

**ORDINANCE #2017-1**

**AN ORDINANCE AMENDING WALWORTH COUNTY ORDINANCE #83-2, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR WALWORTH COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH**

WHEREAS, the Walworth County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact zoning regulations and to provide for its administration, and

WHEREAS, the Board of County Commissioners has appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Walworth County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this Ordinance; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulations in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Planning Commission and Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, with regard to the preparation of these regulations and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning regulations have been filed with the Walworth County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances, or parts of regulations in conflict herewith are hereby expressly repealed;

THEREFORE BE IT ORDAINED that Ordinance 2017-1 is hereby adopted by the Board of County Commissioners, Walworth County, South Dakota.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
Chairperson  
Walworth County Board of County Commissioners

\_\_\_\_\_  
Walworth County Auditor

**ARTICLE I  
GENERAL PROVISIONS**

**CHAPTER 1.01. TITLE AND APPLICATION.**

**Section 1.01.01. Title.**

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

**Section 1.01.02. Jurisdiction.**

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

**Section 1.01.03. Purpose.**

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

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

## **CHAPTER 1.02. ORDINANCE PROVISIONS.**

### **Section 1.02.01. Provisions of Ordinance Declared to be Minimum Requirements.**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rule, ordinance, or Board of Adjustment decision, the most restrictive or that imposing the higher standards, shall govern.

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

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

### **Section 1.02.03. Violation and Penalty.**

1. Violations of the ordinance shall be treated in the manner specified below.
  - a. Any person who starts work for which a permit (building, conditional use, variance, rezoning) is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All administrative fees assessed there under shall be rounded to the nearest whole dollar.
    - i. Upon finding such violation, the Walworth County Zoning Officer shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
    - ii. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (b) below.
    - iii. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.

- b. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.

The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation.

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

**Section 1.02.04. Separability Clause.**

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

**Section 1.02.05. Repeal of Conflicting Ordinances.**

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

**Section 1.02.06. Effective Date.**

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

## **CHAPTER 1.03. OFFICIAL ZONING MAP.**

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

1. The unincorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners attested by the County Auditor and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Chapter 1.03 of Ordinance Number 2017-1 of Walworth County, State of South Dakota," together with the date of the adoption of this Ordinance. The Official Zoning Map shall be on file at the office of the County Auditor.
2. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the County Director of Equalization, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

### **Section 1.03.02. Amendment of the Official Zoning Map.**

1. If, in accordance with the provisions of this Ordinance changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On (date of adoption) by official action of the Board of County Commissioners, the following change(s) were made on the Official Zoning Map:" (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor.
2. No amendment of this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on the Official Zoning Map.

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

### **Section 1.03.03. Interpretation of District Boundaries.**

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

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. Boundaries indicated at approximately following the center lines of streets, highways, or alleys, shall be construed to follow such center lines;

3. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
4. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
5. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
6. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
7. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 6 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map; and
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 7 above, the Board of Adjustment shall interpret the district boundaries.

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

In the event that the Official Zoning Map becomes damaged, destroyed, or lost, the Board of County Commissioners may by ordinance adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.

In the event that the Official Zoning Map becomes difficult to interpret because of the nature or number of changes and additions, the Board of County Commissioners may by resolution adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall contain previous changes and additions to the previous Official Zoning Map and may correct drafting or other errors or omissions in the prior Official Zoning Map.

The new Official Zoning Map shall be identified by the signature of the Chairperson attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of Walworth County, State of South Dakota."

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

Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 6.05, Section 6.05.03 of these regulations.

**Section 1.03.05. Disincorporation.**

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

## **ARTICLE II DEFINITIONS**

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

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

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

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

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

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

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

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

**Animal Unit.** (See Section 5.08).

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

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

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



**Automotive Tow Business.** A business engaged in removing or delivering to public or private property a motor vehicle by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site. Automotive Tow Business shall comply with Chapter 5.30.

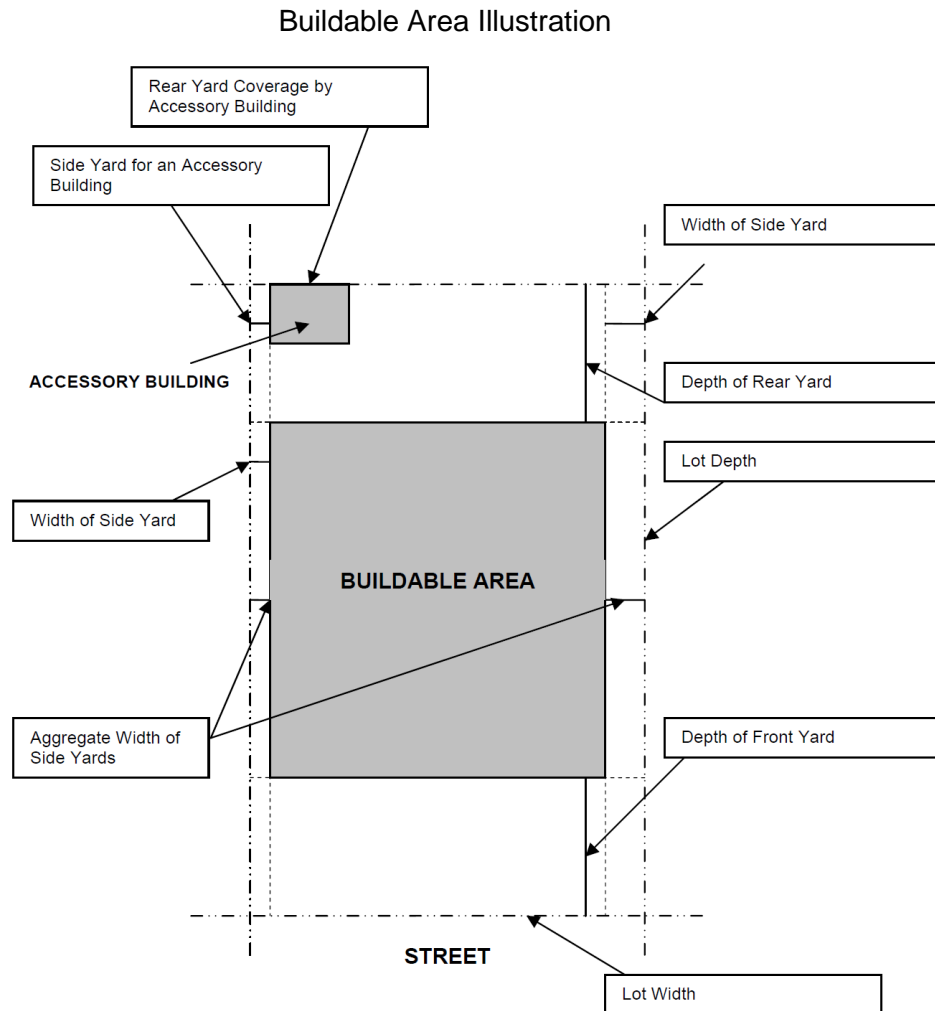
**Bar/Tavern.** An establishment that is licensed to sell alcoholic beverages by the drink.

**Basement.** A basement has more than one-half ( $\frac{1}{2}$ ) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.

**Bed and Breakfast (B & B's).** A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties. Bed and Breakfast (B & B's) shall comply Chapter 5.23.

**Board of County Commissioners.** The governing body of Walworth County.

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



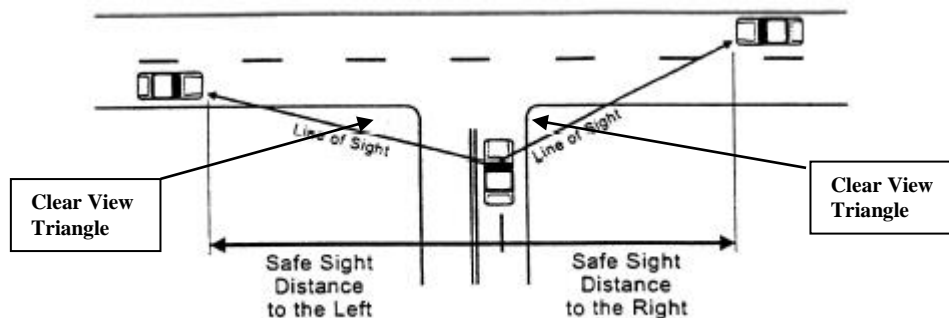
**Building.** The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection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

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

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

**Clear View Triangle.** A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below). A clear view triangle is formed by measuring the area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line at a prescribed distance.

Clear View Triangle Illustration



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

**Commercial Vehicles.** Any motor vehicle licensed by the state as a commercial vehicle.

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

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

**Concentrated Animal Feeding Operation.** A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of one-hundred-twenty (120) days or more during any twelve (12)-

month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are considered a single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for land application of manure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Erosion.** The process of the gradual wearing away of land masses.

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

**Established Residence (in reference to Chapter 5.08.)** A non-seasonal dwelling established before the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

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

1. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations or tax records.
2. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to (date of adoption of new ordinance).
3. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Board of Adjustment in determining the suitability of the parcel for development.

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

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

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

**Farm.** An area with or without a dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine all of the foregoing farm products and animals are raised for income. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

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

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

**Filling.** Filling in low-lying ground with soil.

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

1. The overflow of inland or tidal waters and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

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

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

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

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

**Government Grain Storage Sites.** A grain storage facility owned and operated by a State or Federal governmental entity.

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

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

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

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

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

**Group Home.** A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

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

1. Ignitable: A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.

5. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: Atrazine.
6. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

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

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

**Home Occupation.** An occupation engaged in by the occupants of a dwelling subject to Chapter 5.06.

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

**Impound Lot.** A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, Junkyard/salvage Yard or dismantling. Impound lot shall comply with Chapter 5.29.

**Incorporation.** A soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil

**Institutional Farm.** A farm owned and operated by a county, municipal, State or Federal governmental entity and used to grow an agricultural commodity.

