.

Section 3:04. Conditional Uses and Structures

After the provisions of this Ordinance relating to conditional uses and structures have been fulfilled, the Planning Commission and Board of Adjustment may permit a temporary or permanent conditional use or structure in the Agricultural District (AG) for the following, regardless if a permitted principle or accessory use exists on the property:

1. Agricultural product processing facilities;
2. Airports;
3. Aquaculture;
4. Auction yards and barns;
5. Auto sales or vehicles, including trailers;
6. Campgrounds;
7. Cemeteries;
8. Churches;
9. Commercial trucking terminals;
10. Concentrated animal feeding operations;
11. Day care centers;
12. Day cares, group family home;
13. Exhibition areas;
14. Extraction of sand, gravel, or minerals provided such uses meet requirements for conducting surface mining activities of § 45-6B;
15. Fairgrounds;
16. Fireworks stands;

17. Game farms;
18. Game lodges;
19. Golf courses;
20. Grain elevators;
21. Hobby farms;
22. Motor vehicle tracks or play areas;
23. Municipal or multi-residential sewage treatment sites pursuant to Section 2:15;
24. Open sales;
25. Private recreation areas;
26. Private shooting preserves;
27. Rental Property of three (3) or more units.
28. Repair shops;
29. Riding stables;
30. Salvage yard-recycling center;
31. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
32. Schools, public;
33. Schools, private or denominational;
34. Self-storage units;
35. Shooting range;
36. Signs, off-site;
37. Solar Energy Systems over 100 square feet;
38. Special Events, which may include alcohol sales;
39. Swimming pools;

40. Towers;
41. Wildlife and game production areas;
42. Wind energy system, commercial; and
43. Wind energy system, non-commercial.

#### Section 3:05. Classification of Unlisted Uses and Structures

In order to insure that the zoning ordinance will permit all similar uses or structures in each district, the Planning Commission and the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use or structure not specifically listed as a permitted, accessory, or conditional use or structure in a District shall be deemed a permitted, accessory, or conditional use or structure in one or more districts on the basis of similarity to uses or structures specifically listed.

#### Section 3:06. Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 3:05 shall be prohibited.

#### Section 3:07. Minimum Lot Requirements

The minimum lot width shall be one hundred and fifty (150) feet.

The minimum lot area per single-family dwelling unit, modular, or manufactured home to be used as a residence shall be twenty-five (25) acres. Lots recorded at the Register of Deeds prior to May 1, 1996 are grandfathered in from complying with this Section.

The minimum lot area of twenty-five (25) acres may be waived by variance upon compliance with one of the following criteria:

1. The proposed building site is a farmstead as defined herein; then the minimum lot size shall be three (3) acres. The applicant shall secure a variance prior to issuance of a building permit.
2. An additional dwelling, occupied by other members of the family farm unit is to be placed within the existing farmstead.
3. A financing agency requiring a smaller lot size for the dwelling shall enable the applicant consideration of a variance, provided written proof of such requirement is presented to the Zoning Administrator upon request and the applicant verifies ownership of a minimum of twenty-five (25) acres adjacent to or abutting the proposed plat.

4. If the proposed building site will be transferred by the owner to a relative within the 3rd degree of kinship subject to the following limitations:
  - a. the minimum lot size shall be three (3) acres,
  - b. the applicant shall secure a variance prior to issuance of the building permit, and
  - c. the proposed building site shall be platted, and the plat recorded with the Register of Deeds prior to issuance of a building permit.
5. The Planning Commission and County Commission have the authority to determine whether a plat which does not meet the minimum lot area in a District be permitted.

#### Section 3:08. Minimum Setback Requirements for Structures

There shall be a setback from all public or private right-of-ways, and other structures. Setbacks will be measured from the edge of the structure, including a gutter or down spout, to the public right-of-way, according to the following:

1. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, car ports, and obstructions;
  - a. A front yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet;
  - b. A rear yard setback from all lot lines or public right-of-ways of not less than a depth of fifty (50) feet;
  - c. A side yard setback from all lot lines or public right-of-ways of not less than a width of fifty (50) feet;
  - d. A corner lot shall meet the requirements of a site triangle, requiring a front yard setback in accordance with Section 3:08 (1) (a), and a side yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other building or structure, unless connected.
3. No structure, other than a standard mailbox approved by the United States Post Office, shall be erected in any right of way.

4. No temporary items, such as bales, may remain in the right of way past November 1<sup>st</sup> of each year, in accordance with § 13-31-56.
5. No trees or crops may be planted or remain in the right of way at any time.
6. No trees shall be planted in any drainage or utility easement.

Section 3:09. Concentrated Animal Feeding Operation Standards (500 to 999 Animal Units)

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources and the Planning & Zoning Office.
2. Prior to construction, such facilities shall obtain a storm water permit for construction activities from the South Dakota Department of Environment and Natural Resources. The storm water pollution prevention plan required by the permit must be developed and implemented upon the start of construction.
3. Animal Feeding Operation confinement and waste facilities shall comply with the following facility setback requirements:
 

a. Public wells	2,640 feet
b. Private wells	250 feet
c. Private wells (producers)	150 feet
d. Lakes, rivers, or streams classified as a drinking water supply	1,320 feet
e. Lakes, rivers, or streams classified as fisheries	500 feet
f. All public road right of ways	300 feet
g. Special Flood Hazard Area	Prohibited
h. All property lines delineating an ownership change	300 feet
4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification.
5. Animal feeding operation confinement and waste facilities shall be located no closer than one (1) mile from any incorporated municipality.
6. Animal feeding operation confinement and waste facilities shall be located no closer than one-quarter (1/4) mile from any church, commercially zoned area, or residential dwelling. One or more dwelling units are allowed on the facility site.

Residential dwellings associated with the animal feeding operation do not have to meet setback requirements.

7. The owner and/or operator of a proposed animal feeding operation or the owner and/or developer of proposed residential property may request a variance decreasing the separation distances required by this Article. Prior to approval of a variance in the agriculture district the owner(s) of all property within ½ mile of the proposed animal feeding operation will be informed of the application by mail at least 10 days prior to any hearings.
8. Animal waste shall be transported in leak proof containers and all hauling equipment shall comply with Davison County load limits.
9. Animal waste generated outside of and transported to Davison County for the purpose of land application shall comply with manure application setbacks as prescribed in this section.
10. Animal feeding operations shall prepare a facility management plan to dispose of dead animals, manure, and wastewater in such a manner as to control odors or flies. The Planning Commission and Board of Adjustment will review the need for control measures on a site-specific basis.
11. Manure generated from animal feeding operations shall comply with the following manure application setback requirements if the manure is incorporated or injected:
  - a. Public wells 1,320 feet
  - b. Private wells 660 feet
  - c. Private wells (producers) 150 feet
  - d. Lakes, rivers, or streams classified as a drinking water supply 1,320 feet
  - e. Lakes, rivers or streams classified as fisheries 660 feet
  - f. All public road right-of-ways 0 feet
  - g. Special Flood Hazard Area Prohibited
  - h. Incorporated or unincorporated communities 660 feet
  - i. A residence other than the operators 100 feet
  - j. All property lines delineating an ownership change 0 feet

12. Manure generated from animal feeding operations shall comply with the following manure application setback requirements if the manure is irrigated or surface applied:

- |   |            |
|---|------------|
| a. Public wells   | 1,320 feet |
| b. Private wells  | 660 feet   |
| c. Private wells (producers)                                      | 150 feet   |
| d. Lakes, rivers or streams classified as a drinking water supply | 2,640 feet |
| e. Lakes, rivers or streams classified as fisheries               | 660 feet   |
| f. All public road right-of-ways (surface)                        | 100 feet   |
| g. All public road right-of-ways (irrigated)                      | 660 feet   |
| h. Special Flood Hazard Area                                      | Prohibited |
| i. Incorporated or unincorporated communities                     | 2,640 feet |
| j. A residence other than the operators (surface)                 | 330 feet   |
| k. A residence other than the operators (irrigated)               | 660 feet   |
| l. All property lines delineating an ownership change (surface)   | 100 feet   |
| m. All property lines delineating an ownership change (irrigated) | 200 feet   |

Section 3:10. Concentrated Animal Feeding Operation Standards (1000 Animal Units or more)

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources and the Planning & Zoning Office.
2. Prior to construction, such facilities shall obtain a storm water permit for construction activities from the South Dakota Department of Environment and Natural Resources. The storm water pollution prevention plan required by the permit must be developed and implemented upon the start of construction.
3. Animal Feeding Operation confinement and waste facilities shall comply with the following facility setback requirements:

- |                 |            |
|-----------------|------------|
| a. Public wells | 2,640 feet |
|-----------------|------------|

- |  |            |
|--|------------|
| b. Private wells   | 250 feet   |
| c. Private wells (producers)                                       | 150 feet   |
| d. Lakes, rivers, or streams classified as a drinking water supply | 1,320 feet |
| e. Lakes, rivers, or streams classified as fisheries               | 500 feet   |
| f. All public road right of ways                                   | 300 feet   |
| g. Special Flood Hazard Area                                       | Prohibited |
| h. All property lines delineating an ownership change              | 300 feet   |
4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification.
  5. Animal feeding operation confinement and waste facilities shall be located no closer than one (1) mile from any incorporated municipality.
  6. Animal feeding operation confinement and waste facilities shall be located no closer than one-half ½ mile from any church, commercially zoned area, or residential dwelling. One or more dwelling units are allowed on the facility site. Residential dwellings associated with the animal feeding operation do not have to meet setback requirements.
  7. The owner and/or operator of a proposed animal feeding operation or the owner and/or developer of proposed residential property may request a variance decreasing the separation distances required by this Article. Prior to approval of a variance in the agriculture district the owner(s) of all property within ½ mile of the proposed animal feeding operation will be informed of the application by mail at least 10 days prior to any hearings.
  8. Animal feeding operations shall prepare a facility management plan to dispose of dead animals, manure, and wastewater in such a manner as to control odors or flies. The Planning Commission and Board of Adjustment will review the need for control measures on a site-specific basis.
  9. Animal waste shall be transported in leak proof containers and all hauling equipment shall comply with Davison County load limits.
  10. Animal waste generated outside of and transported to Davison County for the purpose of land application shall comply with manure application setbacks as prescribed in this section.

