

DEFINITIONS

Definitions

For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall means mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied.

Terms

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

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

Actual Construction - Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially commenced, preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

Agriculture - The planting, cultivating, harvesting and storage of grains, hay or plants, fruits, or vineyards along with the raising and/or feeding of less than one thousand (1,000) animal units of livestock and/or poultry in an animal feeding operation as defined by this ordinance.

An animal feeding operation as defined by this ordinance is not considered an agricultural use. The processing and/or storage of raw agricultural products, including facilities such as grain elevators and ethanol plants, shall not be considered an agricultural use if such use constitutes the main or principal use on a lot or parcel.

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

All Weather Road - A roadway in which emergency vehicles and local traffic may pass at all times not to include severe weather events such as snow drifting and surface flooding. (*Amended 11/3/15*)

Animal Feeding Operation - A facility where more than one thousand (1,000) animal units are stabled, confined, fed, or maintained in either an open or housed lots for a total of 45 days or more in any 12-month period and the open lots do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two (2) or more facilities under common ownership are a single animal feeding operation if they adjoin each other (within one (1) mile), or if they use a common area or system for the disposal of manure. For the purpose of this ordinance animal units of differing species shall not be totaled to constitute an animal feeding operation as defined herein.

Animal Units - A unit of measure for livestock. One (1) animal unit is equivalent to:

- 1 feeder or slaughter beef animal;
- .5 horse;
- .7 mature dairy cattle;
- .27 farrow-to-finish sows;
- 2.13 swine in a production unit (breeding, gestating and farrowing);
- 10 nursery swine less than 55 pounds;
- 2.5 finisher swine over 55 pounds;
- 10 sheep or lambs;
- 30 laying hens or broilers;
- 5 ducks; and
- 55 turkeys.

Animal Unit Conversion Table

A conversion table designed to integrate the definition of an animal feeding operation with the animal unit definition.

<u>Animal Species</u>	<u>1,000 Animal Units</u>
Feeder or Slaughter Beef Animal	1,000
Horses	500
Mature Dairy Cattle	700
Farrow to Finish Sows	270
Swine in a Production Unit	2,130
Nursery Swine Less than 55 Pounds	10,000
Finisher Swine Over 55 Pounds	2,500
Sheep	10,000
Laying Hens or Broilers	30,000
Ducks	5,000
Turkeys	55,000

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

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

Board – The County Commission, Planning Commission, Board of Adjustment or other governmental body governing the district this ordinance refers to. (*Amended 11/3/15*)

Buildable Area - The portion of a lot remaining after required yards have been provided.

Building - Any structure for the support, shelter and enclosure of persons, animals, chattels, or moveable property of any kind.

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

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

Commercial Trucking Terminal - A building or structure where seven (7) or more commercially licensed trucks or tractors are rented, leased, kept for hire, or stored or parked for compensation, or from which trucks or tractors, stored or parked on the property, are dispatched for hire as common carriers, and which may include warehouse space.

Conditional Use - A conditional use is a use that would not be appropriate, generally or without restriction, throughout the zoning district, but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, convenience, appearance, prosperity or general welfare.

Construction – Any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions. (*Amended 11/3/15*)

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

Dwelling Unit - One (1) 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.

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

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

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

Farm, Ranch, Orchard - An area of twenty (20) acres or more which is used for growing usual farm products, vegetables, fruits, trees, and grain, and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle, and sheep, and including the necessary accessory uses for raising, treating, and storing products raised on the premises; but excluding an Animal Feeding Operation.

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

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

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

Farmstead - The area within or adjacent to the shelterbelt protecting the house and main buildings, including, the driveway and the land lying between the farmstead and the road.

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

Fishery - As defined by South Dakota Administrative Rules, Sections 74:03:03:02 and 74:03:03:03 (August 8, 1994). Bon Homme County as described in Section 74:03:03:07. Lakes Bucholz, Clear, Cosby, Hieb, Kloucek, Schaefer and Tyndall Kids Pond (Section 74:03:03:03(6)) are warm water marginal fish life propagation waters and Lake Henry (Section 74:03:03:03(5)) is defined as warm water permanent fish life propagation waters. The Missouri River (Section 74:03:04:04 (1,4,7,8,11)) domestic water supply, warm water permanent fish life propagation waters, immersion recreation waters, limited-contact recreation waters, commerce and industry waters. Choteau Creek from Lewis and Clark Lake to S34, T96N, R63W as described in 74:03:04:04 (5,8) and Emanuel Creek from Lewis and Clark Lake to S20 T94N R60W are warm water semi-permanent fish life propagation waters and warm water marginal fish life propagation waters. Dry Choteau Creek as described in 74:03:04:04 (6,8) from Choteau Creek to S.D. Highway 50 is warm water marginal fish life propagation waters and limited-contact recreation waters.