**Junk Yard.** The use of more than fifty (50) square feet of any land, building, or structure, whether for private or commercial purposes, or both, where waste, discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same. (See Chapter 5.29).

**Kennel.** Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are bred, raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

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

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

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

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

**Lodging House.** A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three (3) or more persons as opposed to hotels open to the public.

**Lot.** A lot is any lot, plot, or parcel of land under one ownership, occupied or intended for occupancy by a use permitted in this Ordinance including one (1) principal building together with its accessory buildings, open spaces and parking spaces required by this ordinance.

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

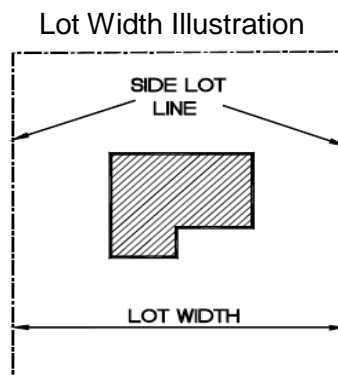
**Lot, Corner.** A lot abutting upon two (2) or more streets at their intersection.

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

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

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

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



**Manufactured Home.** See Chapter 5.10.

**Manufactured Home Park.** Any manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the



manufactured home park and its facilities or not. "Manufactured Home Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

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

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

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

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

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

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

**Modular Home.** See Chapter 5.10.

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

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

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

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

**Object.** Anything constructed, erected, or placed, the use of which does not require permanent location on the ground or attached to something having a permanent location on the ground.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Private Club.** A social and recreational facility that is usually private or semi-private

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

**Range (Target/Shooting).** Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. A Range Officer shall be present on site at any Range when the range is in use. The term range includes archery ranges.

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

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

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

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

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

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

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

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

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

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

**Section Line.** A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

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

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

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

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

**Shelterbelt.** For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, with each trees separated by a distance of forty (40) feet or less. Ornamental and/or shade trees, generally used in front yards and spaced further than fifteen (15) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Shelterbelts shall comply with Chapter 5.05.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The term does not, however, include either:

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

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

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

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

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

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

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

**Tree, Ornamental.** A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

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

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

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

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

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

**Variance.** A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconforming in the zoning district or uses in an adjoining zoning district.

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

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

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

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

**Wind Energy System (WES).** A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Turbine or multiple turbines,
2. Generator(s),
3. Blades,
4. Power collection systems,
5. Substation(s),
6. Electric interconnection systems, including feeder lines,
7. Permanent meteorological towers,
8. Communication cables, wires,
9. Accessory buildings, such as an operations and maintenance building, and
10. Access roads

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

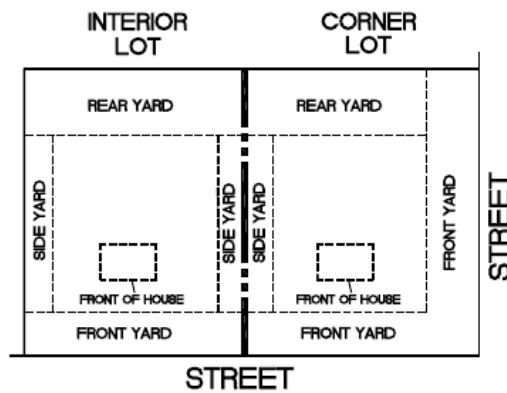
**Yard.** An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the main building shall be used. (See Front, Side, and Rear Yard Illustration Below)

**Yard, Front.** A yard extending across the front of a lot between the sideyard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the main building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. (See Front, Side, and Rear Yard Illustration Below)

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

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

Front, Rear and Side Yard Illustration



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



**ARTICLE III  
DISTRICT REGULATIONS**

**CHAPTER 3.01. APPLICATION OF DISTRICT REGULATIONS.**

**Section 3.01.01. Application of District Regulations.**

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

1. No structure, permanent or temporary, or any part thereof shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or use of land be used, except for a purpose listed as a permitted use or conditional use in the district in which the building or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.
4. The minimum yards and other open spaces, including lot area, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.
5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

**CHAPTER 3.02. NONCONFORMING USES.**

**Section 3.02.01. Purpose and Intent.** The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. Further, it is intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.

**Section 3.02.02. Continuation of Nonconforming Uses.** Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

**Section 3.02.03. Use Becoming Nonconforming by Change in Law or Boundaries.** Whenever the use of premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

**Section 3.02.04. Extension or Enlargement.** A nonconforming use shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the premise is located.

**Section 3.02.05. Restoration After Damage.** When the use of a building is nonconforming as defined by this ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than sixty (60) percent of its fair market cash value, it shall not be restored except in conformity with the provisions of the district in which the building is located. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.

**Section 3.02.06. Repairs and Maintenance.** On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

**Section 3.02.07. Unsafe Nonconforming Use.** If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe, or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

**Section 3.02.08. Discontinuance of Nonconforming Use.** No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located.

**Section 3.02.09. Effect on Use Which is Illegal Under Prior Law.** Nothing in this ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a premises in violation of zoning regulations in effect immediately prior to the effective date of this ordinance.

**Section 3.02.10. Powers of the Planning Commission/Board of Adjustment.** Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

**Section 3.02.11. Continuation of Nonstandard Uses.** Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.
2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.

3. Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.

#### **Section 3.02.12. Nonconforming Lots of Record.**

1. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.
2. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

### **CHAPTER 3.03. ZONING DISTRICTS.**

#### **Section 3.03.01. Districts.**

1. For the purpose of this Ordinance, the unincorporated areas of the County may be divided into any of the following zoning districts: A-Agricultural; CI-Commercial/Industrial; CN-Conservation; LP-Lake Park; PR-Planned Residential; and TD-Town District.
2. The requirements as set forth below for each of the use districts listed as part of this Ordinance shall govern the development within the said districts as outlined on the map entitled "Official Zoning Map, Walworth County, South Dakota."
3. "A" AGRICULTURAL LAND DISTRICT – The Agricultural Land District is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural Land District is further characterized, as land areas not yet ready for further development, residential development, other than single-family farming units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.
4. "CI" COMMERCIAL/INDUSTRIAL DISTRICT - The Commercial District is intended to provide areas for commercial and industrial activities, which require highway access, and further are oriented primarily to, and supportive of, farming and other activities which are determined to be appropriate in the rural area. Industrial uses which produce smoke, noise,

dust, odor, and/or heavy traffic and large outdoor storage areas shall require special review and consideration.

5. "CN" CONSERVATION DISTRICT - The Conservation District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses, and to protect wildlife habitat. Such areas may include, but are not limited to, flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands and natural prairies, and historical sites.
6. "LP" LAKE-PARK DISTRICT - Lake Park District is to provide for orderly residential and recreational development, together with certain public facilities, customary home occupations, and certain commercial establishments, normally associated with lake shore development.
7. "PR" PLANNED RESIDENTIAL DISTRICT - The Planned Residential District is to provide for residential subdivisions which, through their design and development, will limit the amount of agricultural land that is taken out of production, will not require additional public expenditures for roads or other improvements and services, and which will minimize the conflict between farm and non-farm uses.
8. "TD" TOWN DISTRICT - The Town District is established to provide for orderly low density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental in the unincorporated towns of Walworth County.

**Section 3.03.02. Prohibited Uses.**

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

**ARTICLE IV  
DISTRICT REQUIREMENTS**

The requirements as set forth below for each of the use districts listed as part of this ordinance in Article III shall govern the development within the said districts as outlined on the Official Zoning Map for the unincorporated areas of Walworth County.

**CHAPTER 4.01. "A" AGRICULTURAL LAND DISTRICT**

**Section 4.01.01. Permitted Uses:**

1. Field crops and grasslands.
2. Fisheries services.
3. Game propagation areas.
4. Government grain storage sites.
5. Orchards and tree farms.
6. Public parks and recreation areas.
7. Truck gardening.
8. Botanical gardens (nurseries and greenhouses); without on-site retail sales.
9. Farm and Non-farm dwelling, to include modular home or for a manufactured home connected to an existing farmstead, but not within two (2) miles of a concentrated animal feeding operation unless waiver is registered on deed of farm dwelling or non-farm dwelling property.
10. Stables.
11. Grain bins.
12. Home occupations.
13. Agricultural activities and farm related buildings, including Type D concentrated animal feeding operation
14. On-premise signs.
15. Accessory uses and buildings.
16. Temporary roadside stands for sales of agricultural products grown or produced on the premises.
17. Private Wind Energy Conversion System (PWECS). Provided they meet the requirements of Chapter 5.22.

**Section 4.01.02. Conditional Uses:**

1. Airports and airstrips.
2. Churches and Cemeteries.
3. Commercial public entertainment enterprises not normally accommodated in commercial areas including, but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races.
4. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of Chapter 5.07.
5. Private clubs.
6. Sanitary landfills, rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste provided they meet the requirements of Chapter 5.27.
7. Domestic sanitary sewer treatment plant/facility; provided they meet the requirements of Chapter 5.28.
8. Class A, B and C concentrated animal feeding operations; (See Section 5.08).
9. Commercial Stables.
10. Junkyards/salvage yards, provided that they meet the requirements of Chapter 5.29.
11. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs.
12. Land application of petroleum-contaminated soils.
13. Institution farms, including religious farming communities.
14. Bed and Breakfast provided they meet requirements of 5.23.
15. Wireless Telecommunication Towers and Facilities provided they meet requirements of Chapter 5.18.
16. Manufactured home not connected to an existing farmstead.
17. Game Lodge.
18. Group Homes.
19. Meteorological Towers.
20. Wind Energy System (WES) provided they meet the requirements of Chapter 5.24.