11. Manure generated from animal feeding operations shall comply with the following manure application setback requirements if the manure is incorporated or injected:

- |  |            |
|--|------------|
| a. Public wells  | 1,320 feet |
| b. Private wells   | 660 feet   |
| c. Private wells (producers)                                       | 150 feet   |
| d. Lakes, rivers, or streams classified as a drinking water supply | 1,320 feet |
| e. Lakes, rivers or streams classified as fisheries                | 660 feet   |
| f. All public road right-of-ways                                   | 0 feet     |
| g. Special Flood Hazard Areas                                      | Prohibited |
| h. Incorporated or unincorporated communities                      | 660 feet   |
| i. A residence other than the operators                            | 100 feet   |
| j. All property lines delineating an ownership change              | 0 feet     |

12. Manure generated from animal feeding operations shall comply with the following manure application setback requirements if the manure is irrigated or surface applied:

- |   |            |
|---|------------|
| a. Public wells   | 1,320 feet |
| b. Private wells  | 660 feet   |
| c. Private wells (producers)                                      | 150 feet   |
| d. Lakes, rivers or streams classified as a drinking water supply | 2,640 feet |
| e. Lakes, rivers or streams classified as fisheries               | 660 feet   |
| f. All public road right-of-ways (surface)                        | 100 feet   |
| g. All public road right-of-ways (irrigated)                      | 660 feet   |
| h. Special Flood Hazard Areas                                     | Prohibited |
| i. Incorporated or unincorporated communities                     | 2,640 feet |
| j. A residence other than the operators (surface)                 | 330 feet   |

- k. A residence other than the operators (irrigated) 660 feet
- l. All property lines delineating an ownership change (surface) 100 feet
- m. All property lines delineating an ownership change (irrigated) 200 feet

Section 3:11. Wind Energy Systems

Prior to construction, Wind Energy Systems shall:

1. Submit a Conditional Use Application to be considered.
2. Obtain any access permits from the road authority, to include the Highway Superintendent or Township Chairman.
3. Obtain a road use and maintenance agreement with the road authority (s).
4. Obtain a building permit.
5. Not contain artificial lights other than in accordance with the Federal Aviation Administration Standards, to include Title 14 Code of Federal Regulations (14 CFR) Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace (75 Federal Register 42303, July 21, 2010).
6. Not exceed 45 dBA, as measured at the closest neighboring non-participating residence; at a time when other ambient noise is not present.
7. Not exceed 30 hours per year of project shadow flicker at a non-participating residence.
8. Not damage any private or county coordinated drainage Systems. Any repairs will be the responsibility of the developer.
9. Not be located within a distance of 1,000', or two times the height of the tower, whichever is greater, of a non-participating residence, business, or public building. Structures built post-WES construction may be constructed inside the designated WES setbacks.
10. Not be located within 1.1 times the height of the tower to any property line, measured from the base of the tower.
11. Be decommissioned if out of service for a continuous 12 month period. All equipment above ground and three feet below ground shall be removed within 180 days.
12. Acquire waivers to be signed by those affected to allow a less restrictive distance.

13. Provide yearly proof of a surety bond in an amount approved by the County Commission for removal of the decommissioned tower.

14. Provide yearly proof of liability insurance on the WES.

## ARTICLE 4

### AGRICULTURAL - RESIDENTIAL DISTRICT (AR)

Section 4:01. Intent

Section 4:02. Permitted Principal Uses and Structures

Section 4:03. Permitted Accessory Uses and Structures

Section 4:04. Conditional Uses and Structures

Section 4:05. Classification of Unlisted Uses and Structures

Section 4:06. Prohibited Uses and Structures

Section 4:07. Minimum Lot Requirements

Section 4:08. Minimum Setback Requirements for Structures

Section 4:09. Rural Development Standards

Section 4:10. Concentrated Animal Feeding Operation Standards (500 to 999 Animal Units)

#### Section 4:01. Intent

The intent of Agricultural - Residential Districts (AR) is to protect agricultural lands and lands consisting of natural growth from incompatible land uses while providing for single family residential uses in a pleasant and stable environment; yet to encourage in-fill development of rural areas which currently support rural residential developments and to limit increased residential development to areas where they are best suited for reasons of practicality and service delivery.

#### Section 4:02. Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Agricultural - Residential District (AR):

1. Additional farm dwellings;
2. Agriculture;
3. Bed and breakfasts;
4. Day cares, family;
5. Dwellings, single-family;
6. Farm buildings, to include grain bins;
7. Farms, hobby;
8. Historic sites;

9. Horticulture;
10. Modular homes; Farms;
11. Orchards;
12. Parks;
13. Ranches;
14. Rental Property of less than three (3) units.
15. Shelterbelts;
16. Stock dams;
17. Storage Building;
18. Utility facilities; and
19. Veterinary clinics.

#### Section 4:03. Permitted Accessory Uses and Structures

Permitted accessory uses and structures shall be allowed, as long as a permitted principle use or structure exists on the property.

The following accessory uses and structures shall be permitted in the Agricultural - Residential District (AR):

1. Accessory agricultural structures;
2. Accessory buildings;
3. Accessory uses, not specifically regulated by ordinance and customarily incidental to permitted uses and structures when established within the space limits of this district;
4. Farm drainage and irrigation systems, flood control and watershed structures and erosion control devices meeting all county, state, and soil conservation district regulations;
5. Farm occupations;
6. Home occupations;

7. Roadside stands for sales of farm products, fish bait, and other approved products;  
and
8. Signs, on-site;

#### Section 4:04. Conditional Uses and Structures

After the provisions of this Ordinance relating to conditional uses and structures have been fulfilled, the Planning Commission and Board of Adjustment may permit a temporary or permanent conditional use or structure in the Agricultural - Residential District (AR) for the following, regardless if a permitted principle or accessory use exists on the property:

1. Accessory agricultural structures;
2. Agricultural product processing facilities;
3. Aquaculture;
4. Auction yards and barns;
5. Auto sales or vehicles, including trailers;
6. Campgrounds;
7. Cemeteries;
8. Churches;
9. Commercial trucking terminals;
10. Concentrated animal feeding operations;
11. Convenience stores;
12. Day care centers;
13. Day cares, group family home;
14. Exhibition areas;
15. Extraction of sand, gravel, or minerals provided such uses meet requirements for conducting surface mining activities of § 45-6B;
16. Fairgrounds;
17. Fireworks stands;

18. Game farms;
19. Game lodges;
20. Governmental services;
21. Golf courses;
22. Grain elevators;
23. Kennels;
24. Manufactured homes;
25. Motor vehicle tracks or play areas;
26. Municipal or multi-residential sewage treatment sites pursuant to Section 1211;
27. Open sales areas;
28. Private recreation areas;
29. Private shooting preserves;
30. Rental Property of three (3) or more units.
31. Repair shops;
32. Riding stables;
33. Salvage yard-recycling center;
34. Sanitary landfills or restricted use sites, permitted by the Department of Environment and Natural Resources (DENR);
35. Self-storage units;
36. Shooting range;
37. Signs, off-site;
38. Solar Energy Systems over 100 square feet;
39. Special Events, which may include alcohol sales;

- 40. Swimming pools;
- 41. Tower;
- 42. Veterinary services;
- 43. Wildlife and game production areas; and
- 44. Wind Energy System, Non-Commercial

#### Section 4:05. Classification of Unlisted Uses and Structures

In order to insure that the zoning ordinance will permit all similar uses or structures in each district, the Planning Commission or the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use or structure not specifically listed as a permitted, accessory, or conditional use or structure in a District shall be deemed a permitted, accessory, or conditional use or structure in one or more districts on the basis of similarity to uses or structures specifically listed.

#### Section 4:06. Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 4:05 shall be prohibited.

#### Section 4:07. Minimum Lot Requirements

The minimum lot width shall be one hundred and fifty (150) feet.

The minimum lot area per single-family dwelling unit, modular, or manufactured home to be used as a residence shall be twenty-five (25) acres. Lots recorded at the Register of Deeds prior to May 1, 1996 are grandfathered in from complying with this Section.

The minimum lot area of twenty-five (25) acres may be waived by variance upon compliance with one of the following criteria:

1. The proposed building site is a farmstead as defined herein; then the minimum lot size shall be three (3) acres. The applicant shall secure a variance prior to issuance of a building permit.
2. An additional dwelling, occupied by other members of the family unit is to be placed within the existing farmstead.
3. A financing agency requiring a smaller lot size for the dwelling shall enable the applicant consideration of a variance, provided written proof of such requirement is presented to the Zoning Administrator upon request and the applicant verifies ownership of a minimum of twenty-five (25) acres adjacent to or abutting the

proposed plat.

4. If the proposed building site will be transferred by the owner to a relative within the 3rd degree of kinship subject to the following limitations:
  - a. the minimum lot size shall be one (1) acre,
  - b. the Applicant shall secure a variance prior to issuance of the building permit, and
  - c. the proposed building site shall be platted, and the plat recorded with the Register of Deeds prior to issuance of a building permit.
5. The Planning Commission and County Commission have the authority to determine whether a plat which does not meet the minimum lot area in a District be permitted.

#### Section 4:08. Minimum Setback for Structures

There shall be a setback from all public or private right-of-ways, and other structures. Setbacks will be measured from the edge of the structure, not including a gutter or down spout, to the public right-of-way, according to the following:

1. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, and car ports, and obstructions;
  - a. A front yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet;
  - b. A rear yard setback from all lot lines or public right-of-ways of not less than a depth of ten (10) feet;
  - c. A side yard setback from all lot lines or public right-of-ways of not less than a width of ten (10) feet;
  - d. A corner lot shall meet the requirements of a site triangle, requiring a front yard setback in accordance with Section 4:08 (1) (a), and a side yard setback from all public right-of-ways of not less than a depth of twenty-five (25) feet.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other building or structure, unless connected.
3. No structure, other than a standard mailbox approved by the United States Post Office, shall be erected in any right of way.

4. No temporary items, such as bales, may remain in the right of way past November 1<sup>st</sup> of each year, in accordance with § 13-31-56.
5. No trees or crops may be planted or remain in the right of way at any time.
6. No trees shall be planted in any drainage or utility easement.

#### Section 4:09. Rural Development Standards

1. No single lots of less than three (3) acres for a non-farm use shall be approved without a variance. All proposed non-farm rural housing developments shall comply with this Section.
2. All lots shall be part of master planned and platted development or subdivision, which may be approved under one variance. In lieu of requiring the entire development to be platted and recorded a master plan illustrating the density, infrastructure, and current and future development of all property owned or controlled by the applicant which adjoins or abuts the development shall be submitted for approval to the Planning Commission and County Commission. The applicant shall also provide a road maintenance agreement for all private interior roads that are dedicated for public use. The master plan shall provide a one hundred fifty foot (150') buffer for all land within the development abutting land that is used for agriculture. If the abutting land is also developed, the 150' buffer on the original development may be utilized.
3. The applicant shall provide a final copy of all covenants and easements to be recorded upon the property prior to development, which shall be submitted for approval to the Planning Commission and County Commission.
4. Initially, no less than four (4) of the proposed lots within the development or subdivision shall be platted and recorded pursuant to § 11-3.
5. The minimum lot area shall be one (1) acre per single family dwelling unit, modular, or manufactured home.
6. The minimum lot width shall be one hundred and fifty (150) feet.
7. All yards must meet the setbacks set forth in Section 4:08.
8. The County Planning Commission and County Commission shall approve ingress and egress to the development, which may require a service road for developments of three (3) or more lots. The applicant shall obtain a signature granting said access from the appropriate road authority when platted.
9. Planned developments or subdivisions shall not be located within the floodway as

defined herein.