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

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

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 more than two (2) sleeping rooms.

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

Habitable Residential Dwelling – A structure designed and constructed for residential purposes to which utilities such as water and electrical are either active or readily accessible upon the property. Structures currently not occupied shall be able to facilitate human occupation with minor repairs or renovations as determined by the Zoning Administrator. *(Amended 11/3/15)*

High Voltage Transmission Line – A conductor of electric energy with a minimum voltage of 69 kilovolts and associated facilities. *(Amended 11/3/15)*

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

The raising and feeding of livestock and poultry shall be considered as part of a hobby farm if the area, in which the livestock or poultry is kept, is two (2) acres or more in area for every two (2) domesticated large animals, and if such livestock does not exceed ten (10) animals; or the raising of livestock and poultry is incidental or supplemental to the residential use and is not primarily for the growing of crops or raising of livestock.

Home Occupation - A business activity customarily carried on in the home by a member of the occupant's family without structural alterations in the building or any of its rooms, without the installation or outside storage of any machinery, equipment or material other than that customary to normal household operations, without the employment of persons not residing in the home, which does not cause the generation of additional traffic in the street.

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

Junkyard - A place where non recyclable waste, having no economic value, or waste which is recyclable, but has no chance of being recycled is deposited.

Kennel - Any place where dogs, cats, or other domesticated animals are housed, groomed, bred, boarded, trained, harbored, kept or sold for commercial purposes.

Large Wind Energy System or LWES – All WES facilities excluding Small Wind Energy Systems. *(Amended 11/3/15)*

Lagoon - Any pond, basin, or other impoundment made by excavation or earthfill for storage or treatment of animal waste.

Lot - Land occupied or to be occupied by a building and its accessory building(s) having its principal frontage upon a public street or officially approved place.

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

Lot Frontage - The portion of the lot nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under Yards in this article.

Lot Line - The legally defined limits of any lot.

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

Manufactured Home - A moveable or portable dwelling which is eight (8) feet or more in width and thirty-two (32) feet or more in length, constructed on a chassis, and which is designed to be towed, designed for year-round occupancy, primarily to be used without a permanent foundation, but which may sit on a permanent foundation, and designed to be connected to utilities. It may consist of one (1) or more units, separately transportable, but designed to be joined together into one (1) integral unit.

The following shall not be included in this definition:

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

Mobile Home - See Manufactured Home

Modular Home - A structure or building module that is manufactured at a location other than the site upon which it is installed and used as a residence; transportable in one or more sections on a temporary chassis or other conveyance device; and to be used as a permanent dwelling when installed and placed upon a permanent foundation system. This term includes the plumbing, heating, air conditioning, and electrical systems contained within the structure.

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

Open Sales Area - Any open land or area used or occupied for the purpose of displaying for sale new or secondhand merchandise, including but not limited to, passenger cars or trucks, farm machinery, construction machinery, motor scooters or motorcycles, boats, trailers, aircraft, and monuments.

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

Person – An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, Municipal Corporation, government agency, public utility district, consumer's power district, or any other entity, public or private, however organized.
(Amended 11/3/15)

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.

Property Line - The division between two (2) parcels of land, or between a parcel of land and the road.

Route – The location of a High Voltage Transmission Line between two end points. The route may have a variable width of up to 1.25 miles. *(Amended 11/3/15)*

Salvage Yard - The use of more than one (1) acre of open storage on any lot, portion of lot, or tract of land for the sale, storage, keeping, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

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

Shelterbelt - A barrier consisting of trees and shrubs that reduces erosion and protects against the effects of wind and storms. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, separated by a distance of forty (40) feet or less.

Shelterbelt Restoration - The removal and replacement of two (2) or more rows of trees or of trees totaling one-half (1/2) acre or more, whichever is greater, in an existing shelterbelt.

Small Wind Energy System or SWES - A WES facility with a single Tower Height of less than seventy-five (75) feet used primarily for on-site consumption of power. (*Amended 11/3/15*)

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

Structure - Anything constructed or erected which requires location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include, but are not limited to, buildings and manufactured homes. This definition does not include semi-portable agricultural structures.