21. Public or private motorcycle recreation facilities.
22. Target/Shooting Range provided they meet requirements of Chapter 5.20.
23. Veterinarians offices and animal hospitals.
24. Golf course, golf driving range, clubhouse.
25. Seasonal retail stands – including produce and fireworks – utilizing a temporary or permanent structure.
26. Livestock sales barn.
27. Rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste.
28. Orchards and tree farms with retail sales.
29. Botanical gardens (nurseries and greenhouses with retail sales.
30. Schools.
31. Animal husbandry service.
32. Government grain storage sites.
33. Horticulture Services.
34. Institutional farms.
35. Automotive Tow Business/Impound Lot – provided they meet requirements of Chapter 5.30.
36. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing.

**Section 4.01.03. Area Regulations.**

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

1. Minimum Lot Size: All eligible building lots for permitted uses shall be a minimum of two (2) acres, except as provided in 7.a of this Section.
2. Minimum Lot Width: The minimum lot width for eligible building lots for permitted uses shall be one hundred sixty-five (165) feet.
3. Front Yard: The minimum depth of the front yard setback shall be one hundred (125) feet and in no case shall an accessory building be located or extend into the front yard. In the case of a corner lot, front yards shall be provided on both streets.

4. Side Yard: The minimum depth of a side yard setback shall be twenty-five (25) feet.
5. Rear Yard: The minimum depth of a rear yard shall be twenty-five (25) feet.
6. Uses allowed by a Conditional Use Permit shall have minimum lot area and yard setback regulations determined by the Board of Adjustment.
7. The Board of Adjustment may allow a smaller minimum lot requirement for the "A" Agricultural District under the following conditions:
  - a. Where a permit for an additional single-family farm dwelling is requested on an existing farmstead, provided:
    - i. The dwelling is located on the same legal description as the existing farmstead.
    - ii. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
    - iii. The dwelling is to be occupied by employees or relatives of the farm owner (existing farming operation).
    - iv. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.
8. Height Regulations: All buildings must meet FAA standards within one (1) mile of airports. Further, no principal building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures:
  - a. Agricultural buildings.
  - b. Chimneys, smokestacks, cooling towers.
  - c. Radio and TV towers.
  - d. Water tanks.
  - e. Meteorological Towers.
  - f. Wind Energy System (WES).
  - g. Private Wind Energy Conversion Systems (PWECS).
  - h. Wireless Telecommunications Towers and Facilities.
  - i. Others, as determined by the Board of Adjustment, providing that they are not used for human occupancy.
9. Agriculture Covenant/Concentrated Animal Feeding Operation Waiver:



- a. All new residential development (farm and non-farm) shall be required to file an "Agricultural Easement" with the Register of Deeds before the issuance of a building permit. (See Chapter 5.19). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.
- b. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than two (2) miles from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. The waiver is to be filed with the Register of Deeds (See Chapter 5.21). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

10. Access:

- a. The location of driveways accessing County roads for individual parcels shall require written approval from the County Highway Superintendent and shall be recorded with the register of deeds.
- b. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

## **CHAPTER 4.02. CI - COMMERCIAL / INDUSTRIAL DISTRICT**

### **Section 4.02.01. Permitted Uses:**

1. Field crops and grasslands.
2. On-premise signs.
3. Orchards and tree farms.
4. Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales.
5. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use contained in Chapter 4.02.
6. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.

### **Section 4.02.02. Conditional Uses:**

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

15. Commercial stables.
16. Kennel with or without animal grooming.
17. Veterinary clinics.
18. Wireless telecommunication towers and facilities provided they meet requirements of Chapter 5.18.
19. Convenience store/service station.
20. Seasonal retail stands utilizing a permanent structure.
21. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales.
22. Off-premise signs.
23. Light manufacturing.
24. Commercial animal husbandry service.
25. Agricultural product processing facilities including but not be limited to ethanol plants and corn/soybean processing.
26. Private wind energy system (PWECS) provided they meet requirements of Chapter 5.22.
27. Retail sales and trade
28. Automotive tow business/Impound lot provided they meet requirements of 5.30.
29. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 where there have been no past violations regarding previous sales.
30. Temporary structures used for sales of agricultural products where have been past violations regarding previous sales.

#### **Section 4.02.03. Area Regulations**

1. Lot Area. Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres, not to include the public road right-of-way. An applicant for conditional use permit shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, buildings shall occupy no more than seventy-five percent (75%) of the lot.
2. Front Yard. There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred (100) feet in depth.
3. Side Yards. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be

landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.

4. Rear Yards. No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.
5. Height Regulations. No building shall exceed four (4) stories or fifty (50) feet in height. Exceptions include the following structures:
  - a. Chimneys, smokestacks, cooling towers;
  - b. Radio and TV towers;
  - c. Water tanks;
  - d. Wireless Telecommunications Towers and Facilities;
  - e. Wind Energy Systems (WES)
  - f. Private Wind Energy Systems (PWECS)
  - g. Others, providing that they are not used for human occupancy.
6. Access. It is recommended that all property in the "CI" District have access to an asphalt paved or concrete State or County Highway.
7. Storage. All outdoor storage within five hundred (500) feet of a residential dwelling must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stock pile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

#### **Section 4.02.04. Performance Standards.**

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and

recurrently generated is not perceptible, without instruments, at any point on the property line.

6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

## **CHAPTER 4.03. PR PLANNED RESIDENTIAL DISTRICT**

### **Section 4.03.01. Planned Development Standards and Requirements**

1. The use of land in the Planned Residential District shall be limited to non-farm single-family dwelling units and their supporting services.
2. The Planned Residential District shall not be permitted on a parcel of land less than twenty (20) acres in area.
3. All roads, common facilities, and open spaces within the Planned Residential District shall be maintained by a homeowner's association.
4. Planned Residential Districts within one (1) mile of an incorporated community will be submitted to the community governing body for review and comment.
5. Where a proposed Planned Residential District is within one (1) mile of an incorporated area, the Walworth County Planning Commission may request the developer to construct proposed improvements to specifications approved by the community's governing body.
6. Strip or linear development proposals along a road or highway will not qualify as a Planned Residential District.
7. Minimum lot size shall not be less than that required by the South Dakota Department of Water & Natural Resources regulations on Private Sewage Disposal Systems (Chapter 34:04:01).
8. Access to public dedicated streets and roads shall be limited. Dwelling units shall not have direct access to public road right-of-ways. Dwelling unit access shall be provided through the interior street/road system. Further all interior streets constructed within the Planned Residential District may be required to be either gravel, concrete, or bituminous-asphalt with the design to be approved by the County Highway Superintendent.
9. Planned Residential Districts must have access to a hard-surfaced road. Access to a concrete or bituminous-asphalt roads is preferred. In order for the Planned Residential District to have access to a gravel road, approval of the governmental entity maintaining said gravel road (Township or County) is required.
10. Easements per 4.01.03.9 of this ordinance shall be required to be placed on any lot in a Planned Residential District in order to protect agricultural operations or practices in the adjoining areas. Exception: This requirement does not apply to future residential development (farm and non-farm) on lots of record with residential dwellings existing on (date of adoption of new ordinance). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

### **Section 4.03.02. Procedure for Planned Development**

The following shall be observed when a planned development proposal is submitted for consideration:

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit three (3) copies of a preliminary development plan to the Planning Commission for study at least seven (7) days prior to the Planning Commission meeting at which it is to be considered. The preliminary development plan shall include the following information:
  - a. Location map showing the relationship of the proposed district to existing roads and property lines.
  - b. Proposed land uses, building locations, and housing unit densities.
  - c. Proposed circulation pattern indicating the status of street ownership.
  - d. Proposed open space uses.
  - e. Proposed grading and drainage pattern.
  - f. Proposed method of water supply and sewage disposal.
  - g. Relation of the proposed development to the surrounding area and comprehensive plan.
2. Copies of the proposed water and sewer system will be submitted to the South Dakota Department of Water & Natural Resources for study and comment.
3. A list and schedule of improvements to be completed by the developer must be submitted.
4. In reviewing the plan, the Planning Commission shall need to determine that:
  - a. Resulting development will not be inconsistent with the comprehensive plan objectives or zoning provisions of the area.
  - b. The plan can be completed within a reasonable period of time.
  - c. The streets are adequate to support the anticipated traffic and the development will not overload the roads outside the planned area.
  - d. Proposed utility and drainage facilities are adequate for the population densities proposed.
5. If, in the opinion of the Planning Commission, the foregoing provisions are satisfied, the proposal shall be processed according to this section. If the Planning Commission finds to the contrary, they may recommend the application be denied or return the plan to the applicant for revision.
6. In addition to the requirements of this section, the Planning Commission may attach conditions it finds are necessary to carry out the purpose of this ordinance.
7. Before approving a planned development, the Planning Commission must have copies of proposed deed restrictions, agreements for maintenance by the homeowners' association of common facilities and open spaces, guarantees (surety bonds, etc.) by the developer for the completion of the development in accordance with the approved plan, and an agreement

binding successors who may take over completion of the development to conditions of the plan approval.

8. The Planning Commission shall follow the procedure for considering an amendment to the Official Zoning Map before approving a Planned Residential District.
9. Permits for construction in a planned development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Commission for processing as an amendment to this ordinance.



## **CHAPTER 4.04. LAKE PARK DISTRICT**

Purpose: To provide for orderly development with certain public facilities and customary parks and commercial uses normally associated with lakeshore development.

### **Section 4.04.01. Permitted Uses:**

1. Site-built Single-family dwelling.
2. Public and private parks.
3. Horticulture uses.
4. Agricultural or horticulture uses excluding concentrated animal feeding operations.
5. Modular home.
6. Manufactured home.
7. Attached garages and unattached private garages with sidewalls less than ten (10) feet and conform to the design of the house.
8. Essential public services.
9. Accessory structures such as piers and docks and uses to include but not limited to boathouses and sheds further than fifty (50') feet from the high water mark, or from a point as determined by the Board of Adjustment.