10. All lots within a planned development or subdivision shall be served by a Department of Environment and Natural Resources approved water system.
11. Prior to issuance of a building permit, a site plan and topographic maps shall be submitted. Said plan and maps shall include, at a minimum:
  - a. proposed site layout;
  - b. storm water drainage management, including applicable permits;
  - c. roads and streets, including ingress and egress; and
  - d. water and sewer service.
12. Septic Systems shall comply with Section 2:16 and all applicable South Dakota Department of Environment and Natural Resources regulations, to include AR 74:53:01. Applicants shall be prepared to document acceptable soil percolation and waste treatment, certified by a South Dakota licensed and registered professional engineer by submitting this information and any additional information requested by the Planning Commission or Board of Adjustment. Housing subdivisions and housing developments platted before February 28, 1975, are exempt from the lot size requirements of AR 74:53:01:16 provided compliance with other provisions of AR 74:53:01 can be achieved.
13. The developer, contractor, or owner of all platted lands shall execute a perpetual agricultural farm use covenant running with the land prior to recording a plat or securing a building permit, in accordance with Section 2:16.

Section 4:10. Concentrated Animal Feeding Operation Standards (500 to 999 Animal Units)

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources and the Planning & Zoning Office.
2. Prior to construction, such facilities shall obtain a storm water permit for construction activities from the South Dakota Department of Environment and Natural Resources. The storm water pollution prevention plan required by the permit must be developed and implemented upon the start of construction.
3. Animal Feeding Operation confinement and waste facilities shall comply with the following facility setback requirements:
  - a. Public wells 2,640 feet

- |  |            |
|--|------------|
| b. Private wells   | 250 feet   |
| c. Private wells (producers)                                       | 150 feet   |
| d. Lakes, rivers, or streams classified as a drinking water supply | 1,320 feet |
| e. Lakes, rivers, or streams classified as fisheries               | 500 feet   |
| f. All public road right of ways                                   | 300 feet   |
| g. Special Flood Hazard Areas                                      | prohibited |
| h. All property lines delineating an ownership change              | 300 feet   |
4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification.
  5. Animal feeding operation confinement and waste facilities shall be located no closer than one (1) mile from any incorporated municipality.
  6. Animal feeding operation confinement and waste facilities shall be located no closer than one-half (1/2) mile from any church, commercially zoned area, or residential dwelling, sited outside the area described in Section 619 (5) above. One (1) dwelling unit is allowed on the facility site.
  7. The owner and/or operator of a proposed animal feeding operation or the owner and/or developer of proposed residential property may request a variance decreasing the separation distances required by Section 619 (5) (6). Prior to approval of a variance in the agriculture-residential district the owner(s) of all property affected by the variance must execute an agriculture easement, which shall be recorded with the County Register of Deeds.
  8. Animal waste shall be transported in leak proof containers and all hauling equipment shall comply with Davison County load limits.
  9. Animal waste generated outside of and transported to Davison County for the purpose of land application shall comply with manure application setbacks as prescribed in this Section.
  10. Animal feeding operations shall prepare a facility management plan to dispose of dead animals, manure, and wastewater in such a manner as to control odors or flies. The Planning Commission and Board of Adjustment will review the need for control measures on a site-specific basis.
  11. Manure generated from animal feeding operations shall comply with the following manure application setback requirements if the manure is incorporated or injected:

- |  |            |
|--|------------|
| a. Public wells  | 1,320 feet |
| b. Private wells   | 660 feet   |
| c. Private wells (producers)                                       | 150 feet   |
| d. Lakes, rivers, or streams classified as a drinking water supply | 1,320 feet |
| e. Lakes, rivers and streams classified as fisheries               | 660 feet   |
| f. All public road right-of-ways                                   | 0 feet     |
| g. Special Flood Hazard Areas                                      | Prohibited |
| h. Incorporated or unincorporated communities                      | 660 feet   |
| i. A residence other than the operators                            | 100 feet   |
| j. All property lines delineating an ownership change              | 0 feet     |
12. Manure generated from animal feeding operations shall comply with the following manure application setback requirements if the manure is irrigated or surface applied:
- |   |            |
|---|------------|
| a. Public wells   | 1,320 feet |
| b. Private wells  | 660 feet   |
| c. Private wells (producers)                                      | 150 feet   |
| d. Lakes, rivers or streams classified as a drinking water supply | 2,640 feet |
| e. Lakes, rivers or streams classified as fisheries               | 660 feet   |
| f. All public road right-of-ways (surface)                        | 100 feet   |
| g. All public road right-of-ways (irrigated)                      | 660 feet   |
| h. Special Flood Hazard Area                                      | Prohibited |
| i. Incorporated communities                                       | 2,640 feet |
| j. A residence other than the operators (surface)                 | 330 feet   |
| k. A residence other than the operators (irrigated)               | 660 feet   |

- l. All property lines delineating an ownership change (surface) 100 feet
- m. All property lines delineating an ownership change (irrigated) 200 feet

## ARTICLE 5

### RURAL ESTATE DISTRICT (RE)

Section 5:01. Intent

Section 5:02. Permitted Principal Uses and Structures

Section 5:03. Permitted Accessory Uses and Structures

Section 5:04. Conditional Uses and Structures

Section 5:05. Classification of Unlisted Uses and Structures

Section 5:06. Prohibited Uses and Structures

Section 5:07. Minimum Lot Requirements

Section 5:08. Minimum Setback Requirements for Structures

Section 5:09. Rural Development Standards

#### Section 5:01. Intent

The intent of Rural Estate Districts (RE) is to provide for low density residential development and other compatible uses in a pleasant and stable environment, where utilities are available.

#### Section 5:02. Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Rural Estate District (RE):

1. Day care, family;
2. Dwellings, single-family;
3. Horticulture;
4. Modular homes;
5. Parks; and
6. Rental Property of less than three (3) units.
7. Utility facilities.

#### Section 5:03. Permitted Accessory Uses and Structures

Permitted accessory uses and structures shall be allowed, as long as a permitted principle use or structure exists on the property.

The following accessory uses and structures shall be permitted in the Rural Estate District (RE):

1. Accessory buildings;

2. Accessory uses, not specifically regulated by ordinance and customarily incidental to permitted uses and structures when established within the space limits of this district; and
3. Farm occupations.
4. Home occupations.

#### Section 5:04. Conditional Uses and Structures

After the provisions of this Ordinance relating to conditional uses and structures have been fulfilled, the Planning Commission and Board of Adjustment may permit a temporary or permanent conditional use or structure in the Rural Estate District (RE) for the following, regardless if a permitted principle or accessory use or structure exists on the property:

1. Accessory agricultural structures;
2. Campgrounds;
3. Cemeteries;
4. Churches,
5. Clinics;
6. Convalescent, nursing, and rest homes;
7. Convenience stores;
8. Day care, group family home;
9. Fairgrounds;
10. Golf courses;
11. Governmental services;
12. Hobby farms;
13. Manufactured homes;
14. Rental Property of three (3) or more units.
15. Riding stable;
16. Rodeo grounds;

17. Salvage yard-recycling center; and

18. Self-storage units.

19. Solar Energy Systems over 100 square feet;

#### Section 5:05. Classification of Unlisted Uses and Structures

In order to insure that the zoning ordinance will permit all similar uses or structures in each district, the Planning Commission or the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use or structure not specifically listed as a permitted, accessory, or conditional use or structure in a District shall be deemed a permitted, accessory, or conditional use or structure in one or more districts on the basis of similarity to uses or structures specifically listed.

#### Section 5:06. Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 5:05 shall be prohibited.

#### Section 5:07. Minimum Lot Requirements

The minimum lot width shall be three hundred (300) feet.

The minimum lot area shall be three (3) acres per single family dwelling unit, modular, or manufactured home.

#### Section 5:08. Minimum Setback Requirements for Structures

There shall be a setback from all public or private right-of-ways, and other structures. Setbacks will be measured from the edge of the structure, not including a gutter or down spout, to the public right-of-way, according to the following:

1. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, and car ports, and obstructions;
  - a. A front yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet,
  - b. A rear yard setback from all lot lines or public right-of-ways of not less than a depth of twenty-five (25) feet, and
  - c. Each side yard setback from all lot lines or public right-of-ways shall not be less than a width of twenty-five (25) feet.

- d. A corner lot shall meet the requirements of a site triangle, requiring a front yard setback in accordance with Section 5:08 (1) (a), and a side yard setback from all public right-of-ways of not less than a depth of twenty-five (25) feet.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other building or structure, unless connected.
3. No structure, other than a standard mailbox approved by the United States Post Office, shall be erected in any right of way.
4. No temporary items, such as bales, may remain in the right of way past November 1<sup>st</sup> of each year, in accordance with § 13-31-56.
5. No trees or crops may be planted or remain in the right of way at any time.
6. No trees shall be planted in any drainage or utility easement.

#### Section 5:09. Rural Development Standards

1. All lots shall be part of master planned and platted development or subdivision. In lieu of requiring the entire development to be platted and recorded a master plan illustrating the density, infrastructure, and current and future development of all property owned or controlled by the applicant which adjoins or abuts the development shall be submitted for approval by the Planning Commission and Board of Adjustment or County Commission.
2. The applicant shall provide a final copy of all covenants and easements to be recorded upon the property prior to development which shall be submitted for approval by the Planning Commission and Board of Adjustment or County Commission.
3. Initially, no less than four (4) of the proposed lots within the development or subdivision shall be platted and recorded pursuant to § 11-3.
4. The County Planning Commission and County Commissions shall approve ingress and egress to the development. In those situations where access shall be onto a Township road the applicant shall obtain a written document granting said access from the Township Board prior to submitting the plat to the Planning Commission or County Commission for review and approval.
5. Planned developments or subdivisions shall not be located within the floodway as defined herein.
6. All lots within a planned development or subdivision shall be served by a

Department of Environment and Natural Resources approved water system.

7. A site plan and topographic maps shall be submitted with the building permit application. Said plan and maps shall include, at a minimum:
  - a. proposed site layout;
  - b. storm water drainage management, including applicable permits;
  - c. roads and streets, including ingress and egress; and
  - d. water and sewer service.
8. Septic systems shall comply with Section 2:16 and all applicable South Dakota Department of Environment and Natural Resources regulations, to include AR 74:53:01. Applicants shall be prepared to document acceptable soil percolation and waste treatment, certified by a South Dakota licensed and registered professional engineer by submitting this information and any additional information requested by the Planning Commission or Board of Adjustment. Housing subdivisions and housing developments platted before February 28, 1975, are exempt from the lot size requirements of AR 74:53:01:16 provided compliance with other provisions of AR 74:53:01 can be achieved.
9. The developer, contractor, or owner of all platted lands shall execute a perpetual agricultural farm use covenant running with the land prior to recording a plat or securing a building permit, in accordance with Section 2:17.