Swine, Farrow-to-Finish - An animal husbandry operation including all elements of an animal's life cycle and generally includes a single site operation with breeding, gestating, farrowing, nursery, feeder, and finisher stages of swine. The operation is viewed as a complete operation and is different from multi-site production methods

Swine, Feeder - A swine of an intermediate stage of growth; removed from a nursery facility at an approximate weight of fifty-five (55) pounds then sold and/or moved to a finishing unit.

Swine, Finish - A swine weighing between an approximate weight of fifty-five (55) pounds and the standard slaughter weight for the specific genetic makeup of the animal. This term shall also include replacement stock raised to an adult stage for the purposes of reproduction or show. A swine in a finishing unit may be part of either a single or multi-site production system.

Swine, Nursery - A young swine weaned from a sow and placed in a unit for the purpose of growth to an approximate weight of fifty-five (55) pounds. A swine in a nursery unit may be part of either a single or multi-site production system.

Swine, Production Unit - A swine unit primarily focused on the breeding, gestating, and farrowing of swine. This unit may include newly farrowed swine not yet weaned from the sow. A swine production unit may be part of either a single or multi-site production system.

System Height - The height above grade of the tallest point of the WES, including the rotor radius. (*Amended 11/3/15*)

Tower Height – The height above grade of the fixed portion of the tower, excluding the wind turbine itself. (*Amended 11/3/15*)

Turbine – The parts of the WES including the blades, generator and tail. (*Amended 11/3/15*)

Used Vehicles Dealer - Any person who, for commission or with intent to make a profit or gain sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of used vehicles or who is engaged in the business of selling used vehicles; or any person who sells five (5) or more used vehicles or offers for sale five (5) or more used vehicles at the same address or telephone number in any one calendar year.

Utility – Any person engaged in the generation, transmission or distribution of electric energy in this state including, but not limited to, a private investor owned utility, a cooperatively owned utility, a consumers power district and a public or municipal utility. (*Amended 11/3/15*)

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

Vehicle - Any new or used automobile, truck, truck tractor, motorcycle, motor home, trailer, semi trailer, or travel trailer of the type and kind required to be titled and registered under Chapters 32-3 and 32-5 of SDCL, except manufactured homes, mobile homes, mopeds or snowmobiles.

Vehicle Dealer - Any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with the option to purchase, offers or attempts to negotiate a sale or exchange new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles.

Wind Energy System or 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:

- a) Tower or multiple towers, including foundations;
- b) Generator(s);
- c) Blades;
- d) Power collection systems, including pad mount transformers;
- e) Access roads, meteorological towers, on-site electric substation, control building and other ancillary equipment and facilities. (*Amended 11/3/15*)

Yard - An open space at grade, other than a court or plaza, between a structure and the adjacent lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward. All yards shall be measured from the property line or road right-of-way where applicable.

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

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

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

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ARTICLE 1

JURISDICTION

Section 101 General

This Ordinance shall be known and shall be cited and referred to as “The Zoning Ordinance of Bon Homme County, South Dakota”, to the same effect as if the full title were stated.

Section 103 Jurisdiction

The provisions of this Ordinance shall apply within the unincorporated areas of Bon Homme County, South Dakota, excluding the incorporated communities of Avon, Scotland, Springfield, Tabor, and Tyndall, as established on the map entitled “The Official Zoning Map of Bon Homme County, South Dakota”.

Section 105 Provisions of this Ordinance Declared to the Minimum Requirements

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

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ARTICLE 2

APPLICATION OF DISTRICT REGULATIONS

Section 201 General

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

Section 203 Zoning Affects Every Building and Use

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

Section 205 Performance Standards

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

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

Section 207 Yard and Lot Reduction Prohibited

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

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ARTICLE 3

ESTABLISHMENT OF DISTRICTS

Section 301 Districts Created

For the purpose of this Ordinance, there are hereby created four (4) types of districts by which the jurisdictional area defined in Section 103 shall be divided.

AG - Agricultural

RR - Rural Residential

PTR - Platted Town Site Residential

RC - Rural Commercial

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ARTICLE 4

OFFICIAL ZONING MAP AND BOUNDARY INTERPRETATION

Section 401 General

The County is hereby divided into zones, or districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairman of the County Commissioners, attested by the Auditor, and bearing the seal of the County, under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 401 of Ordinance No. 99-1 of Bon Homme County, South Dakota, as amended" together with the date of the adoption of this Ordinance.