### **Section 4.04.02. Conditional Uses:**

1. Private parks and campgrounds.
2. Twin homes.
3. Boathouses within fifty (50) feet of the high water mark or from a point as determined by the Board of Adjustment.
4. Multiple family dwellings, including condominiums.
5. Unattached garages with sidewalls greater than ten (10) feet or do not conform to the design of the house.
6. Commercial storage garages.
7. Home occupation.
8. Bait shop;
9. Grocery store;
10. Bar, tavern, or lounge;

11. Convenience store;
12. Recreational sales;
13. Rental services;
14. Outdoor music event.
15. Golf course, driving range, clubhouse and related accessory uses

**Section 4.04.03. Area Regulations**

**Table 4.04.03**

	Minimum Lot Area (Sq. Ft)	Minimum Lot Width (1)	Minimum Lot Depth	Minimum Side Yard	Minimum Front Yard (2)	Minimum Rear Yard (Lake Front) (3)	Maximum Height
<b>Single Family Dwelling</b>	20,000	50'	150'	9'	50'	75'	30'
<b>Multiple Family Dwelling</b>	40,000	100'	200'	10'	50'	75'	45'

- (1) Each lot in the LP District shall have a road frontage of not less than fifty (50) feet in width (100' for multiple family dwellings). Each lot in the LP District shall have a shoreline frontage width of not less than seventy-five (75) feet.
- (2) Side of lot facing road right-of-way or access easement.
- (3) Measured from the high water mark or from a point as determined by the Board of Adjustment.
- (4) For lakes or ponds: No structure except boathouses, piers and docks shall be placed at an elevation such that the lowest floor, including basement, is less than five (5) feet above the highest known water level.
- (5) Lots must meet minimum State requirements for private sewage disposal systems. At a minimum, requirements include water-tight septic tanks connected to a drain field, drain field to be not closer than eighty (80) feet to the shoreline of lake or streams and no drain area deeper than five (5) feet.
- (6) Moved in buildings shall meet the requirements of Chapter 5.04.
- (7) Sealed holding tanks for dwellings are required for all lots of record containing less than twenty thousand (20,000) square feet and not connected to a central sewer system. Existing septic tanks and drainfields on lots with an area of less than twenty thousand (20,000) square feet are considered nonconforming uses and shall not be allowed to be replaced after the adoption of this ordinance.
- (8) There shall be no more than one (1) principal residential building on any parcel of land.
- (9) Where two (2) parcels of land are purchased and joined together by one (1) common boundary, the setbacks established above shall pertain to the perimeter of the combined lots.

**Section 4.04.04. Sewage Systems.**

1. The developer of any plat shall provide for a South Dakota Department of Environment and Natural Resources approved sewage systems and provide provisions that are binding on the developer before such plat is approved. At a minimum, the installation and utilization of individual on-site wastewater systems shall meet state regulations, Chapter 74:53:01.
2. The developer of any plat shall be liable for the execution of the provisions required above to protect waters of the state from pollution and shall be liable for any pollution that occurs for failure to execute such provisions.

**Section 4.04.05. Easement/Waivers.**

1. Easements/Waivers per 4.01.03.9 of this ordinance shall be required to be placed on any lot in a Lake Park District in order to protect agricultural operations or practices in the adjoining areas. Exception: This requirement does not apply to future residential development (farm and non-farm) on lots of record with residential dwellings existing on (date of adoption of new ordinance).

## **CHAPTER 4.05. "CN" CONSERVATION DISTRICT**

### **Section 4.05.01. Permitted Uses:**

1. Wildlife production areas.
2. Game refuges.
3. Historic sites and/or monuments.
4. Designated natural prairies.
5. Public hunting and fishing access areas.

### **Section 4.05.02. Special Designation for "CN" Wetlands:**

All wetlands that are totally or partly owned by the State or Federal governments as wildlife production or public shooting areas may be designated as "CN" Conservation Districts. Also included in these "CN" wetland areas will be the area adjacent to the wetland and all land extending three hundred (300) feet upland.

### **Section 4.05.03. Conditional Uses Permitted if Deemed Not Detrimental to the District:**

1. Transportation and utility easements and rights-of-way.
2. Golf courses, summer camps.
3. Public parks, biking/walking trails, and/or playgrounds.
4. Horticulture uses and livestock grazing.
5. Essential Public services.

**CHAPTER 4.06. "TD" TOWN DISTRICT.**

**Section 4.06.01. Permitted Uses.**

1. Single-family residential usage, including manufactured homes, modular homes, provided that provisions of Section 5.10 are met.
2. Public parks.
3. Agriculture and horticulture uses, excluding feedlots.

**Section 4.06.02. Conditional Uses.**

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Home occupation.
7. Manufactured home park.
8. The Board of Adjustment may permit other uses which in its opinion are not detrimental to other uses. These may include manufacturing and processing uses.

**Section 4.06.03. Area Regulations**

1. Residential Uses/Lots - Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be as follows.
  - a. Minimum Yard Requirements:  

Front -- Twenty-five (25) feet  
Side -- Fifteen (15) feet  
Rear -- Twenty-five (25) feet
  - b. Minimum Lot Size:  

Public Water Supply/Septic Tank -- 20,000 Sq. Ft.  
Well/Septic Tank ----- 43,560 Sq. Ft.  
Public Water Supply/Public Sewer - 9,600 Sq. Ft.
2. Commercial Uses/Lots - Lot size shall be determined by off-street parking needs; availability of water and sewage disposal facilities; adjacent land uses; need for screening; and type of business. Front, side, and rear yards shall be determined by the Board of Adjustment.

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

**ARTICLE V  
GENERAL REQUIREMENTS**

Pursuant to the purpose of this ordinance are certain general requirements that are not provided for under Article IV District Requirements. These requirements are set forth under this article.

**CHAPTER 5.01. SCREENING.** Where any CI commercial/industrial Zoning District use is adjacent to any residential development, that use (building, parking or storage) shall be appropriately screened from the residential development by a fence or planting, approved by the Board of Adjustment, except where such fence or planting may be in conflict with Vision Clearance - Section 5.02 below.

**CHAPTER 5.02. VISION CLEARANCE ON CORNER LOTS.** On any corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Lake Park District, Town District, and Planned Residential District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

**CHAPTER 5.03. FENCES.**

**Section 5.03.01. Purpose.**

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

**Section 5.03.02. Permit required.**

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

**Section 5.03.03. Location/Construction Requirements.**

1. Notwithstanding other provisions of this Ordinance fences, walls, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall meet the requirements of Chapter 5.02. Further, the aforementioned fence, wall, or hedge shall not be constructed within twenty-five (25) feet of a public right-of-way or edge of a private road. Fences, walls and hedges shall be set back a minimum of twenty (20) feet from high water mark or from a point as determined by the Board of Adjustment.
2. Fences, with a maximum height of not more than eighty inches (80) inches, may be erected on any part of a lot other than in the required front yard which shall be limited to a height of forty-eight (48) inches.
3. The County does not provide surveying services. The property owner is responsible for

locating property lines.

4. Fences can be built on the property line.
5. The “finished side” of the fence shall face neighboring properties or the road.
6. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire fences shall be allowed in conjunction with residential uses in the Town, Lake Park and Planned Residential Districts.
7. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.

#### **CHAPTER 5.04. MOVED IN BUILDINGS.**

1. **Any building to be moved requires a building permit.** The Zoning Officer may attach conditions to the issuance of the moved in building permit. No permit shall be issued until the following requirements are met.
  - a. The fee for said permit as prescribed in Section 6.01.05, shall have been paid.
  - b. That the work is to be completed within twelve (12) months after the permit has been issued by the Zoning Officer.
  - c. Must have signatures, by petition, of sixty-six percent (66%) of landowners within two hundred (200) feet, excluding streets and public right-of-ways). EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location, shall not require adjoining landowners' approval.
  - d. The applicant will also be required to indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property on which the building/structure will be located have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Officer shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.

#### **CHAPTER 5.05. SHELTERBELT SETBACK REQUIREMENTS**

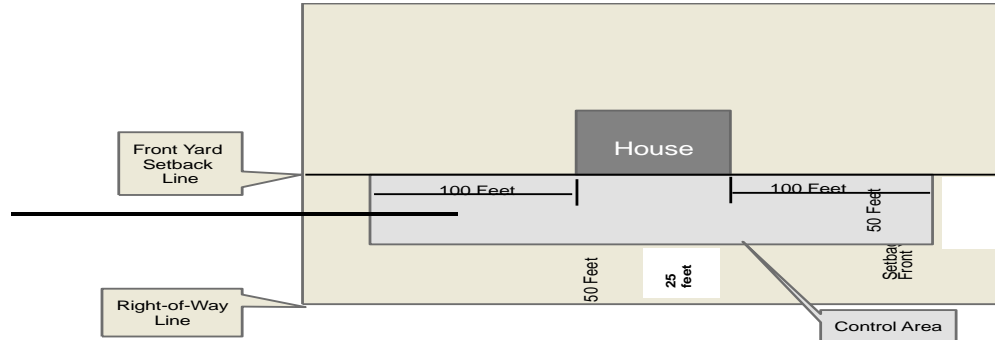
1. A shelterbelt, consisting of one (1) or more rows shall not be established with the windward row within one hundred fifty (120) feet of a public right-of-way and the non-windward row within fifty (50) feet of a public right-of-way. Further, the windward row of trees shall consist of shrubbery or tree species, as determined by the State Urban Forester, which aid in the containment of snow. Shelterbelts at right angles to roads shall provide a minimum turnaround of fifty (50) feet measured from the road right-of-way. Shelterbelts shall not be established within one hundred fifty (150) feet of adjoining property lines without written



permission of adjoining property owners. Trees used for landscaping the area immediately adjacent to farmsteads and residences are exempt from this regulation, but not from 5.05.2.