## ARTICLE 6

### RURAL RESIDENTIAL DISTRICT (RR)

Section 6:01. Intent

Section 6:02. Permitted Principal Uses and Structures

Section 6:03. Permitted Accessory Uses and Structures

Section 6:04. Conditional Uses and Structures

Section 6:05. Classification of Unlisted Uses and Structures

Section 6:06. Prohibited Uses and Structures

Section 6:07. Minimum Lot Requirements

Section 6:08. Minimum Setback Requirements for Structures

Section 6:09. Rural Development Standards

#### Section 6:01. Intent

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

#### Section 6:02. Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Rural Residential District (RR):

1. Day care, family;
2. Dwellings, single-family;
3. Horticulture;
4. Modular homes;
5. Parks; and
6. Rental Property of less than three (3) units.
7. Utility facilities.

#### Section 6:03. Permitted Accessory Uses and Structures

Permitted accessory uses and structures shall be allowed, as long as a permitted principle use or structure exists on the property.

The following accessory uses and structures shall be permitted in the Rural Residential District (RR):

1. Accessory buildings;
2. Accessory uses, not specifically regulated by ordinance and customarily incidental to permitted uses and structures when established within the space limits of this district; and
3. Home occupations.

#### Section 6:04. Conditional Uses and Structures

After the provisions of this Ordinance relating to conditional uses and structures have been fulfilled, the Planning Commission and Board of Adjustment may permit a temporary or permanent conditional use or structure in the Rural Residential District (RR) for the following, regardless if a permitted principle or accessory use exists on the property:

1. Accessory agricultural structures;
2. Cemeteries;
3. Clinics;
4. Convalescent, nursing, and rest homes;
5. Convenience stores;
6. Day care, group family home;
7. Golf courses;
8. Governmental services;
9. Manufactured homes;
10. Rental Property of three (3) or more units.
11. Riding stable;
12. Salvage yard-recycling center; and
13. Self-storage units.
14. Solar Energy Systems over 100 square feet;

#### Section 6:05. Classification of Unlisted Uses and Structures

In order to insure that the zoning ordinance will permit all similar uses or structures in each

district, the Planning Commission and the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use or structure not specifically listed as a permitted, accessory, or conditional use or structure in a District shall be deemed a permitted, accessory, or conditional use or structure in one or more districts on the basis of similarity to uses or structures specifically listed.

#### Section 6:06. Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 6:05 shall be prohibited.

#### Section 6:07. Minimum Lot Requirements

1. The minimum lot width shall be one hundred and fifty (150) feet.
2. The minimum lot area shall be one (1) acre per single family dwelling unit, modular, or manufactured home.

#### Section 6:08. Minimum Setback Requirements for Structures

There shall be a setback from all public or private right-of-ways, and other structures. Setbacks will be measured from the edge of the structure, not including a gutter or down spout, to the public right-of-way, according to the following:

1. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, and car ports, and obstructions;
  - a. A front yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet,
  - b. A rear yard setback from all lot lines or public right-of-ways of not less than a depth of twenty-five (25) feet, and
  - c. Each side yard setback from all lot lines or public right-of-ways shall not be less than a width of twenty-five (25) feet.
  - d. A corner lot shall meet the requirements of a site triangle, requiring a front yard setback in accordance with Section 6:08 (1) (a), and a side yard setback from all public right-of-ways of not less than a depth of twenty-five (25) feet.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other building or structure, unless connected.

3. No structure, other than a standard mailbox approved by the United States Post Office, shall be erected in any right of way.
4. No temporary items, such as bales, may remain in the right of way past November 1<sup>st</sup> of each year, in accordance with § 13-31-56.
5. No trees or crops may be planted or remain in the right of way at any time.
6. No trees shall be planted in any drainage or utility easement.

#### Section 6:09. Rural Development Standards

1. All lots shall be part of master planned and platted development or subdivision. In lieu of requiring the entire development to be platted and recorded a master plan illustrating the density, infrastructure, and current and future development of all property owned or controlled by the applicant which adjoins or abuts the development shall be submitted for approval by the Planning Commission and Board of Adjustment or County Commission.
2. The applicant shall provide a final copy of all covenants and easements to be recorded upon the property prior to development shall be submitted for approval by the Planning Commission and Board of Adjustment or County Commission.
3. Initially, no less than four (4) of the proposed lots within the development or subdivision shall be platted and recorded pursuant to § 11-3.
4. The County Planning Commission and County Commissions shall approve ingress and egress to the development. In those situations where access shall be onto a Township road the applicant shall obtain a written document granting said access from the Township Board prior to submitting the plat to the Planning Commission or County Commission for review and approval.
5. Planned developments or subdivisions shall not be located within the floodway as defined herein.
6. All lots within a planned development or subdivision shall be served by a Department of Environment and Natural Resources approved water system.
7. A site plan and topographic maps shall be submitted with the building permit application. Said plan and maps shall include, at a minimum:
  - a. proposed site layout;
  - b. storm water drainage management, including applicable permits;
  - c. roads and streets, including ingress and egress; and

- d. water and sewer service.
8. Septic systems shall comply with Section 2:16 and all applicable South Dakota Department of Environment and Natural Resources regulations, to include AR 74:53:01. Applicants shall be prepared to document acceptable soil percolation and waste treatment, certified by a South Dakota licensed and registered professional engineer by submitting this information and any additional information requested by the Planning Commission or Board of Adjustment. Housing subdivisions and housing developments platted before February 28, 1975, are exempt from the lot size requirements of AR 74:53:01:16 provided compliance with other provisions of AR 74:53:01 can be achieved.
  9. The developer, contractor, or owner of all platted lands shall execute a perpetual agricultural farm use covenant running with the land prior to recording a plat or securing a building permit, in accordance with Section 2:17.

## ARTICLE 7

### PLATTED TOWN SITE RESIDENTIAL DISTRICT (PTR)

Section 7:01. Intent

Section 7:02. Permitted Principal Uses and Structures

Section 7:03. Permitted Accessory Uses and Structures

Section 7:04. Conditional Uses and Structures

Section 7:05. Classification of Unlisted Uses and Structures

Section 7:06. Prohibited Uses and Structures

Section 7:07. Minimum Lot Requirements

Section 7:08. Minimum Setback Requirements for Structures

#### Section 7:01. Intent

The intent of a Platted Town Site District (PTR) is to provide for residential uses of a currently platted town site, and other compatible uses in a pleasant and stable environment.

The city of Mitchell, city of Ethan, and the city of Mt. Vernon provide local government services to its citizens and are not required to follow the Davison County Zoning Ordinance. The town of Loomis does not provide local government services to its citizens. Therefore, parcels inside the PTR District of Loomis are required to follow the Davison County Zoning Ordinance.

#### Section 7:02. Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Platted Town Site Residential District (PTR):

1. Dwellings, single-family;
2. Dwellings, two-family;
3. Horticulture;
4. Manufactured homes;
5. Modular homes; and
6. Rental Property of less than three (3) units.
7. Utility facilities.

#### Section 7:03. Permitted Accessory Uses and Structures

Permitted accessory uses and structures shall be allowed, as long as a permitted principle use or structure exists on the property.

The following accessory uses and structures shall be permitted in the Platted Town Site Residential District (PTR):

1. Accessory buildings;
2. Accessory uses, not specifically regulated by ordinance and customarily incidental to permitted uses and structures when established within the space limits of this district; and
3. Farm occupations.
4. Home occupations.

#### Section 7:04. Conditional Uses and Structures

After the provisions of this Ordinance relating to conditional uses and structures have been fulfilled, the Planning Commission and Board of Adjustment may permit a temporary or permanent conditional use or structure in the Platted Town Site Residential District (PTR) for the following, regardless if a permitted principle or accessory use exists on the property:

1. Convenience stores;
2. Dwellings, multi-family;
3. Rental Property of three (3) or more units.
4. Riding stable;
5. Salvage yard-recycling center; and
6. Self-storage units.
7. Solar Energy Systems over 100 square feet;

#### Section 7:05. Classification of Unlisted Uses and Structures

In order to insure that the zoning ordinance will permit all similar uses or structures in each district, the Planning Commission and the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use or structure not specifically listed as a permitted, accessory, or conditional use or structure in a District shall be deemed a permitted, accessory, or conditional use or structure in one or more districts on the basis of similarity to uses or structures specifically listed.

#### Section 7:06. Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 7:05 shall be prohibited.  
Section 7:07. Minimum Lot Requirements

There shall be a setback from all public or private right-of-ways, and other structures. Setbacks will be measured from the edge of the structure, not including a gutter or down spout, to the public right-of-way, according to the following:

1. The minimum lot width shall be twenty-five (25) feet.
2. The minimum lot depth shall be one hundred forty-two (142) feet.
3. The minimum area shall be seven thousand one hundred (3,550) square feet;

Section 7:08. Minimum Setback Requirements for Structures

1. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, and car ports, and obstructions;
  - a. A front yard setback from all public right-of-ways of not less than a depth of twenty-five (25) feet,
  - b. A rear yard setback from all lot lines or public right-of-ways of not less than a depth of twenty-five (25) feet, and
  - c. Each side yard setback from all lot lines or public right-of-ways shall not be less than a width of six (6) feet.
  - d. A corner lot shall meet the requirements of a site triangle, requiring a front yard setback in accordance with Section 7:08 (1) (a), and a side yard setback from all public right-of-ways of not less than a depth of twenty-five (25) feet.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other building or structure, unless connected.
3. No structure, other than a standard mailbox approved by the United States Post Office, shall be erected in any right of way.
4. No temporary items, such as bales, may remain in the right of way past November 1<sup>st</sup> of each year, in accordance with § 13-31-56.
5. No trees or crops may be planted or remain in the right of way at any time.
6. No trees shall be planted in any drainage or utility easement.

## ARTICLE 8

### PLANNED UNIT DEVELOPMENT (PUD)

Section 8:01. Intent

Section 8:02. Eligibility Requirements

Section 8:03. Application Procedure

Section 8:04. Minimum Lot Requirements

Section 8:05. Minimum Setback Requirements for Structures

#### Section 8:01. Intent

The intent of a Planned Unit Development (PUD) is to provide for tracts of land of considerable size to be developed, redeveloped or renewed as integrated and harmonious units; and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this Ordinance.

#### Section 8:02. Eligibility Requirements

A Planned Unit Development, to be eligible under this Article, must be:

1. In accordance with the comprehensive plans of the county, including all plans for redevelopment and renewal;
2. Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the County;
3. So designed in its space allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the County; and
4. A minimum of five (5) acres in land area.