Section 403 Zoning Map Changes

If, in accordance with the provisions of this Ordinance, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the County Commissioners, with an entry on the Official Zoning Map as follows: "on [date], by official action of the Bon Homme County Commission, the following [change] changes were made in the Official Zoning Map: [brief description of nature of change]," which entry shall be signed by the Chairman of the Commission and attested by the Auditor. No amendment to this Ordinance which involves matters portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map.

No changes of any nature shall be made in the Official Zoning Map or matters shown thereon except in conformity with the procedures set forth in this Ordinance.

Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Section 1503.

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 Zoning Administrator shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

Section 405 Zoning Map Replacement

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Bon Homme County Commission may, by resolution, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

The new Official Zoning Map shall be identified by the signature of the Chairman of the County Commission, attested by the Auditor, and bearing the seal of the County, under the following words:

“This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted [date of adoption of map being replaced] as part of Ordinance No. 99-1 as amended of Bon Homme County, South Dakota.”

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

Section 407 Rules for Interpretation of District Boundaries

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

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

ARTICLE 5

AGRICULTURAL DISTRICT (AG)

Section 501 Intent

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

Section 503 Permitted Principal Uses and Structures

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

1. agriculture;
2. farm;
3. ranch;
4. orchard;
5. farm occupations;
6. public parks and public recreational areas;
7. farm buildings;
8. farm drainage and irrigation systems, flood control and watershed structures and erosion control devices meeting all county, state, and soil conservation district regulations;
9. manufactured homes;
10. historic sites;
11. veterinary services and kennels;
12. off-site and on-site signs;
13. cemeteries;
14. schools public and private;
15. campgrounds;
16. single-family dwellings;
17. additional farm dwellings;
18. churches;
19. rodeo grounds and arenas;
20. shelterbelts; and
21. stock dams.

Section 505 Permitted Accessory Uses and Structures

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

1. roadside stands for sales of farm products, fish bait, and other approved products;
2. home occupations;
3. professional offices; and
4. accessory uses, not specifically regulated by ordinance and structures customarily incidental to permitted uses and structures when established within the space limits of this district.

Section 507 Conditional Uses

After the provisions of this Ordinance relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in an Agricultural District (AG):

1. utility substations, television, radio, and telephone relay stations;
2. airports;
3. automobile and equipment sales;
4. fairgrounds, race tracks, and amusement parks;
5. golf courses, country clubs, and golf driving ranges;
6. amphitheaters, stadiums, arenas, and fieldhouses;
7. go-cart tracks, riding stables, playfields, athletic fields, bowling alleys, swimming pools, permanent automobile parking;
8. agricultural product processing facilities;
9. grain elevators;
10. municipal sewage disposal and/or treatment sites, animal feeding operation lagoons and holding facilities;
11. commercial trucking terminals;
12. sales and auction yards and barns;
13. private or commercial outdoor recreation areas;
14. sanitary landfills and similar facilities;
15. wildlife and game production areas;
16. fireworks stands;
17. animal feeding operations;
18. bed and breakfast commercial operations;
19. game farms;
20. private shooting preserves;
21. game lodges;

22. extraction of sand, gravel, or minerals provided such uses meet requirements for conducting surface mining activities of SDCL 45-6B;
23. salvage yards/junk yards; and
24. any facility engaged in the manufacture, wholesale distribution, retail sale or storage of flammable or combustible liquids, or hazardous material.

Section 509 Classification of Unlisted Uses

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

Section 511 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory or conditional uses or approved as such within the provisions of Section 509 shall be prohibited from an Agricultural District (AG).

Section 513 Minimum Lot Requirements

1. The minimum lot area per single-family dwelling unit, manufactured or modular homes shall be five (5) acres.
2. The minimum lot frontage shall be two hundred and fifty (250) feet.
3. An additional dwelling unit may be allowed if they are to be occupied by other members of the family farm unit, the Board of Adjustment may reduce the required area following the procedures of a variance.
4. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(d), non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.

Section 515 Minimum Yard Requirements for Dwellings, Manufactured or Modular Homes

All yards must meet the following criteria as measured from the lot lines. This Section shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of seventy-five (75) feet.
2. There shall be a rear yard of not less than a depth of twenty (25) feet.