2. Shade Trees, ornamental trees or shrubs generally used in front yards for landscaping and spaced further than fifteen (15) feet apart and further do not extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts and are allowed in a controlled area (see Controlled Area Illustration below). The controlled area is defined as the area within one hundred (100) feet of homes or farm buildings, but no closer to the right-of-way than twenty-five (25) feet and in compliance with Section 5.01. Except for the following, plantings within the controlled area are exempt from this regulation. Four (4) or more trees planted in a row are not allowed with the controlled area. Deciduous trees which are spotted or staggered within the controlled area can be no closer than twenty (20) feet. Conifer trees which are spotted or staggered within the controlled area can be no closer than twenty-five (25) feet. The distance between trees shall be determined by measuring distance between tree trunks.
3. The shelterbelts setback requirements (paragraph 1) also apply to volunteer trees that the landowner allows to grow.
4. A recommendation from the County Highway Superintendent, Township and/or State Department of Transportation is required prior to the issuance of any variance of the shelterbelt setback from any respective County, Township or State/Federal public right-of-way.

Controlled Area Illustration



**CHAPTER 5.06. HOME OCCUPATIONS.** Home occupations shall be subject to the following requirements:

1. For the purpose of this section, provided all requirements are met, the following shall be considered for farm home occupations:
  - a. Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, welding repair conducted in a safe manner; Veterinarian's office; Seed Sales; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.
2. Performance Standards

- a. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
- b. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof.
- c. The total area used for such purposes shall not exceed the equivalent of one-fourth (1/4) the floor area of a dwelling, in square feet, of the first floor of the user's dwelling unit.
- d. Home occupations are permitted in accessory buildings.
- e. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) non-lighted and non-reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within.
- f. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
- g. Off premise signage for home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
- h. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.

**CHAPTER 5.07. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT AND CONCRETE AND ASPHALT MIXING PLANTS REQUIREMENTS.**

**Section 5.07.01 Application**

1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:
  - a. A description of the mineral or minerals which are the subject of the mining or milling.
  - b. A detailed site Map(s) showing
    - i. The general area within which the mining or milling operation will be conducted.
    - ii. Present topography, soil types, and depth to groundwater.
    - iii. Location of existing water drainage, existing buildings, existing shelterbelts.
    - iv. Identification of roads leading to the site.
    - v. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.

### **Section 5.07.02 State and Federal Requirements.**

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

### **Section 5.07.03 Setbacks**

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) feet of a residence. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. The exception to this standard would apply to residences owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants.
2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at one hundred twenty (120) feet from any public right-of-way.
3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:
  - a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.
  - b. No excavation is allowed within five (5) feet of any rear or side property line.
  - c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

### **Section 5.07.04 General Provisions:**

1. Haul Roads.

A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).

2. The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands.
  - a. A reclamation schedule.
  - b. Methods of plugging drill holes.

- c. Methods of severing and returning topsoil and subsoil.
  - d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
  - e. Methods of waste management and disposal, including liquid and solid wastes.
  - f. Method of revegetation.
3. Utilities/Easements - No excavation shall occur within recorded easements.
  4. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.

## **CHAPTER 5.08. CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS**

### **Section 5.08.01. General Requirements.**

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. This section applies to any concentrated animal feeding operation (CAFO) constructed or used after the effective date of **(date of adoption of new ordinance)**. Any facility shall be sufficiently separated from other land uses so as not to unreasonably interfere with or burden the enjoyment of other neighboring lands, consistent with the policy established under this Ordinance. All concentrated animal feeding operations shall comply with the regulations as outlined herein.

### **Section 5.08.02. Classes of Concentrated Animal Feeding Operations:**

Concentrated animal feeding operations are hereby classified as Class A, B, C, or D concentrated animal feeding operations and are defined by the number of animal as listed in Table 5.08.1.

**Number of Animals to Define Classes of Concentrated Animal Feeding Operations**  
**Table 5.08.1**

<b>TYPE OF ANIMAL:</b>	<b>Class A # of Animals</b>	<b>Class B # of Animals</b>	<b>Class C # of Animals</b>	<b>Class D # of Animals</b>
Mature Dairy cows (milked or dry)	3,500 or more	1,400 to 3,499	700 to 1,399	350 to 699
Cattle other than mature dairy cows <sup>1</sup>	5,000 or more	2,000 to 4,999	1,000 to 1,999	500 to 999
Swine over 55 pounds	12,500 or more	5,000 to 12,499	2,500 to 4,999	1,250 to 2,499
Swine under 55 pounds	50,000 or more	20,000 to 49,999	10,000 to 19,999	5,000 to 9,999
Horses	2,000 or more	1,000 to 1,999	500 to 999	250 to 499
Sheep or Lambs	50,000 or more	20,000 to 49,999	10,000 to 19,999	5,000 to 9,999
Turkeys	275,000 or more	110,000 to 274,999	55,000 to 109,999	27,500 to 54,999
Laying Hens or Broilers <sup>2</sup>	150,000 or more	60,000 to 149,999	30,000 to 59,999	15,000 to 29,999
Chickens, other than laying hens <sup>3</sup>	625,000 or more	250,000 to 624,999	125,000 to 249,999	62,500 to 124,999
Laying Hens <sup>3</sup>	410,000 or more	164,000 to 409,999	82,000 to 163,999	41,000 to 81,999
Ducks <sup>2</sup>	25,000 or more	10,000 to 24,999	5,000 to 9,999	2,500 to 4,999
Ducks <sup>3</sup>	150,000 or more	60,000 to 149,999	30,000 to 59,999	15,000 to 29,999
Geese	150,000 or more	60,000 to 149,999	30,000 to 59,999	15,000 to 29,999

1. **Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.**
2. **Animal Feeding operation uses a liquid manure handling system**
3. **Animal Feeding operation uses other than a liquid manure handling system**

**Section 5.08.03. Concentrated Animal Feeding Operation Permit Requirements**

Two (2) or more concentrated animal feeding operations under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more concentrated animal feeding operations treated as a single operation shall not be less than the

minimum setback required for each operation if said operations were treated as individual operations.

Any person who owns, operates, or proposes to own or operate a Class A, B or C concentrated animal feeding operation as defined in these regulations, shall be required to apply for a conditional use permit pursuant to these regulations whenever any of the following occurs:

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion of a concentrated animal feeding operation is proposed that exceeds the number of animal units allowed by an existing county-issued permit.
3. An expansion in the number of animal units of a concentrated animal feeding operation, without a county-issued permit, that existed prior to (date of adoption of new ordinance), which would result in the creation of either a Class A, B or C concentrated animal feeding operation.
4. If a Class A or B concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.
5. A change in ownership of a Class A, B or C concentrated animal feeding operation which does not have a previously issued county-permit.
6. An existing concentrated animal feeding operation-is to be restocked after being idle for five (5) or more years.
7. A signed complaint has been received and/or documented by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the concentrated animal feeding operation is in violation of County or State regulations.

**Section 5.08.04. Concentrated Animal Feeding Operation Control Requirements:**

1. **Required Minimum Setbacks** and Separation Distance for New Classes A, B, C, and D Concentrated Animal Feeding Operations and those Existing Concentrated Animal Feeding Operations without a County issued permit expanding into a Class A, B, C, or D Concentrated Animal Feeding Operations after (date of adoption of new ordinance). See Table 5.08.2.

**5.08.2**  
**Minimum Setbacks**

<b>SETBACK TABLE</b>	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
Dwellings (other than owner's or operator's)	10,560 feet (2 Mile)	5,280 feet (1 Mile)	2,640 feet (1/2 Mile)	1,320 feet (1/4 Mile)
Incorporated Municipality Limits	10,560 feet (2 Miles)	10,560 feet (2 Miles)	5,280 feet (1 Mile)	5,280 feet (1 Mile)
Churches, Schools, Businesses, Designated County or State Parks, Lake Park, Planned Residential, and Town Zoning Districts	10,560 feet (2 Miles)	7,920 feet (1 ½ Miles)	5,280 feet (1 Mile)	2,640 feet (1/2 Mile)
Federal, State, County, & Township Road Right of Way	300 feet	300 feet	200 feet	200 feet

**2. Additional Setback and Separation Distance Requirements for Classes A, B and C, Concentrated Animal Feeding Operations.**

**a. Considerations to Increase Setbacks and/or Separation Distances**

The facility shall be sited not closer than those distances indicated in the "Setback Table" 5.08.2. These setbacks are minimum standards that may be increased by the Board of Adjustment during the conditional use permit issuance process due to concerns or circumstances unique to a specific concentrated animal feeding operation permit application. Setbacks shall be measured from the outermost point of the feedlot to the structure/use as identified on the "Setback Table".

**b. Considerations to Decrease Setbacks and/or Separation Distances**

If an applicant wishes to place a concentrated animal feeding operation closer than the separation distances set forth in these regulations, the applicant can request an exception for the separation distance from the Board of Adjustment. The Board of Adjustment may allow an exception from the separation distance only when the applicant obtains waivers from all the dwellings located within the separation distance. Any authorized person, business, or governmental entity that is within the separation distance may waive the separation distance through a written instrument to be filed with the County Register of Deeds. This waiver shall pass with the land.

**3. Exemptions to Setback and/or Separation Distance Requirements**

- a. All Concentrated Animal Feeding Operations (CAFO) in operation prior to (date of adoption of new ordinance), which do not comply with the minimum setback requirements, but continue to operate, and are not expanded in a manner which will

result in one of the following examples are exempt from setback/separation distance requirements:

- i. Example 1: A Class D CAFO expands to a Class A, B, or C CAFO.
  - ii. Example 3: A Class C CAFO expands to a Class A or B CAFO.
  - iii. Example 4: A Class B CAFO expands to a Class A CAFO.
  - iv. Example 5: A Class A CAFO expands by 15% of the number of animal units
- b. A concentrated animal feeding operation which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the CAFO is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The title holder of the land benefiting from the distance separation requirement land is the individual or individuals, business entity, governmental entity, bona-fide religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
  - c. A concentrated animal feeding operation which is constructed or expanded closer than the required setback/separation distance from the corporate limits of a city, if the incorporated community approves a written waiver. The written waiver becomes effective only after it's recorded with the Register of Deeds.
  - d. A concentrated animal feeding operation which existed prior to the creation of a residence, educational institution, commercial enterprise, bona-fide religious institution, incorporated community, if the residence, educational institution, commercial enterprise or bona-fide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the concentrated animal feeding operation was established is the date on which concentrated animal feeding operation commenced operating. A change in ownership or expansion shall not change the date of operation.
  - e. It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.