#### Section 8:03. Application Procedure

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit to the County Planning Commission a plan for the proposed planned development. The plan shall indicate:
  - a. The location and extent of the proposed planned development unit, including its relationship to surrounding properties;

- b. The exact nature and extent of improvements to be developed or erected upon the tract, including contoured site plans, building plans and elevations, and plans for landscaping and paved areas, transportation patterns, and public utilities such as water and sewer services; and
  - c. Such other information as may be required by the County Planning Commission to determine if the proposed planned development unit is consistent with the intent of the district, to include permitted uses and structures.
2. The County Planning Commission shall, within sixty (60) days of receiving the plan for the proposed Planned Unit Development, consider such plan at a minimum of one Conditional Use Permit public hearing, in accordance with Section 11:03 and Section 11:06 (A). Upon consideration, the County Planning Commission shall inform the applicant in writing of its approval or denial of the plan. In the event of denial, the Commission shall inform the applicant of the reason(s) for denial, including any recommended modifications in the plan, which would cause the Commission to reconsider.
  3. Upon approval of the plan by the County Planning Commission, it shall forward its written recommendations to the Board of County Commissioners along with a copy of the approved plan, that the tract be designated a Planned Development District (PD) by amendment of the Official Zoning Map.
  4. Upon receiving the County Planning Commission written recommendation, the Board of County Commissioners shall consider the proposed development and possible amendment of the Official Zoning Map, in accordance with Section 2:08.
  5. Following the amendment of the Official Zoning Map by the Board of County Commissioners, the County Zoning Administrator may, upon proper application, issue a building permit for construction of the planned development unit in accordance with the approved plan.

Section 8:04. Minimum Lot Requirements

The developer will determine the minimum lot requirements in the development plan for the Planned Unit Development.

Section 8:05. Minimum Setback Requirements for Structures

1. The developer will determine the minimum right-of-way setback requirements for structures in the development plan for the Planned Unit Development.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other

building or structure.

3. No trees shall be planted in any drainage or utility easement.

## ARTICLE 9

### RURAL COMMERCIAL DISTRICT (RC)

Section 9:01. Intent

Section 9:02. Permitted Principal Uses and Structures

Section 9:03. Permitted Accessory Uses and Structures

Section 9:04. Conditional Uses and Structures

Section 9:05. Classification of Unlisted Uses and Structures

Section 9:06. Prohibited Uses and Structures

Section 9:07. Minimum Lot Requirements

Section 9:08. Minimum Setback Requirements for Structures

Section 9:09. Wind Energy Systems

#### Section 9:01. Intent

The intent of the Rural Commercial District (RC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to a major vehicular circulation route due to the nature of the merchandise handled and the display space required, particularly items requiring expansive display area such as motor vehicles, trailers, and farm implements; the method of transport required of the purchaser for the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area; primary dependence upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement services; or the clientele toward which the establishments are primarily oriented.

#### Section 9:02. Permitted Principal Uses and Structures

The following principal uses and structures shall be permitted in the Rural Commercial District (RC):

1. Agriculture;
2. Arcades;
3. Commercial trucking terminal;
4. Construction services;
5. Exhibition areas;
6. Funeral homes;
7. Historic and monument sites;
8. Motels;

9. Parks;
10. Repair shops, auto body;
11. Repair shops, motor vehicle and equipment;
12. Retail sales;
13. Self-storage warehouses;
14. Swimming pools;
15. Utility facilities;
16. Veterinary services and clinics;
17. Warehousing facilities; and
18. Wholesale sales.

#### Section 9:03. Permitted Accessory Uses and Structures

Permitted accessory uses and structures shall be allowed, as long as a permitted principle use or structure exists on the property.

The following accessory uses and structures shall be permitted in the Rural Commercial District (RC):

1. Accessory buildings;
2. Accessory uses, not specifically regulated by ordinance and customarily incidental to permitted uses and structures when established within the space limits of this district; and
3. Signs, on-site.

#### Section 9:04. Conditional Uses and Structures

After the provisions of this Ordinance relating to conditional uses and structures have been fulfilled, the Planning Commission and Board of Adjustment may permit a temporary or permanent conditional use or structure in the Rural Commercial District (RC) for the following, regardless if a permitted principle or accessory use exists on the property:

1. Campgrounds;
2. Grain elevators;

3. Junkyards;
4. Manufacturing;
5. Manufacturing, distribution, sale, or storage of hazardous materials;
6. Other trade and service uses which are similar to the permitted principal uses and which are in harmony with the intent of this district;
7. Rental Property of 3 or more units.
8. Riding stable;
9. Salvage yard-recycling center;
10. Self-storage units;
11. Signs, off-site;
12. Solar Energy Systems over 100 square feet;
13. Special Events, which may include alcohol sales;
14. Truck stops;
15. Wind energy system, commercial; and
16. Wind energy system, non-commercial.

#### Section 9:05. Classification of Unlisted Uses and Structures

In order to insure that the zoning ordinance will permit all similar uses or structures in each district, the Planning Commission and the Board of Adjustment, upon its own initiative or upon written application, shall determine whether a use or structure not specifically listed as a permitted, accessory, or conditional use or structure in a District shall be deemed a permitted, accessory, or conditional use or structure in one or more districts on the basis of similarity to uses or structures specifically listed.

#### Section 9:06. Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory, or conditional uses or approved as such within the provisions of Section 9:05 shall be prohibited.

#### Section 9:07. Minimum Lot Requirements

1. The minimum lot width shall be one hundred and fifty (150) feet.
2. The minimum lot area shall be one (1) acre.

#### Section 9:08. Minimum Setback Requirements for Structures

There shall be a setback from all public or private right-of-ways, and other structures. Setbacks will be measured from the edge of the structure, not including a gutter or down spout, to the public right-of-way, according to the following:

1. All yards must meet the following criteria, which shall apply to all buildings and structures, including decks, patios, and car ports, and obstructions;
  - a. A front yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet,
  - b. A rear yard setback from all lot lines or public right-of-ways of not less than a depth of fifty (50) feet, and
  - c. A side yard setback from all lot lines or public right-of-ways of not less than a width of twenty-five (25) feet.
  - d. A corner lot shall meet the requirements of a site triangle, requiring a front yard setback in accordance with Section 9:08 (1) (a), and a side yard setback from all public right-of-ways of not less than a depth of seventy-five (75) feet.
2. No accessory building or structure shall be erected in any required yard area and no separate accessory building or structure shall be erected within five (5) feet of any other building or structure, unless connected.
3. No structure, other than a standard mailbox approved by the United States Post Office, shall be erected in any right of way.
4. No temporary items, such as bales, may remain in the right of way past November 1<sup>st</sup> of each year, in accordance with § 13-31-56.
5. No trees or crops may be planted or remain in the right of way at any time.
6. No trees shall be planted in any drainage or utility easement.

#### Section 9:09. Wind Energy Systems

Prior to construction, Wind Energy Systems shall:

1. Submit a Conditional Use Application to be considered.

2. Obtain any access permits from the road authority, to include the Highway Superintendent or Township Chairman.
3. Obtain a road use and maintenance agreement with the road authority (s).
4. Obtain a building permit.
5. Not contain artificial lights other than in accordance with the Federal Aviation Administration Standards, to include Title 14 Code of Federal Regulations (14 CFR) Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace (75 Federal Register 42303, July 21, 2010).
6. Not exceed 45 dBA, as measured at the closest neighboring non-participating residence; at a time when other ambient noise is not present.
7. Not exceed 30 hours per year of project shadow flicker at a non-participating residence.
8. Not damage any private or county coordinated drainage Systems. Any repairs will be the responsibility of the developer.
9. Not be located within a distance of 1,000', or two times the height of the tower, whichever is greater, of a non-participating residence, business, or public building. Structures built post-WES construction may be constructed inside the designated WES setbacks.
10. Not be located within 1.1 times the height of the tower to any property line, measured from the base of the tower.
11. Be decommissioned if out of service for a continuous 12 month period. All equipment above ground and three feet below ground shall be removed within 180 days.
12. Acquire waivers to be signed by those affected to allow a less restrictive distance.
13. Provide yearly proof of a surety bond in an amount approved by the County Commission for removal of the decommissioned tower.
14. Provide yearly proof of liability insurance on the WES.

## ARTICLE 10

### PROCEDURES AND ENFORCEMENT

Section 10:01. Davison County Zoning Administrator

Section 10:02. Building Permit Required

Section 10:03. Application for Building and Demolition Permit

Section 10:04. Expiration of Building Permit

Section 10:05. Building Permits for Un-platted Lands

Section 10:06. Construction and Use to be Provided in Application, Plans, Permits, and Application for Zoning Compliance

Section 10:07. Schedule of Fees, Charges, and Expenses

Section 10:08. Building Permit in a Conspicuous Place

Section 10:09. Right of Entry

#### Section 10:01. Davison County Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Davison County Commission shall administer and enforce this Ordinance. They may be provided with the assistance of such other persons as the County Commission may direct. The Deputy Zoning Administrator shall have the same authority to administer and enforce this Ordinance.

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, then the Planning Commission and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Commission, and that recourse from the decisions of the Board of Adjustment shall be as provided in Section 12:02 (A).

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, he/she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall 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 the Ordinance to insure compliance with or to prevent violation to its provisions.

#### Section 10:02. Building and Demolition Permit Required

No concrete shall be poured, infrastructure installed, or structure shall be erected, demolished, moved, added to, or use changed without a permit issued by the Zoning Administrator. Pouring of concrete for driveways, etc. does not require a building permit, as long as a structure will not sit on the concrete. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance unless they received a written order from the Board of Adjustment or County Commissioners in the form of an administrative review, conditional use, variance, or change in zone as provided by this Ordinance.

Failure to obtain a building permit prior to construction will result in a penalty of a permit fee double the original fee. The penalty shall also include lost property taxes, as well as interest at a rate allowed under § 54-3-16.

#### Section 10:03. Application for Building and Demolition Permit

All applications for building and demolition permits are the responsibility of the owner, but may be issued to the contractor. All applications shall be completed at the Zoning Administration office. The structure will be drawn in the Geographic Information System (GIS) program and signed by the applicant, verifying the size and location of the structure on the property; to include distance from the lot lines and right-of-ways. It is the responsibility of the land owner to identify the property lines.

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

If available, a copy of the building plans shall be provided to the Zoning Administrator and retained by the Director of Equalization. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The issuance of a building permit, shall, in no case, be construed as waiving any provisions of this Ordinance.

#### Section 10:04. Expiration of Building Permit

If the work described in any building permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator and written notice thereof shall be given to the persons affected. If the work described in any building permit has not been substantially completed within eighteen (18) months 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 has been obtained.

#### Section 10:05. Building Permits for Un-platted Lands

Building permits shall not be issued for use on any tract, parcel, or lot described by linear measurements such as, “the south 100 feet of the east 200 feet of the north 1,000 feet” or similar linear descriptive language.

Subject to the regulations contained herein relating to minimum lot size and variance from such requirements, building permits may be issued for tracts resulting from the subdividing of land into full, half, and quarter sections. Such full, half, and quarter section subdivision descriptions

shall not include language describing a parcel by linear measurements such as, “the south 100 feet of the east 200 feet of the north 1,000 feet” or similar linear descriptive language.

Under no circumstances shall a building permit be issued for use on any tract of land consisting of less than a quarter section unless:

1. Such tract has been platted in accordance with the laws of the State of South Dakota and the regulations contained herein; and
2. An appropriate variance from minimum lot size requirements has been granted by the Board of Adjustment.