3. There shall be two (2) side yards, each of which shall not be less than twenty-five (25) feet.
4. The Zoning Administrator may allow construction of single and multi-family dwelling units not in conformance with this provision only on those lands organized as a 501(d); non-profit religious and apostolic associations as described in the United States Tax Code. Prior to issuance of a building permit or permission to proceed said entity shall file the Articles of Incorporation and other requested documentation with the Zoning Administrator. Construction activities carried on under this provision shall be in conformance with all other provisions of this ordinance.

Section 517 Prohibition of View Obstruction

1. There shall be no obstruction, such as buildings, structures, grain bins, baled or stacked agricultural products, large rocks or rock piles, dead plant material, volunteer trees, and shelter belts that may cause view obstruction, snow build-up or safety hazards within seventy five (75) feet of the road right-of-way between the dates of November 1 and April 1.
2. The purpose of this Section is to keep the right-of-ways free and clear of snow build-up and, further, to promote traffic safety along road rights-of-way and at intersections.

Section 519 Animal Feeding Operations Performance Standards

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources.
2. Prior to construction, such facilities shall obtain a storm water permit for construction activities from the South Dakota Department of Environment and Natural Resources. The storm water plan required by the permit must be developed and implemented upon the start of construction.
3. All animal feeding operation's confinement and waste facilities shall comply with the following setbacks;

Public Wells	1,000 feet
Private Wells	250 feet
Operators Well	150 feet
Property Lines delineating a change in ownership	300 feet
Road Right-of-Ways	300 feet
Lakes, Rivers, Streams Classified as Fisheries	500 feet

4. Applicants must present a nutrient management plan, with the initial application documents, which will assure offensive odors, and runoff will be kept to a minimum.

Examples of such management shall include at least:

- a. Proposed maintenance of holding ponds.

- b. Nutrient transportation equipment free of leaks or spillage hazards.
 - c. Land application process and/or methods
 - d. Legal description and map of area to be utilized for nutrient application.
5. Animal waste facilities shall be located no closer than one (1) mile from any incorporated municipality or rural residential district.
 6. Animal waste facilities shall be located no closer than one (1) mile from any residential dwelling, one dwelling unit is allowed on the facility site. The owner of a residential dwelling may request the Board of Adjustment to review the facility and the Board may, by variance, waive or decrease the required separation distance. An easement, approved by the States Attorney must then be recorded with the County Register of Deeds in order that any future owners can be informed.
 7. Animal waste shall be transported no further than five (5) miles from the point of origination for land application.
 8. Animal Feeding Operations shall have a minimum lot size of five (5) acres.
 9. The Zoning Administrator will automatically transfer a conditional use permit for all land approved as a conditional use for the purpose of operating an Animal Feeding Operation if:
 - a. The current owner notifies the Zoning Administrator and Secretary of the Department of Environment and Natural Resources at least thirty (30) days in advance of the proposed transfer date;
 - b. The notice includes a written agreement between the existing and new owners containing a specific date for transfer of permit responsibility, coverage and liability between them; and
 - c. The new owner or operator submits a Certification of Applicant Form to the County and DENR.

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ARTICLE 6

RURAL RESIDENTIAL DISTRICT (RR)

Section 601 Intent

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

Section 603 Permitted Principal Uses and Structures

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

1. single-family dwellings;
2. multi-family dwellings;
3. manufactured homes;
4. modular homes;
5. horticulture;
6. churches, synagogues, and temples;
7. nursery, primary, intermediate, secondary schools and day care facilities;
8. public recreational and park facilities;
9. cemeteries;
10. utility substations;
11. long term care facilities;
12. medical and other health facilities; and
13. governmental services.

Section 605 Permitted Accessory Uses and Structures

1. home occupations and professional offices; and
2. accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

Section 607 Conditional Uses

After the provisions of this Ordinance, relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in a Rural Residential District (RR):

1. convenience stores;
2. colleges and universities;

3. golf courses, fairgrounds, rodeo grounds, and country clubs;
4. campgrounds;
5. hobby farms;
6. retail sales;
7. automobile service stations; and
8. game lodges.

Section 609 Classification of Unlisted Uses

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

Section 611 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory or conditional uses or approved as such within the provisions of Section 609 shall be prohibited from Rural Residential Districts (RR).

Section 613 Minimum Lot Requirements

1. The minimum lot area shall be one acre for a single-family dwelling unit, manufactured or modular homes;
2. The minimum lot area for a multi-family dwelling unit shall be ten thousand (10,000) square feet per unit; and
3. The minimum lot width shall be one hundred fifty (150) feet.