#### **4. Standards for Conditional Use Permits**

- a. The Board of Adjustment or the County Zoning Officer may request information relating to concentrated animal feeding operations not contained in these regulations.
- b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- c. Conditional Use Permit permits for concentrated Animal Feeding Operations shall be in effect only as long as other provisions of the permit are being adhered to.



- d. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to concentrated animal feeding operations that the applicant has or had an interest in.
- e. Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the applicant and signed by both the applicant and the Chair of the Board of Adjustment. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.

**5. Information Required for Class A, B, C, or D, Concentrated Animal Feeding Operation**

- a. Owner's, manager's, management company's or similar entities name, address and telephone number.
- b. Legal descriptions of site.
- c. The number and type of animals to be housed by the proposed concentrated animal feeding operation.
- d. Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation, if required by the State of South Dakota. A County conditional use permit may be approved conditioned upon receiving a State General Permit.
- e. Information on ability to meet designated setback requirements, including maps showing measured distances.
- f. Notification of whomever maintains the access road (township, county and state).

**CHAPTER 5.09. MANUFACTURED HOME PARKS.**

It shall be unlawful for any person to place or maintain a manufactured home park in the unincorporated area of Walworth County unless said court is located on property zoned Lake Park and connected to an approved public water and sewer system.

**CHAPTER 5.10. MANUFACTURED HOME REGULATIONS.**

**Section 5.10.01 Manufactured Homes**

- 1. A manufactured home is an industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year-round occupancy as a single dwelling.

a. A manufactured home shall:

- i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit. Minimum width for a manufactured home is fourteen (14) feet.
- i. Be anchored to the ground or permanent foundation, in accordance with manufacturer's specifications permanent foundation.
- ii. Utilize a perimeter enclosure of metal, vinyl, wood or Styrofoam in accordance with manufactures specifications that encloses the entire perimeter of the home.
- iii. The age of the manufactured house may not exceed twenty (20) years from the date of manufacture.

2. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Officer and subsequent approval thereof, a manufactured home, located upon any lot or lots of record at the time of the adoption of this ordinance, deemed a legal nonconforming use, may be replaced by a-manufactured home, provided the replacement meets the requirements of this section.

a. Variance from Maximum Age Requirement

Manufactured homes may receive a variance from the maximum age requirement. The Board of Adjustment may grant a variance if the manufactured home meets the following requirements:

- i. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- ii. That it shall have been shown to the satisfaction of the Zoning Officer that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Walworth County.
- iii. That the applicant shall obtain the written consent of sixty-six (66) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within two hundred (200) feet (excluding streets and alleys) of said proposed location has been received.

**Section 5.10.02 Modular Homes**

1. Modular homes shall meet the following regulations.

- a. Modular homes shall meet or exceed Uniform Building Codes.
- b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.

- c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.
- d. Modular homes shall not have attached running gear and a trailer hitch.
- e. Modular homes shall have a minimum of a 4/12-roof pitch.
- f. Have siding material of a type customarily used on site-constructed residences.
- g. Have roofing material of a type customarily used on site-constructed residences.

#### **CHAPTER 5.11. ACCESSORY BUILDINGS.**

1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.
2. No accessory use shall be permitted in any district unless such principal use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
4. No accessory building may be used for residential dwelling purposes at any time.
5. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
6. Commercial and Industrial Districts. In any Commercial or Industrial district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.
7. Town, Lake Park, and Planned Residential Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town, Lake Park, and Planned Residential Districts only in accordance with the provisions of the Table 5.11-1.

**Table 5.11-1**

**Permitted Accessory Uses: TD, LP, and PR Districts**

<u>Principal Use</u>	<u>Permitted Accessory Uses</u>
<b>Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers</b>	<ol style="list-style-type: none"><li>1. Private garages.<ol style="list-style-type: none"><li>a. Attached and unattached garages shall be limited to maximum dimensions per applicable zoning district and conform to the design of the house.</li><li>b. Attached garages shall be limited to maximum sidewalls of ten (10) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.</li><li>c. Unattached garages shall be limited to maximum sidewalls of twelve and one-half (12 ½) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.</li></ol></li><li>1. Buildings or structures for customary residential storage purposes not over ten (10) feet in height and not exceeding one hundred fifty (150) square feet in gross floor area.</li><li>2. Readily moveable sports, recreation, or outdoor cooking equipment.</li><li>3. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved.</li><li>4. Home occupations but only as defined herein.</li><li>5. Non-commercial greenhouses provided that greenhouses over one hundred (100) square feet in floor area must have an approved site plan.</li><li>6. Off-street parking and storage of vehicles.</li></ol>
<b>Churches, Convents and Monasteries</b> <b>All conditional uses</b>	<ol style="list-style-type: none"><li>1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.</li><li>2. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.</li></ol>
<b>All other items</b>	<ol style="list-style-type: none"><li>3. No accessory uses permitted.</li></ol>

**CHAPTER 5.12 SIGNS.**

**Section 5.12.01 On-premise and Off-premise Signs**

1. Prohibited signs:
  - a. No sign shall be erected or maintained which creates a hazard due to collapse, fire, collision, decay, or abandonment; or creates traffic hazards, by either:
    - i. Confusing or distracting motorists; or
    - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles; or
    - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or

- iv. Creates a nuisance to persons using a public right-of-way; or
    - v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement.
  - b. Any vehicle or trailer parking on public right-of-way, public property or private property so as to be visible from the public right-of-way and which displays an advertising message, unless said vehicle is used in the regular course of a business.
- 2. Signs shall be permitted in zoning districts per Article III, subject to the following provisions:
  - a. Wall signs may be located anywhere on the wall of a building.
  - b. Signs shall not project over public property.
  - c. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 5.01.
  - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
  - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Zoning Officer and the said Official grants a permit therefore.
- 3. On-premise Signs: Each sign erected as an on-premise sign in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
  - a. Unless otherwise specified herein, each sign erected as an on-site sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. Each sign shall meet clear view triangle standards identified in Chapter 5.02. The maximum cumulative amount of all on-site signage allowed shall not exceed eighty (80) square feet.
  - b. No on-premise sign may be converted to an off-premise sign.
- 4. Off-premise Signs: Off-premise signs erected in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
  - a. Each sign shall have a maximum surface area of three hundred (300) square feet.
  - b. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
  - c. Stacked signs (two or more signs stacked vertically on a single sign structure are

prohibited.

- d. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted Off-premise sign on the same side of the street or road.
- e. Each sign shall not be closer than ten (10) feet from any street right-of-way.
- f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

### **CHAPTER 5.13. STRUCTURES TO HAVE ACCESS.**

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

### **CHAPTER 5.14. YARDS.**

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

#### **Section 5.14.01. Yards, Reduction in Size.**

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

#### **Section 5.14.02. Additional Yard Requirements.**

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

1. A corner lot must have a front yard on both streets.
2. On developed property, in the LP-Lake Park District and PR-Planned Residential District, fronting on one side of the street between two streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.
3. In the LP and PR Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.

4. In the LP and PR Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

#### **Section 5.14.03. Exceptions to Yard Requirements.**

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

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

#### **CHAPTER 5.15. PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS.**

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

#### **CHAPTER 5.16. UTILITY EASEMENTS.**

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

#### **CHAPTER 5.17. ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT.**

In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met. Exception: Secondary residences in the Agricultural Zone, per 4.01.03.7, and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met

#### **CHAPTER 5.18. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES.**

##### **Section 5.18.01. Purposes.**

1. The general purpose of this Section is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County. Specifically, the purposes of this Ordinance are:
  - a. To regulate the location of Towers and Telecommunications Facilities in the County;
  - b. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
  - c. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
  - d. To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
  - e. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
  - f. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and
  - g. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

**Section 5.18.02. Development of Towers.**

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Walworth County mount law-enforcement or public safety communications apparatus.
3. An application to develop a Tower shall include:
  - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.



- b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
- c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including County-owned property.
- d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
- e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or collocate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or collocate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially reasonable.
- f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.
- g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
- h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
- i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
- j. The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.

- k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

#### **Section 5.18.03. Setbacks.**

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

#### **Section 5.18.04. Structural Requirements.**

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

#### **Section 5.18.05. Separation of Buffer Requirements.**

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

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

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The separation requirements contained in 5.18.05 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

#### **Section 5.18.06. Method Of Determining Tower Height.**

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

#### **Section 5.18.07. Illumination.**

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

#### **Section 5.18.08. Exterior Finish.**

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

#### **Section 5.18.09. Modification Of Towers.**

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the Count's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
  - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
  - b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this Section allowing the modification or demolition and

rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.

- c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.
2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

#### **Section 5.18.10. Certifications And Inspections.**

1. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.
2. The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

#### **Section 5.18.11. Maintenance.**

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

#### **Section 5.18.12. Criteria For Site Plan Development Modifications.**

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a Conditional use in

accordance with the following:

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

Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.

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

#### **Section 5.18.13. Abandonment.**

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

#### **Section 5.18.14. Action of the Board of Adjustment.**

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

**CHAPTER 5.19. RIGHT TO FARM NOTICE COVENANT.**

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural, Lake Park and Planned Residential Districts. (See 4.01.03.9.a)

Prepared by:  
Walworth County Zoning Officer (or by Grantor or Grantor's Attorney)  
Zoning Officer Address (or Grantor's or Grantor's Attorney's address)  
Selby, SD 57472 (or Grantor's or Grantor's Attorney's city)

**RIGHT TO FARM NOTICE COVENANT**

You are hereby notified that the property you are purchasing is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural operations permitted by Walworth County zoning regulations. Agricultural operations may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal manure; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for agricultural operations to expand. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to obtaining a building permit, may not be removed from the record title without consent of the Walworth County Board of Adjustment.