#### Section 10:06. Construction and Use to be Provided in Application, Plans, Permits, and Application for Zoning Compliance

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 15:02 of this Ordinance.

#### Section 10:07. Schedule of Fees, Charges, and Expenses

The Davison County Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for variances, conditional uses, plats, amendments, 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 Davison County Commission. Until all application fees, charges, expenses, and penalties have been paid in full, no action shall be taken on any application or appeal.

#### Section 10:08. Building Permit in a Conspicuous Place

All building permits issued by the Zoning Administrator must be placed in a conspicuous location on the building site for the duration of the construction of work described.

#### Section 10:09. Right of Entry

Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Zoning Administrator or an authorized representative has reasonable cause to believe that there exists in any building or upon any premises an ordinance 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 ordinance.

## ARTICLE 11

### PLANNING COMMISSION

Section 11:01. Planning Commission Members

Section 11:02. Planning Commission Terms

Section 11:03. Planning Commission Meetings

Section 11:04. Planning Commission Rules

Section 11:05. Requirements to be Heard

Section 11:06. Powers and Duties

Section 11:07. Duties on Matters of Appeal

#### Section 11:01. Planning Commission Members

The Davison County Commission may appoint a Planning Commission, as provided in § 11-2-2. A minimum of four (4) of the seven (7) Planning Commission members is required to define a quorum. The concurring vote of fifty-one (51) percent of the membership present at the meeting of the Planning Commission shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

#### Section 11:02. Planning Commission Terms

The Planning Commission members shall have a term of three years and may be re-appointed for additional terms. The Chairperson and Vice-Chairperson will be nominated and appointed at the regularly scheduled January meeting, or the first meeting of the calendar year. A vacancy shall be appointed by the County Commissioners in accordance with § 3-4-3 (2).

#### Section 11:03. Planning Commission Meetings

Meetings shall be regularly scheduled and held at the call of the Chairperson, at such other times as the Planning Commission may determine. The Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Planning Commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the Planning and Zoning Administration office.

#### Section 11:04. Planning Commission Rules

The Planning Commission shall adopt rules necessary for the conduct of its affairs and keeping with the provisions of this Ordinance. The Planning Commission shall keep a record of all proceedings. The Planning Commission shall adopt from time to time, additional regulations as it may deem necessary to carry appropriate provisions of this Ordinance into effect.

#### Section 11:05. Requirements to be Heard

All Conditional Use, Variance, Amendment or Change in Zone, Appeals, Comprehensive Plans, and Tax Increment Financing District request shall require the following:

1. A written application, indicating the section of this Ordinance under which the request is sought, if applicable, and stating the grounds on which it is requested shall be provided not less than fourteen (14) days prior to the hearing date.
2. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of the County for all matters in this section in accordance with § 11-2-19, with the exception of Comprehensive Plans.
3. The Zoning Administrator or their designee shall notify by mail all owners of abutting property for which action is sought; notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date.
4. A notice shall be posted in a conspicuous place on or near the property upon which action is pending at least ten (10) days before the date of such hearing. Such notice shall comply with Section 2:10 (1) of this Ordinance.
5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

#### Section 11:06. Powers and Duties

The Planning Commission is not a quasi-judicial commission, and shall have the following powers and duties:

##### A. CONDITIONAL USES

The Planning Commission shall have the power to hear and make recommendations to the Board of Adjustment, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Planning Commission is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether conditional uses should be recommended for approval; and to recommend for approval conditional uses with such conditions and safeguards as are appropriate under this Ordinance, or to recommend denial on conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be heard by the Commission unless and until:

1. The Planning Commission shall make a finding that it is empowered under the section of this Ordinance described in the application to recommend approval, approval with conditions, or denial of the conditional use, and that the recommendation will not adversely affect the public interest.

2. Before a recommendation on any conditional use is issued, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable;
  - a. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe,
  - b. off-street parking and loading areas where required; with particular attention to the items in (a) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district,
  - c. refuse and service areas, with particular reference to the items in (a) and (b) above,
  - d. utilities, with reference to locations, availability, and compatibility,
  - e. screening and buffering with reference to type, dimensions, and character,
  - f. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district,
  - g. required yards and other open spaces, and
  - h. general compatibility with adjacent properties and other property in the district.

A recommendation of denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

## B. VARIANCES

The Planning Commission shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to make recommendations to the Board of Adjustment on such variances only when the following provisions apply:

1. The Planning Commission shall make a finding that it is empowered under the section of this Ordinance described in the application to recommend approval,

approval with conditions, or denial of the variance, and that the recommendation will not adversely affect the public interest.

2. No such variance shall be recommended for approval by the Planning Commission unless it finds that the strict application of the Ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
3. No variance shall be recommended for approval unless the Planning Commission finds that the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this Ordinance.
4. A variance from the terms of this Ordinance shall not be acted upon by the Planning Commission unless the application for a variance demonstrates that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that recommending approval of the requested variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structure, or buildings in the same district.
5. 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 recommendation for approval.
6. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a variance. The Commission shall further make a finding that the reasons set forth in the application justify the recommendation of approval of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The Commission shall further make a finding that the recommendation for approval of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

7. Before a recommendation on any variance is issued, the Planning Commission shall make written findings certifying compliance with the specific rules governing variances and that satisfactory provision and arrangement has been made concerning the following, where applicable;
  - i. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe,
  - j. off-street parking and loading areas where required; with particular attention to the items in (a) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district,
  - k. refuse and service areas, with particular reference to the items in (a) and (b) above,
  - l. utilities, with reference to locations, availability, and compatibility,
  - m. screening and buffering with reference to type, dimensions, and character,
  - n. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district,
  - o. required yards and other open spaces, and
  - p. general compatibility with adjacent properties and other property in the district.
8. Consideration towards conservation of agriculture and trees may be considered as a determining factor.

In recommending approval of any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. 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 Section 15:02 of this Ordinance.

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

A recommendation of denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

C. APPEALS

Any persons, jointly or severally aggrieved by a decision of the Zoning Administrator, or any taxpayer, or any officer, department, board, or bureau of the county, may appeal to the Planning Commission.

D. AMENDMENT OR CHANGE IN ZONING

The Planning Commission shall have the power to hear and make recommendations to the County Commission, in accordance with provisions of this Ordinance, on requests for change in zoning. A request for change in zoning will not be decided until:

1. The individual petitioner provides a completed change in zone request. The request for change in zone must clearly state that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the area; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the change in zoning will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structure, or buildings in the area.
2. The public hearing shall be held. Any party may appear in person or by agent or attorney; the Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a change in zone; the Commission shall further make a finding that the reasons set forth in the application justify the recommendation for approval of the change in zone, and the change in zone will make possible the reasonable use of the land, building, or structure; the Commission shall further make a finding that the recommendation for approval of the change in zone will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
3. No petition for change in zone shall be recommended for approval unless the Planning Commission finds that the condition, situation or the intended use of the property concerned is not of so general or recurring a nature as to make reasonably practicable the change in zone.
4. Nonconforming use of neighboring lands, structures, or buildings in the same district, and permitted or nonconforming use of lands, structures or buildings in other districts shall be considered as reasons for the recommendation of approval of a change in zone.

In recommending approval of any petition for change in zone, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the change in zone is granted, shall be deemed a violation of this Ordinance and punishable under Section 15:02 of this Ordinance.

A recommendation of denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

Property requested to have the zoning changed on Agriculture land can continue to have the land taxed as Agriculture in accordance with § 10-6-31.3, if the property meets two of the three of the following criteria:

1. One-third (1/3) of the gross family income is from farming.
2. Twenty-five (25) acres or more in Davison County.
  - a. § 10-6-31.3 requires a minimum of 20 acres. In regular session on December 4, 1979 the Davison County Commission increased the requirement to a minimum of 25 acres.
3. An Agriculture or commodity product is produced on the property.

#### E. PLATS

The Planning Commission shall have the power to hear and make recommendations to the County Commission, in accordance with provisions of this Ordinance, on requests for plats.

1. The individual petitioner shall provide a completed Plat in accordance with § 36-18A-71 and § 11-3 and the required fee. An original plat must be drawn on a Mylar type material. A registered surveyor shall survey the property and draw a plat, which must include a certified signature by a registered land surveyor, to include his/her seal certifying that the plat is correct and done in accordance with the wishes of the landowner(s). The owners, and possibly the sellers, shall sign the Mylar with a fine tip black marker. A plat may be rejected by the Register of Deeds or the Planning & Zoning office if all requirements are not included in the plat.
2. A public hearing shall be held. Any party may appear in person or by agent or attorney. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a favorable recommendation of the Plat to the County Commission. The Commission shall further make a finding that the recommendation for approval of the plat will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

3. No petition for change in Platting shall be recommended for approval unless the Planning Commission finds that the condition, situation or the intended use of the property concerned is not of so general or recurring a nature as to make reasonably practicable the change in Platting.
4. Nonconforming use of neighboring lands, structures, or buildings in the same district, and permitted or nonconforming use of lands, structures or buildings in other districts shall be considered as reasons for the recommendation of approval of a change in Platting.

In accordance with § 11-3-6, § 11-6-26.1 and any other authority provided by law or as such statutes may be amended, the City of Mitchell, under city code 11-1-4: Exercise of Extraterritorial Authority, hereby exercises the power and authority to review and approve or disapprove plats of land within the extraterritorial jurisdiction of the city as provided by law for such purpose, as well as an area of three (3) miles outside the city limits. Plats within the designated 3 mile area from the corporate limits of the City of Mitchell shall be approved by the City of Mitchell *and* Davison County.

In recommending approval of any petition for change in Platting, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the change in platting is granted, shall be deemed a violation of this Ordinance and punishable under Section 15:02 of this Ordinance.

A recommendation of denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

#### F. COMPREHENSIVE PLAN

The Planning Commission shall have the power to hear and make recommendations to the County Commission, in accordance with provisions of this Ordinance, on requests for Comprehensive Plans.

The Planning Commission shall make a finding that it is empowered under the section of this Ordinance described in the Comprehensive Plan to recommend approval, approval with conditions, or denial of the Comprehensive Plan, and that the recommendation will not adversely affect the public interest.

#### G. TAX INCREMENT FINANCING DISTRICTS

The Planning Commission shall have the power to hear and make recommendations to the County Commission, in accordance with provisions of this Ordinance and § 11-9, on requests for Tax Increment Financing Districts.