Section 615 Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. This Section shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of seventy-five (75) feet;
2. There shall be a rear yard of not less than a depth of twenty-five (25) feet; and
3. Each side yard shall not be less than twenty-five (25) feet

ARTICLE 7

PLATTED TOWN SITE RESIDENTIAL (PTR)

Section 701 Intent

The intent of Platted Town Site Residential Districts (PTR) is to provide for residential uses of all currently platted property within unincorporated town sites, such as the Apple Tree, Bon Homme, Dempster's Cove, and Running Water, and other compatible uses in a pleasant and stable environment.

Section 703 Permitted Principal Uses and Structures

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

1. single-family dwellings;
2. multi-family dwellings;
3. manufactured homes;
4. modular homes;
5. horticulture;
6. churches, synagogues, and temples;
7. nursery, primary, intermediate, secondary schools and day care facilities;
8. public recreational and park facilities;
9. cemeteries;
10. utility substations;
11. convalescent, nursing, and rest homes;
12. medical and other health facilities;
13. governmental services; and
14. game lodges.

Section 705 Permitted Accessory Uses and Structures

1. home occupations and professional offices; and
2. accessory uses and structures normally appurtenant to the permitted uses and structures when established within space limits of this district.

Section 707 Conditional Uses

After the provisions of this Ordinance, relating to exceptions have been fulfilled, the Planning Commission may permit as exceptions in Platted Town Site Residential Districts (PTR):

1. convenience stores;

2. colleges and universities;
3. golf courses, fairgrounds, rodeo grounds, and country clubs;
4. campgrounds;
5. hobby farms;
6. retail sales;
7. automobile service stations; and
8. grain elevators.

Section 709 Classification of Unlisted Uses

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

Section 711 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory or conditional uses or approved as such within the provisions of Section 709 shall be prohibited from Platted Town Site Residential Districts (PTR).

Section 713 Minimum Lot Requirements

1. The minimum lot area shall be two thousand five hundred (2,500) square feet for single family dwelling, manufactured or modular homes;
2. The minimum lot width shall be twenty-five (25) feet; and
3. The minimum lot depth shall be one hundred (100) feet.

Section 715 Minimum Yard Requirements

All yards must meet the following criteria as measured from the lot lines. This Section shall apply to all buildings and structures, including but not limited to decks, patios, and garages:

1. There shall be a front yard of not less than a depth of twenty-five (25) feet;
2. There shall be a rear yard of not less than a depth of five (5) feet; and
3. Each side yard shall not be less than five (5) feet.

ARTICLE 8

RURAL COMMERCIAL DISTRICT (RC)

Section 801 Intent

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

Section 803 Permitted Principal Uses and Structures

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

1. retail sales;
2. wholesale sales;
3. funeral and crematory services and supplies;
4. agriculture;
5. farm products warehousing and storage;
6. refrigerated warehousing;
7. household goods warehousing and storage;
8. general warehousing and storage;
9. automobile and machinery sales, repair and services;
10. veterinary services;
11. contract construction services;
12. bus garaging and equipment maintenance;
13. motor freight terminals, garaging, maintenance;
14. libraries; museums, art galleries; planetaria; aquariums; historic and monument sites; auditoriums; exhibition halls; and arcades;
15. miniature golf, gymnasiums and athletic clubs, swimming pools, tennis courts, ice skating, roller skating;
16. parks;
17. theaters; stadiums; drive-in movies; arenas and field houses; race tracks; fairgrounds; amusement parks, golf driving ranges; go-cart tracks; golf courses and country clubs; riding stables; playfields and athletic fields; bowling; and swimming pools;

18. communication and utility uses;
19. automobile-machinery service stations;
20. motels; and
21. off-site and on-site signs.

Section 805 Permitted Accessory Uses and Structures

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

Accessory uses normally appurtenant to the permitted principal uses and structures when established in conformance within the space limits of this district.

Section 808 Conditional Uses

After the provisions of this resolution relating to conditional uses have been fulfilled, the Board of Adjustment may permit as conditional uses in the Rural Commercial Districts (RC):

1. other trade and service uses which are similar to the permitted principal uses and which are in harmony with the intent of this district;
2. campgrounds;
3. any facility engaged in the manufacture, wholesale distribution, retail sale or storage of flammable or combustible liquids, or hazardous material; and
4. grain elevators.