Legal

Description: \_\_\_\_\_

\_\_\_\_\_  
Signature

STATE OF SOUTH DAKOTA COUNTY OF WALWORTH

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_ My commission expires \_\_\_\_\_

## **CHAPTER 5.20. TARGET RANGE REQUIREMENTS.**

### **Section 5.20.01. Conditional Use Permits.**

No Range shall be established within the Walworth County without first obtaining a Conditional Use Permit.

### **Section 5.20.02. General Regulations for All Ranges.**

No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):

1. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:
  - a. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
  - b. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
  - c. The policy for the site for the use of alcohol.
  - d. Controlled substances are prohibited on the site.
  - e. Rules for the safe handling of weapons.
  - f. A building and grounds maintenance plan.
  - g. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.
  - h. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.
  - i. The penalties that are in force for violations of the safety plan.
  - j. The method used to control trespass or unauthorized access to the range or preserve.
2. On an annual basis, applicants must provide proof of insurance.
3. Applicants shall continuously keep the County informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.



4. All Ranges must control entrance to their sites.
5. No alcohol licenses shall be granted to any site which has a Range.
6. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

**Section 5.20.03. Special Regulations for Ranges.**

Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:

1. A survey delineating the layout of all individual Ranges.
2. Setbacks to all property lines.
3. Method of containing projectiles within each individual range (such as earthen berms or other method).
4. Methods to be employed to reduce noise, including impulse noise.
  - a. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.
5. All Ranges shall be designed using the NRA Range Source Book as a guideline.

**Section 5.20.04. Application Requirements.**

Each application for a Range shall, at a minimum, include the following:

1. A description of specific activities to be conducted on-site.
2. The hours and days of operation.
3. The maximum number of people using the facility at any one time.
4. A plan, if applicable, for collecting and recycling used shot.
5. A delineation of any special events, if any.
6. A sewage, water and solid waste management plan.

**Section 5.20.05. Area Regulations.**

1. Minimum Lot Size: Ten (10) acres.
2. Minimum Front Yard: One hundred fifty (150) feet.
3. Minimum Side Yard: Three hundred (300) feet.

4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.
5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.
7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

**Section 5.20.06. Miscellaneous Regulations.**

1. In the event that any provision of this Chapter or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

**CHAPTER 5.21. WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural, Lake Park, and Planned Residential Zoning Districts which is located within two (2) miles of an existing concentrated animal feeding operation in the Agricultural Zoning District (See 4.01.03.9.b)

Prepared by:  
 Walworth County Zoning Officer (or by Grantor or Grantor's Attorney)  
 Zoning Officer Address (or Grantor's or Grantor's Attorney's address)  
 Selby, SD 57472 (or Grantor's or Grantor's Attorney's city)

WAIVER OF SETBACK FROM  
 EXISTING CONCENTRATED ANIMAL FEEDING OPERATION

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within two (2) miles of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See 4.01.03.9.b)

1. Purpose. This waiver is required for any dwelling to be constructed within two (2) miles of an existing concentrated animal feeding operation as defined by the Walworth County Zoning Ordinance.
2. Waiver:

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

\_\_\_\_\_

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

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

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

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

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

STATE OF SOUTH DAKOTA

SS:

COUNTY OF WALWORTH

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

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

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

**CHAPTER 5.22. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).**

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. The minimum distance between the property line, overhead utility lines or another wind turbine, and any turbine support base of a PWECS shall be equal to

the proposed turbine hub height (plus the radius of the rotor for the horizontal access machines).

3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Turbine Access. Climbing access to the PWECS turbine shall be limited either by means of a fence six (6) feet high around the turbine base with a locking portal, or by limiting turbine climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.
5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.

### **CHAPTER 5.23. BED AND BREAKFAST ESTABLISHMENTS.**

The regulations regarding Bed and Breakfast Establishments (hereafter referred to as B & B's) shall be as follows:

1. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health.
2. A license must be approved by the state prior to granting a conditional use permit and license must remain current while operating a bed and breakfast.

### **CHAPTER 5.24. WIND ENERGY SYSTEM (WES) REQUIREMENTS**

#### **Section 5.24.01. Applicability**

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

### **Section 5.24.02. Federal and State Requirements**

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

### **Section 5.24.03. General Provisions**

#### 1. Mitigation Measures

- a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. Roads
  - i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, meteorological towers, assembled nacelles and all other heavy components to and from the site.
  - ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.
  - iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed

in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

- iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- v. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.
- vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

## 2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing off-site residences, business and churches shall be at least ten thousand five hundred and sixty (10,560) feet or 2 miles. Distance from other existing buildings or structures shall be at least one thousand (1,000) feet. Distance from on-site or lessor's residence shall be at least five hundred (500) feet. Distance to be measured from the wall line of the neighboring principal building to the base of the WES turbine.
- b. Distance from the edge of a public right of way shall be two hundred percent (200%) of the height of the wind turbine. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the turbine to the centerline of the public road.
- c. Distance from any property line shall be two hundred percent (200%) of the height of the wind turbine. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the turbine to the adjoining property line unless wind easement has been obtained from adjoining property owner.
  - i. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the Walworth County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
4. Lighting. Turbines shall be marked as required by the Federal Aviation Administration (FAA). With the exception of lighting to illuminate doorway to turbine hub, there shall be no lights on the turbines other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a turbine, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the turbine from the turbine and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
5. Turbine Spacing. The turbines shall be spaced no closer than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the turbines may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the turbine hubs unless otherwise negotiated with the affected landowner.
7. Collector Lines. Collector lines are the conductors of electric energy from the WES to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.
9. Meteorological Towers. Permanent meteorological towers associated with a WES facility shall be permitted as part of the facility. A temporary meteorological tower shall require a

separate conditional use permit, and shall be constructed in accordance with all applicable federal, state, and local requirements.

10. Decommissioning/Restoration/Abandonment.

- a. Decommissioning Plan. Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
- b. Site Restoration. The decommissioning of the WES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all turbines, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
- c. Cost Responsibility. The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.
- d. Financial Assurance. After the tenth (10<sup>th</sup>) year of operation of a WES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility.
- e. Failure to Decommission. If the WES facility owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a WES facility.

11. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.



12. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
13. Turbine Hubs.
  - a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
  - b. All turbine hubs shall be singular tubular design.
14. Noise. Noise level shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings.
15. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.
16. Required Information for Permit.
  - a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
  - b. Map of easements for WES.
  - c. Affidavit attesting that necessary easement agreements with landowners have been obtained.
  - d. Map of occupied residential structures, businesses and buildings.
  - e. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines to be submitted sixty (60) days prior to construction.
  - f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection.
  - g. Location of other WES in general area.
  - h. Project schedule.
  - i. Mitigation measures.
  - j. Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation shall be included in the application.
  - k. Final haul road agreements to be submitted sixty (60) days prior to construction

## **CHAPTER 5.25. Pipeline Structures.**

Any above ground structure associated with a pipeline requiring South Dakota Public Utilities Commission approval shall also require a Walworth County conditional use permit and building permit. The conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Walworth County recommendations regarding such issues such as but not limited to right-of-way, haul roads, and building permits. The requirement of the conditional use permit may be waived in the event said permit requirement is contrary to federal law.

## **CHAPTER 5.26. Private Campground**

### **Section 5.26.01. Purpose.**

The purpose of this chapter is to provide for areas in the county for recreational vehicles to be located and occupied as temporary living quarters in a campground setting.

### **Section 5.26.02. Minimum Requirements.**

1. A private campground shall comply with the following conditions:
  - a. A private campground may not be permitted on a parcel that contains an existing single family residence.
  - b. The minimum lot area for a private campground facility shall be five (5) acres.
  - c. Each campsite shall contain at least two thousand (2,000) square feet.
  - d. Access roads shall be provided to each campsite and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads.
  - e. No manufactured homes shall be located in the campground.
  - f. The campground(s) shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
  - g. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The campground shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations. It is recommended that one (1) refuse collection station shall be provided, with a minimum of one (1) two-yard dumpster situated on a concrete pad, screened on four sides, for each twelve (12) tenants or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any camper served, and to be conveniently located for collection.
  - h. The grounds shall be kept free of rubbish, trash, or debris, which could become a safety hazard.
  - i. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.

- j. A private campground shall have a responsible person on duty at all times.
- k. The owner of the private campground shall keep accurate record of guests. Such a record shall be available for inspection and copying by the Secretary of Health or Zoning Officer for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The registry shall contain the name of the guest, the number in the party, the place of permanent residence of the guest, the date of registration, the date of departure, and the motor vehicle license number of the registrant. The record shall also include each rate, price, or fee charged to the guest for the guest's stay at the campground. These records shall be kept for a minimum of one (1) year.
- l. Public Safety Access – The owner of the private campground shall allow Law Enforcement and Walworth County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
- m. In the event the private campground does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the private campground shall provide for, at their expense, the restoration of the site to its original condition, including the removal of all campers or RV's, dumpsters, and other related vehicles, or to a use permitted by the zoning ordinance in a time frame to be determined by the Board of Adjustment.
- n. All applicable requirements of the South Dakota Department of Health shall be met.
- o. The Board of Adjustment may impose other conditions to ensure that the use of property related to the private campground is conducted in a manner to be compatible with the surrounding neighborhood.