1. The Planning Commission shall hold a hearing in accordance with § 11-9-3. Notice of the hearing shall be published once, not less than ten nor more than thirty days prior to the date of the hearing in a legal newspaper having a general circulation in the redevelopment area of the municipality or area affected; in accordance with § 11-2-19.
2. Prior to publication, a copy of the notice shall be sent by first class mail to the chief executive officer of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which has property located within the proposed Tax Incremental District. Those affected and notified in the Tax Incremental District, at a minimum, will be:
  - a. Mayor;
  - b. City Finance Officer;
  - c. City Council Members;
  - d. Superintendent of Schools;
  - e. Business Manager of Schools;
  - f. School Board Members;
  - g. County Commissioners;
  - h. County Auditor;
  - i. Manager of the James River Water District;
  - j. Rural Fire Districts;
  - k. Township Chairperson and Township Clerk.
3. The County Planning Commission shall approve or deny the Project Plan, which will include the designated boundaries. If approved, the Tax Incremental District will be forwarded to the governing body, which is the County Commission; in accordance with § 11-9-4. If the Planning Commission does not recommend approval of the Tax Incremental District, the project does not move forward. The applicant may *not* appeal the decision to the Commission; but rather is required to appeal this decision to Circuit Court. A favorable vote will require a simple majority of the members present at the meeting.
4. The County Planning Commission shall make a recommendation to the County Commission, at which time interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a Tax Incremental District and its proposed boundaries.

#### Section 11:07. Duties on Matters of Appeal

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, then the Planning Commission and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Commission, and that recourse from the decisions of the Board of Adjustment shall be as provided in Section 1206 (C) (3).

## ARTICLE 12

### BOARD OF ADJUSTMENT

Section 12:01. Board of Adjustment Members

Section 12:02. Board of Adjustment Terms

Section 12:03. Board of Adjustment Meetings

Section 12:04. Board of Adjustment Rules

Section 12:05. Requirements to be Heard

Section 12:06. Powers and Duties

Section 12:07. Duties on Matters of Appeal

#### Section 12:01. Board of Adjustment Members

The Davison County Commission shall serve as the Board of Adjustment, in accordance with § 11-2-60. The Auditor shall act as secretary to the Board of Adjustment when acting in zoning appeal cases, but shall take no part in the deliberations.

A minimum of four (4) of the five (5) Board of Adjustment members is required to define a quorum. In accordance with § 11-2-60, the concurring vote of a super majority, which is 2/3 of the full membership of the Board of Adjustment, shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance. Failure to obtain a 2/3 vote will result in a failed motion.

#### Section 12:02. Board of Adjustment Terms

The term of each Board of Adjustment Member shall run concurrently with the term of office for the Davison County Commission. A vacancy shall be appointed by the County Commissioners in accordance with § 11-2-50.

#### Section 12:03. Board of Adjustment Meetings

Meetings of the Board of Adjustment acting in zoning appeal cases shall be held at the call of the Chairperson and at such other times as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board, acting in zoning appeal cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Auditor and shall be a public record.

#### Section 12:04. Board of Adjustment Rules

The Board of Adjustment, acting in zoning appeals, shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

### Section 12:05. Requirements to be Heard

All Conditional Use, Variance, and Appeals shall require the following:

1. A written application, which has been reviewed by the Planning Commission, indicating the section of this Ordinance under which the request is sought, if applicable, and stating the grounds on which it is requested. The Planning Commission will make a recommendation to the Board of Adjustment.
2. Notice of public hearing shall be given at least ten (10) days in advance by publication in a legal newspaper of the County for all matters in this section.
3. The Zoning Administrator or their designee shall notify by mail all owners of abutting property for which action is sought; notice shall be given to each owner of record by depositing such notice in the United States Post Office not less than ten (10) days prior to the hearing date.
4. A notice shall be posted in a conspicuous place on or near the property upon which action is pending at least ten (10) days before the date of such hearing. Such notice shall comply with Section 2:10 (1) of this Ordinance.
5. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
6. A notice of the fact of adoption (summary) must be published once in the legal newspaper(s) of the County, in accordance with Section 2:10 (10) of this ordinance. The changes will take effect twenty (20) days after publication.

### Section 12:06. Powers and Duties

The Davison County Board of Adjustment is a quasi-judicial board. A quasi-judicial body is an entity such as an arbitrator or tribunal board, generally of a public administrative agency, which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties. Any decisions the board makes will stand unless taken to a Court of Law. The board must follow the South Dakota Codified Law, and provide unbiased decisions in the best interests of Davison County. The Board of Adjustment shall have the powers and duties allowed in § 11-2-59, which include:

#### A. 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 conditional uses should be

granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board unless and until:

1. 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;
2. Before any conditional use is issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable;
  - a. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe,
  - b. off-street parking and loading areas where required; with particular attention to the items in (a) above and the economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district,
  - c. refuse and service areas, with particular reference to the items in (a) and (b) above,
  - d. utilities, with reference to locations, availability, and compatibility,
  - e. screening and buffering with reference to type, dimensions, and character,
  - f. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district,
  - g. required yards and other open spaces, and
  - h. general compatibility with adjacent properties and other property in the district.
3. Any Conditional Use Permit granted, but not utilized within any 24 month period shall be revoked.

Denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

## B. VARIANCES

The Board of Adjustment shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the following provisions apply:

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the Ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.
2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structure, or buildings in the same district.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
5. The Board of Adjustment shall make findings that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and

will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. Consideration towards conservation of agriculture and trees may be considered as a determining factor.

6. Any Variance granted, but not utilized within a 24 month period shall be revoked.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. 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 Section 15:02 of this Ordinance.

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

Denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

### C. APPEALS

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the Zoning Administrator. Such appeal shall be taken within a reasonable time, 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 thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer 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/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer for whom the appeal is taken and on due cause shown.

1. Prior to an appeal, the Board of Adjustment shall have the power to hear and decide appeals where a prior decision was made without all evidence or without the full membership of the board, which may result in a different decision with the full evidence or full membership of the board present, so long as the request is made prior to the minutes being published. A member of the board, or the applicant may request the reconsideration hearing. The request for reconsideration shall require a motion to be heard by the board, and if passed a hearing date set. If the motion to request reconsideration is approved, all requirements of Section 10:07 and Section 12:05 shall be required prior to the reconsideration hearing.

2. The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official, Planning Commission, or other agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures or to interpret any map.
3. The Board of Adjustment has the powers of a Zoning Administrator on Appeals and Reversing Decision of the Zoning Administrator or Planning Commission.
  - a. 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 appealed 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 officer from whom the appeal is taken.
4. Any persons, jointly or severally aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may appeal to the court of record, in a manner provided by the laws of the State of South Dakota.

#### Section 12:07. Duties on Matters of Appeal

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, then the Planning Commission and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Planning Commission, and that recourse from the decisions of the Board of Adjustment shall be as provided in Section 1206 (C) (3).

## ARTICLE 13

### COUNTY COMMISSION

Section 13:01. County Commission Members

Section 13:02. County Commission Terms

Section 13:03. County Commission Meetings

Section 13:04. County Commission Rules

Section 13:05. Powers and Duties

#### Section 13:01. County Commission Members

The Davison County Commission shall make decisions in the best interests of the county, in accordance with § 7-8-20 (17). The Auditor shall act as secretary to the County Commissioners when acting in cases, but shall take no part in the deliberations.

A minimum of three (3) of the five (5) Commission members is required to define a quorum. A simple majority shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

#### Section 13:02. County Commission Terms

The Davison County Commission shall serve a term in accordance with § 7-8-1. A vacancy shall be appointed by the County Commissioners in accordance with § 3-4-4.

#### Section 13:03. County Commission Meetings

Meetings of the County Commissioners acting in appeal cases shall be held at the call of the Chairperson and at such other times as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses. From all decisions of the board of county commissioners upon matters properly before it, there may be an appeal to the circuit court by any person aggrieved in accordance with § 7-8-27.

All meetings of the County Commissioners shall be open to the public. The Board, acting in appeal cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Auditor and shall be a public record.

#### Section 13:04. County Commission Rules

The County Commissioners, acting in appeals, shall adopt from time to time, such rules and regulations as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

#### Section 13:05. Powers and Duties

The County Commission shall have the power to hear requests for amendments or changes of the

Zoning Ordinance, Plats, Comprehensive Plan revisions, and Tax Increment Financing District requests.

The Davison County Commission is a quasi-judicial board. A quasi-judicial body is an entity such as an arbitrator or tribunal board, generally of a public administrative agency, which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties. Any decisions the board makes will stand unless taken to a Court of Law. The board must follow the South Dakota Codified Law, and provide unbiased decisions in the best interests of Davison County. The Board of Commissioners shall have the following powers and duties:

A. AMMENDMENTS OR CHANGES IN ZONE

The County Commission shall have the power to hear and decide, in accordance with provisions of this ordinance, petitions for amendment or change in zoning. A petition for change in zoning will not be decided until:

1. The individual petitioner provides a completed amendment or change in zone request. Said request must clearly state:
  - a. Special conditions and circumstances exist which require the land to be rezoned;
  - b. The special conditions and circumstances do not result from the actions of the applicant; and
  - c. The granting of the amendment or change in zoning will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the area.
2. The Planning Commission has reviewed the application pursuant to Section 11:06 (D) of this Ordinance.
3. Notice of public hearing shall be given, in accordance with Section 2:10 of this ordinance.
4. The public hearing shall be held. Any party may appear in person or by agent or attorney.
5. The County Commission shall make findings that the requirements of this Section have been met by the applicant for an amendment or change in zone to include:
  - a. The reasons set forth in the application justify the granting of the amendment or change in zone;

- b. The amendment or change in zone will make possible the reasonable use of the land, building, or structure;
  - c. The granting of the amendment or change in zone will be in harmony with the general purpose and intent of this ordinance; and
  - d. Approval of the request will not be injurious to the neighborhood, or otherwise detrimental to the public welfare as presented and testified to by the applicant.
6. No petition for amendment or change in zone shall be authorized unless the County Commission finds that the condition, situation or the intended use of the property concerned is unique, required, or necessary as to make reasonably practicable the amendment or change in zone.
7. Before any amendment or petition for rezoning is approved, the County Commission shall make written findings certifying compliance with:
- a. The comprehensive plan;
  - b. Specific rules governing land uses;
  - c. Zoning district regulations; and
  - d. Satisfactory provision and arrangement has been made concerning the following, where applicable:
    - 1. Certification of compliance with all ordinances and regulations regarding licensing and zoning, health, plumbing, electrical, building, fire prevention, and all other applicable ordinances and regulations;
    - 2. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
    - 3. Off right-of-way parking and loading areas where required; with particular attention to the items in (D(1)) above and the economic, noise, glare or odor effects of the amendment or rezone on adjoining properties and properties generally in the district;
    - 4. Refuse and service areas, with particular reference to the items in (1) and (2) above;

5. Utilities, with reference to locations, availability, and compatibility;
6. Screening and buffering with reference to type, dimensions, and character;
7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
8. Required yards and other open spaces; and
9. General compatibility with adjacent properties and other property in the district.

In granting any petition for amendment or change in zone, the County Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the amendment or change in zone is granted, shall be deemed a violation of this ordinance and punishable under Section 15:02 of this ordinance.

#### B. PLATS

In recommending approval of any petition for change in Platting, the County Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the change in platting is granted, shall be deemed a violation of this Ordinance and punishable under Section 15:02 of this Ordinance.