Section 809 Classification of Unlisted Uses

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

Section 811 Prohibited Uses and Structures

All uses and structures which are not specifically permitted as principal, accessory or conditional uses or approved as such within the provisions of Section 809 shall be prohibited from Rural Commercial Districts (RC).

Section 813 Minimum Lot Requirements

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

Section 815 Minimum Yard Requirements

1. There shall be a front yard of not less than a depth of seventy-five (75) feet;
2. There shall be a rear yard of not less than a depth of twenty-five (25) feet; and
3. Each side yard shall be not less than twenty-five (25) feet.

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ARTICLE 9

SUPPLEMENTARY DISTRICT REGULATIONS

Section 901 Accessory Buildings

No accessory building shall be erected in any required yard area and no separate accessory building shall be erected within five (5) feet of any other building.

Section 903 Erection of More than One Principal Structure on a Lot

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

Section 905 Shelterbelts

All shelterbelts shall be seventy-five (75) feet from the road right-of-way to the first row of trees.

Section 907 Recording of Conditions

All zoning agreements including conditions prescribed by the Board of Adjustment must be recorded at the Register of Deeds Office prior to issuance of a building permit.

Section 909 Signs

All land lying within one (1) mile of an incorporated municipality and adjoining a designated primary roadway or lying on the same side of the road and within one (1) mile of a currently established business located within the rural areas shall be designated rural commercial for the sole purpose of the construction and placement of signs, displays, and devices. Placement of said signs shall comply with SDCL 31-29 and ARSD 70:04:03.

Section 911 Right-of Way Obstructions

It shall be unlawful for any person to place any obstruction in a road right-of-way without prior written permission from the Bon Homme County Highway Superintendent. Said obstacles may include but are not limited to signs, fences, and trees. Temporary obstacles may be placed within six (6) feet of the traveled surface upon written authorization of the Highway Superintendent.

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ARTICLE 10

ADMINISTRATIVE PROCEDURE AND ENFORCEMENT

Section 1001 Bon Homme County Zoning Administrator

An administrative official who shall be known as the Zoning Administrator and who shall be designated by the Bon Homme County Commission shall administer and enforce this ordinance. They may be provided with the assistance of such other persons as the County Commission may direct.

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

Section 1003 Right of Entry

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

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

Section 1005 Bon Homme County Planning Commission

The Bon Homme County Commission shall appoint a Planning Commission of five (5) members; the total membership of which shall be an uneven number and at least one (1) member shall be a county commissioner. The term of each of the appointed members of the Planning Commission shall be for three to five years. When the Planning Commission is first appointed the lengths of the terms shall be varied so that no more than one-third (1/3) of the terms shall expire in the same year. Meetings shall be scheduled and held at the call of the Chairman, at such other times as the Planning Commission may determine. The Chairman, or in their absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

Upon notification of a proposed revision, modification, change or amendment to the zoning ordinance or any part thereof the Planning Commission shall schedule a public hearing. Said public hearing shall not be less than ten (10) days after notice has been published in the County's legal newspapers. Any person may appear and request or protest the proposed change.

The Planning Commission shall keep a record of all proceedings, including minutes, showing the vote of each member upon each question, or if absent or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the Zoning Administrator. The Planning Commission shall adopt from time to time, subject to the approval of the County Commission, rules and regulations, as it may deem necessary for the conduct of its affairs and to carry the appropriate provisions of this Ordinance into effect.

Section 1007 Bon Homme County Board of Adjustment

The Bon Homme County Planning Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses and zoning appeals. The Board of Adjustment may, in specific cases to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds (2/3) of the full membership of the Board of Adjustment, conditional uses or grant variances to the terms of the regulations or controls, subject to appropriate conditions or safeguards being adopted by the Board of County Commissioners.

The Zoning Administrator shall act as secretary to the Board of Adjustment when acting in zoning cases, but shall take no part in the deliberations. Meetings of the Board of Adjustment acting in zoning cases shall be held at the call of the Chairperson and at such other times, as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

All meetings of the Board of Adjustment shall be open to the public. The Board, acting in zoning appeal cases, shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. The Board of Adjustment, acting in zoning appeals cases, shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

Section 1009 Bon Homme County Commission

The Bon Homme County Commission may amend, supplement, change, modify, or repeal any regulation, restriction, boundary, or enforcement provision established in the comprehensive plan or adjuncts thereto. The County Commission shall forward a copy of the proposed changes to the Planning Commission for public review. Upon receipt of the comments from the Planning Commission the County Commission shall publish a notice of public hearing no less than ten (10) days in advance in the County's legal newspapers. The Board of County Commissioners shall thereafter either adopt or reject such amendment, supplement, change, modification, or repeal. If adopted the Board of County Commissioners shall direct the Planning Commission to prepare a summary of the action. Upon completion of the summary the States Attorney shall review the same and direct the County Auditor to have said summary published once in the legal newspapers.