**Section 5.26.03 Application Requirements.** An application for a private campground shall be filed with the Zoning Officer. The application shall contain the following:

- 1. The address and legal description of all property upon which the campground is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
- 2. Plans for supplying potable water including the source, amount available and location of outlets.
- 3. The plans for providing toilet and bathing facilities including the source, number and location, type and the means of disposing of waste deposited.
- 4. The plans for holding, collecting and disposing of solid waste material.
- 5. The plans, if any, to illuminate the campground, including the source and amount of power and the location of lamps.
- 6. A sketch plan of the property showing:
  - a. Location of Camping Pads/sites.
  - b. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads)
  - c. All existing and proposed buildings or additions.

- d. Dimensions of all buildings.
- e. Distance from all campsites/buildings to the property lines at the closest points.
- f. Dimensions of all property lines.
- g. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
- h. Name and location of all adjacent streets, alleys, waterways and other public places.
- i. Proposed grading and drainage pattern.
- j. Proposed interior circulation pattern indicating the status of street ownership and maintenance agreement.
- k. Proposed open space uses.
- l. Utility (water, sewer, electricity) plans.
- m. Relation of the proposed development to the surrounding area and comprehensive plan.

**CHAPTER 5.27. Sanitary Landfills, Rubble Sites, Composting Sites, Waste Tire Sites, and Restricted Use Sites Requirements.**

1. The site meets the requirements of the State Department of Environment and Natural Resources.
2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells.
  - f. A minimum of two thousand six hundred forty (2,640) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence or commercial use; excluding: the residence of the landfill operator.
  - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site is conducted in a manner to be compatible with the surrounding neighborhood.

#### **CHAPTER 5.28. Domestic Sanitary Sewer Treatment Plant/Facility Requirements.**

1. The site meets the requirements of the State Department of Environment and Natural Resources.
2. A site plan is provided indicating the following information:
  - a. Present topography, soil types, and depth to groundwater.
  - b. Location of existing water drainage, existing buildings, existing shelterbelts.
  - c. Identification of roads leading to the site.
  - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
  - e. Proposed monitoring wells.
  - f. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to the nearest residence; excluding: the residence of the sewage treatment plant/facility operator.
  - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the domestic sanitary sewer treatment plant/facility is conducted in a manner to be compatible with the surrounding neighborhood.

#### **CHAPTER 5.29. Junkyards/Salvage Yards Requirements.**

1. Storage for junkyards/salvage yards shall be set back a minimum of three hundred thirty (330) feet from any adjoining property line or road right-of-way.
2. Junkyards/salvage yards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
3. No junkyards/salvage yards will be allowed within one thousand (1,000) feet from the property line of the junkyard/salvage yard to the nearest residence; excluding: the residence of the junkyard/salvage yard operator.
4. All junkyards/salvage yards must have a minimum lot of ten (10) acres.
5. The Board of Adjustment may impose other conditions to ensure that the use of property related to the junkyard/salvage yard is conducted in a manner to be compatible with the surrounding neighborhood.

**CHAPTER 5.30. Automotive Tow Business/Impound Lot Requirements. Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:**

1. The area used for an impound lot must be free of debris and regularly maintained.
2. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.
3. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.
4. An impound lot may be used for the storage of not more than twenty (20) vehicles at any one time.
5. Vehicle parts shall not be stored within an impound lot.
6. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.
7. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.
8. The Board of Adjustment may impose other conditions to ensure that the use of property related to the automotive tow business/impound lot is conducted in a manner to be compatible with the surrounding neighborhood.

**ARTICLE VI  
ADMINISTRATION**

**CHAPTER 6.01. BUILDING/USE PERMITS.**

**Section 6.01.01. Permits Required.**

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

**Section 6.01.02. Applications.**

1. Application for building and use permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Officer, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03 and shall require a new building and use permit.

**Section 6.01.03. Building/Use Permit Issuance and Termination.**

1. Issuance of a Building/Use Permit. If the proposed excavation alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building/use permit for such excavation, construction, alteration or change in use. If a building/use permit is refused, the Zoning Officer shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application with the cause for denial. The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

2. A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Zoning Officer of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.
3. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. A Building Permit shall become null and void twelve (12) months from the date of issuance thereof unless substantial progress has been made by that date on the project described therein. If the work described in any building permit has not begun within six (6) months or has not been substantially completed within one (1) year of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within twelve (12) months from the issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit an additional six (6) months.

#### **Section 6.01.04. Permits Displayed.**

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use.

#### **Section 6.01.05. Fees.**

1. The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, The schedule of fees shall be posted in the office of the County Zoning Officer and may be altered or amended only by the Board of County Commissioners.
2. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

### **CHAPTER 6.02. ZONING OFFICER.**

#### **Section 6.02.01. Zoning Officer.**

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



### **Section 6.02.02. Duties.**

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

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

**Section 6.02.03. Right of Entry.**

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

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

**Section 6.02.04. Stop Order.**

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

**Section 6.02.05. Occupancy Violation.**

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

**CHAPTER 6.03. PLANNING COMMISSION.**

**Section 6.03.01. Establishment.**

The Planning Commission shall consist of five (5) members, at least one member of which shall be a member of the Board of County Commissioners.

**Section 6.03.02. Term of Office.**

The term of each of the appointed members shall be for five years; the length of the terms shall be varied so that no more than 1/3 of the terms expire in the same year. Members of the Planning Commission may be removed for cause by the appointing authority. Vacancies shall be filled by the Board of County Commissioners and shall be for the unexpired term.

### **Section 6.03.03. Meetings of the Planning Commission**

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.
2. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

### **Section 6.03.04. Per Diem and Expenses of Commission**

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

### **Section 6.03.05. Powers and Duties of the Board.**

1. The Planning Commission may initiate proposed amendments to this Ordinance.
2. The Planning Commission shall review all proposed amendments to this Ordinance and make recommendations to the Board of County Commissioners.
3. The Planning Commission shall have all other responsibilities designated to it by this Ordinance and South Dakota Law.

## **CHAPTER 6.04. BOARD OF ADJUSTMENT.**

### **Section 6.04.01. Establishment.**

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

1. The Planning Commission, shall act as the Board of Adjustment.
2. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. The 1<sup>st</sup> alternate will be a member of the Board of County Commissioners. If a County Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent County Commissioner's place. The term of the Alternates shall be for three (3) years.

### **Section 6.04.02. Procedures for Meetings.**

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

2. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

**Section 6.04.03. Powers and Duties of the Board.**

1. The Board of Adjustment shall have the following powers and duties:
  - a. Administrative Review. To hear and decide where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in the carrying out or enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map.
  - b. Conditional Uses. To hear and decide applications for conditional uses that are specified in this Ordinance and for decisions on any special questions upon which the Board of Adjustment is specifically authorized to pass.
  - c. Variance. To hear and decide applications for variance from the terms of this Ordinance because of unnecessary hardship and to authorize upon appeal in specific cases such variance from the terms of this Ordinance as which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

**Section 6.04.04. Board of Adjustment has Powers of Administrative Officer on Appeals: Reversing Decision of Zoning Officer.**

1. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination 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 Zoning Officer from whom the appeal is taken.
2. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (four (4) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning 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 the application of this ordinance.

**Section 6.04.05. Appeals, Record of Appeal, Hearing and Stays**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the zoning officer. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds

thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days.

3. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning 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 opinion, cause imminent peril to life or property.
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.
5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney.

#### **Section 6.04.06. Appeals to a Court of Record.**

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

### **CHAPTER 6.05. PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS.**

#### **Section 6.05.01. Powers and Jurisdiction Relating to Conditional Uses.**

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

1. A written application for a conditional use permit is submitted, indicating the section of this Ordinance under which the conditional use permit is sought and stating the grounds on which it is requested.
2. The Zoning Officer shall require the applicant for a conditional use permit to notify adjacent property owners by certified or registered mail, at their last known address, at the applicant's expense, of the conditional use permit request; in lieu of this requirement, the applicant may obtain written consent from adjacent landowners.

3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
6. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - a. Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
  - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare or other effects of the conditional use on adjoining properties and properties generally in the district.
  - c. Utilities refuse and service areas, with reference to locations, availability, and compatibility.
  - d. Screening and buffering with reference to type, dimensions and character.
  - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
  - f. Required yards and other open space.
  - g. General compatibility with adjacent properties and other property in the district.
  - h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.
7. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a Conditional Use Permit.
9. A conditional use permit shall expire one (1) year from the date upon which it becomes effective if no work has commenced. Upon written request to the Board of Adjustment and

prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.

10. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance.
11. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

#### **Section 6.05.02. Powers and Jurisdiction Relating to Variances.**

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or registered mail at their last known address, at the applicant's, of the variance request; in lieu of the foregoing, if required, the applicant may obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall not be granted unless the following criteria are met:
  - a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures, or buildings in the same district;
  - b. The 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;
  - c. The special conditions and circumstances do not result from the actions of the applicant;

- d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
  - e. Granting the variance request would not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
  - f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under the terms of this regulation.
  7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
  8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.
  9. A variance shall expire one (1) year from the date upon which it becomes effective if no work has commenced. Upon written request to the Board of Adjustment and prior to the variance expiration date, a one (1) year time extension for the variance may be granted by the Board of Adjustment. If the variance request is granted in connection with activities for which a conditional use permit has been granted within the past six (6) months, the variance may be extended in the same manner and shall expire at the same time and under the same conditions as the conditional use permit.

### **Section 6.05.03. Zoning Amendments.**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one (1) or more of the owners of property within the area requested to be rezoned. Initiated petitions which create amendments to this ordinance are required to submit signatures of twenty (20) percent of the landowners in the zoning district or districts requesting change. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.
2. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change shall be followed:



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

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.
- d. A proposed time schedule for beginning and completion of development.
- e. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
- f. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- g. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- h. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- i. The Planning Commission shall recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the Board of County Commissioners.
- j. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in an official newspaper of the County.
- k. When the Board of County Commissioners approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest

to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by simple majority of the Board of County Commissioners.

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

**Section 6.05.04. Reapplication.**

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