Nonconforming use of neighboring lands, structures, or buildings in the same district, and permitted or nonconforming use of lands, structures or buildings in other districts shall be considered as reasons for the final approval or denial of a change in Platting. A denial of the application is appropriate if the applicant fails to present sufficient compelling reasons supported by facts and evidence warranting a deviation in setbacks, the performance standards, and other requirements of this ordinance.

The County Commission shall have the power to hear and make final approval, in accordance with provisions of this Ordinance, on requests for plats. Prior to filing a plat at the Register of Deeds office, the plat shall meet all requirements of § 11-3; and shall:

1. Be certified and contain the seal of a registered land surveyor, in accordance with § 11-3-4 and § 36-18A-71.
2. Include verbiage to allow for the execution of the certificates by the governmental offices or their appropriate designee, such as a deputy or vice chairperson.

3. Contain an Owner's Certificate in accordance with § 11-3-4, and Agreement of Protection of Water, in accordance with § 11-3-8.1. The owner's signature shall be acknowledged before a Notary Public, with seal present, in accordance with § 18-4, § 18-5 and § 43-28-8.
4. Contain city approval, if required. In addition to county approval, in accordance with § 11-3-6, § 11-6-26.1 and any other authority provided by law or as such statutes may be amended, the City of Mitchell, under Mitchell City Code 11-1-4: Exercise of Extraterritorial Authority, hereby exercises the power and authority to review and approve or disapprove plats of land within the extraterritorial jurisdiction of the city as provided by law for such purpose, as well as an area of three (3) miles outside the city limits. In addition to county approval, Plats contiguous to the city of Ethan and city of Mt. Vernon shall require city council approval.
  - a. If located within the 3 mile area of the city of Mitchell, the plat shall also:
    - i. Contain the certificate of the City Planning Commission Chairperson/Vice-Chairperson, certifying a favorable recommendation to the City Council.
    - ii. Contain the certificate and seal of the City Finance Officer/Deputy, certifying a true copy of the resolution passed by the City Council.
5. If located outside the city limits, the plat shall contain a legal description bearing the quarter, section, township, range, prime meridian (PM), and county; in accordance with § 11-3-7.
6. If located inside the city limits, the plat shall contain a legal description bearing the lot, block, addition or subdivision, county, and city name, in accordance with § 11-3-7. **Plats executed solely by the City of Mitchell, Ethan, or Mt. Vernon are not required to be approved by Davison County.**
7. Not contain like named additions, lots, or blocks, in accordance with section 2:18 of this ordinance.
8. Be fifteen by twenty-six inches, eleven by seventeen inches, or eight and one-half by fourteen inches. Each plat shall be drawn on drafting linen, matte film, or mylar, with waterproof black ink and each signature shall be made with permanent ink., in accordance with § 11-3-10.
9. Pay a consideration fee to the Planning & Zoning Department, as set by the county commission during the first meeting of each year.
10. Pay a filing fee to the Register of Deeds, in accordance with § 11-3-11.
11. Be free from errors or omissions.

12. Be presented at a public hearing held by the Planning Commission to make a recommendation on the plat. The Commission shall make a finding that the recommendation for approval of the plat will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. The plat shall contain the certificate of the County Planning Commission Chairperson, certifying a favorable recommendation to the County Commission.
13. Not be recommended for approval unless the County Commission finds that the condition, situation or the intended use of the property concerned is not of so general or recurring a nature as to make reasonably practicable the change in Platting. The plat shall contain the certificate of the County Commission Chairperson, executing the resolution of approval of such plat.
14. Contain the Highway Authority approval of approach location, in accordance with § 11-3-12.1.
15. Contain the certificate of the county Director of Equalization/Deputy, certifying a copy of such plat has been provided, in accordance with § 11-3-9.
16. Contain the certificate of the County Treasurer/Deputy, certifying all taxes and special assessments, which are liens upon any land included in such plat, have been paid in full, at the time of recording, for the current and any past years; in accordance with § 11-3-9.
17. Contain the certificate and seal of the County Auditor/Deputy, certifying a true copy of the resolution passed by the Board of County Commissioners.
18. Contain the certificate and seal of the County Register of Deeds/Deputy, certifying the original plat was filed for record.
19. Be filed at the County Register of Deeds within one year of being approved by the County Commission. All plats previous to the effective date of this ordinance may be recorded, regardless of the Commission approval date.

C. COMPREHENSIVE PLAN

The County Commission shall have the power to hear and make final approval, in accordance with provisions of this Ordinance and § 11-2-21, on requests for Comprehensive Plans.

1. Notice of public hearing shall be in accordance with Section 12:05 (2).
2. The public hearing shall be held in accordance with Section 12:05 (5).

3. The County Commission shall make a finding that it is empowered under the section of this Ordinance described in the Comprehensive Plan to render final approval, approval with conditions, or denial of the Comprehensive Plan, and that the decision will not adversely affect the public interest.

D. TAX INCREMENT FINANCING DISTRICTS

The County Commission shall have the power to hear and make final approval, in accordance with provisions of this Ordinance and § 11-9, on requests for Tax Increment Financing Districts.

1. The County Commission shall hold a public hearing, at which time interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a Tax Incremental District and its proposed boundaries.
2. Notice of the hearing shall be published once, not less than ten nor more than thirty days prior to the date of the hearing in a legal newspaper having a general circulation in the redevelopment area of the municipality.
3. Prior to publication, a copy of the notice shall be sent by first class mail to the chief executive officer of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which has property located within the proposed Tax Incremental District. Those affected and notified in the Tax Incremental District, at a minimum, will be:
  - a. Mayor;
  - b. City Finance Officer;
  - c. City Council Members;
  - d. Superintendent of Schools;
  - e. Business Manager of Schools;
  - f. School Board Members;
  - g. County Commissioners;
  - h. County Auditor;
  - i. Manager of the James River Water District;
  - j. Rural Fire Districts;
  - k. Township Chairperson and Township Clerk.
4. Approval or denial of a Tax Increment Financing District shall be in accordance with Section 13:01 of this ordinance. If approved, the County Commission shall adopt a resolution in accordance with § 11-9-5, which will include the designated boundaries; and approve a Project Plan in accordance with § 11-9-17. If not approved, the applicant may appeal the decision to Circuit Court. An approved TID may also be referred to a public vote by the people.

## ARTICLE 14

### NONCONFORMANCE

Section 14:01. General

Section 14:02. Nonconforming Lots of Record

Section 14:03. Nonconforming Uses of Land (or Land with Minor Structures Only)

Section 14:04. Nonconforming Structures

Section 14:05. Nonconforming Uses of Structures or of Structures and Premises in Combination

Section 14:06. Provisions of Conforming Uses

Section 14:07. Mobile Home and Mobile Home Park

#### Section 14:01. General

Within the districts established by this Ordinance or amendments that may later be adopted, there exists (a) lots, (b) structures, (c) uses of land and structures, and (d) characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent 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 to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this revised Ordinance by attachment on a building or premises of additional signs 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 adoption or amendment of this Ordinance and upon which actual building construction has 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 an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

#### Section 14:02. Nonconforming Lots of Record

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. This provision shall apply even though such lots fail to meet

requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Lots recorded at the Register of Deeds prior to May 1, 1996 are grandfathered in from complying with lot size requirements.

Variance of other yard requirements shall be obtained only through action of the Planning Commission and Board of Adjustment.

#### Section 14:03. Nonconforming Uses of Land (or Land with Minor Structures Only)

Where at the time of passage of this revised Ordinance lawful use of land exists, which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding one thousand (1,000) dollars, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. 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;
3. If any such nonconforming use of land ceases, for any reason, for a period of more than one (1) 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; and
4. No additional structure, not conforming to the requirement of this Ordinance, shall be erected in connection with such nonconforming use of land.

#### Section 14:04. Nonconforming Structures

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

1. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure, or portion thereof, may be altered to decrease its nonconformity;
2. Should such nonconforming structure, or nonconforming portion of structure, be destroyed by any means, to an extent of more than seventy-five (75) percent of its

replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance; and

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

#### Section 14:05. 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. If no structural alterations are made, any nonconforming use of a structure or structure and premises may, as a special exception, be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance;
4. 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;
5. 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

6. 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.

#### Section 14:06. Provisions of Conforming Uses

Any use that is permitted as a special exception in a district, under the terms of this Ordinance, shall be deemed a conforming use in such district without further action. A nonconforming use shall not be allowed in a defined district without a change in the district definition or boundaries.

1. A Permitted Principle Use shall be allowed within a defined district.
2. A Conditional Use shall be allowed within a defined district after the Planning Commission and Board of Adjustment grant permission.

#### Section 14:07. Mobile Home Park

Mobile Homes or Mobile Home Parks shall not be authorized in any district. Mobile Homes or Mobile Home Parks existing prior to creation of this ordinance will be grandfathered in. Mobile Home Parks are located at:

1. Lot 2B and the south  $\frac{1}{2}$  of Lot 3 in the NE  $\frac{1}{4}$  of Section 25, Township 103 Range 61 W, located on Tiede PL and Court PL, Mitchell, SD; and
2. The east 1,575.5' of the south 2,258.28' of the NE  $\frac{1}{4}$  of Section 3, Township 102 Range 60 west, Ex. H-2, located at 40978 Harding Place, Mitchell, SD.

## ARTICLE 15

### VIOLATIONS AND PENALTIES

Section 15:01. Complaints Regarding Violations

Section 15:02. Penalties for Violations

#### Section 15:01. Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator, in accordance with Section 10:01. If compliance is not met, the Zoning Administrator shall record properly such complaint with the Board of Adjustment and investigate and take action thereon as provided by this Ordinance.

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, he/she shall notify, in writing by certified mail with return receipt, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The party responsible for the violation shall respond within seven (7) working days from receipt of the letter; otherwise, they will be considered in violation and punishable under Section 15:02.

#### Section 15:02. Penalties for Violations

The owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist, or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be subject to any or all of the following:

1. A fine not to exceed the current maximum penalty for conviction of a class 2 Misdemeanor from time to time in effect under South Dakota Code;
2. Imprisonment for a period not to exceed thirty (30) days for each violation; or
3. By both fine and imprisonment; and
4. An action for civil injunctive relief, pursuant to § 21-8.

In addition, all costs and expenses involved in the case shall be paid by the defendant; each day such violation continues shall be a separate offense.

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

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance, appropriate authorities of the county may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

## ARTICLE 16

### LEGAL STATUS PROVISIONS

Section 16:01. Separability

Section 16:02 Purpose of Sub-Titles

Section 16:03. Repeal of Conflicting Ordinances

Section 16:04. Effective Date

#### Section 16:01. Separability

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

#### Section 16:02 Purpose of Sub-Titles

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

#### Section 16:03. Repeal of Conflicting Ordinances

All ordinances or parts of resolutions in conflict with this Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

#### Section 16:04. Effective Date

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