Section 1011 Building Permits Required

No building or other structure shall be erected, moved, added to, removed, demolished, burned, or use changed without a permit issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance unless they received a written order from the Board of Adjustment in the form of an administrative review, conditional use, or variance as provided by this Ordinance.

Concrete flatwork of less than five hundred (500) square feet shall be exempt from obtaining a building permit provided such work is done at or immediately above grade.

Section 1013 Applications for Building Permits, Conditional Uses and Variances

All applications for building permits, conditional uses and variances must be signed or approved in writing by the owner of record. In the event the owner of record has a binding purchase agreement contingent on the approval of the application, the potential purchaser may submit and sign all documents required for application. All building permit, conditional use and variance applications shall be accompanied by a site plan including but not limited to the following items; drawn to scale, including a north arrow, showing the property lines, actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. Refer to document entitled Site Plan Requirements for a detailed example of site plan requirements.

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

One copy of the plans shall be returned to the applicant by the Zoning Administrator after they shall have marked such copy either as approved or disapproved and attested to the same by their signature on such copy. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The Zoning Administrator shall retain the original and one copy of the plans, similarly marked. The issuance of a building permit, shall, in no case, be construed as waiving any provisions of this Ordinance.

Section 1015 Expiration of Building Permit, Conditional Uses and Variances

If the work described in any building permit, conditional use or variance application has not begun within one hundred and eighty (180) days or has not been substantially completed within two (2) years of the date of issuance thereof, said permit shall expire; it shall be canceled by the Zoning Administrator and written notice thereof shall be given to the persons affected. The notice shall state that further work as described in the canceled permit or application shall not proceed unless, and until, a new building permit, conditional use or variance application has been approved and all required fees have been paid.

Section 1017 Construction and Use to be as Provided in Application, Plans, Permits, and Application for Zoning Compliance

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications,

and no other use, arrangement or construction. Use arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 1503 of this ordinance.

Section 1019 Schedule of Fees, Charges, and Expenses

The Bon Homme County Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for variances, conditional uses amendments, appeals and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Bon Homme County Commission. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 1021 Building Permit in a Conspicuous Place

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

Section 1023 Bad Actor Legislation

The Bon Homme County Commission may reject an application for any permit filed for a variance, conditional use or otherwise for the reasons and on the grounds set forth in SDCL 1-40-27, as revised and amended. Such rejection shall be based upon a specific finding by the Commission that the applicant has engaged in the activity identified in the aforesaid statute. The burden on the Commission to make the specific finding provided for herein shall be by a preponderance of the evidence.

ARTICLE 11

BOARD OF ADJUSTMENT APPEALS, VARIANCES AND CONDITIONAL USES

Section 1101 Members, Terms, Meetings, Rules

The Bon Homme County Planning Commission shall serve as the Board of Adjustment. The Board of Adjustment is hereby designated to hear all requests for variances, conditional uses, and zoning appeals. The Zoning Administrator shall act as secretary to the Board of Adjustment when acting in zoning cases, but shall take no part in the deliberations. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board shall determine. Such Chairperson, or in his/her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

All meetings of the Board of Adjustment shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. The Board of Adjustment shall adopt from time to time, subject to the approval of the County Commission, such rules and regulations, as it may deem necessary to carry the appropriate provisions of this Ordinance into effect.

Section 1103 Appeals to Board of Adjustment, Record of Appeals, Hearing, and Stays

Any decision rendered by the Zoning Administrator may be appealed to the Board of Adjustment. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with them, that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer for whom the appeal is taken and on due cause shown.

Section 1105 Board of Adjustment Hearings and Notice

Each session of the Board of Adjustment at which a hearing is held shall be a public meeting with notice of hearing to be published at least ten (10) days prior to the date of the hearing in the legal newspapers of the County.

Section 1107 Powers and Duties

The Board of Adjustment shall have the following powers and duties:

APPEALS:

- A. The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning

regulation or any regulation relating to the location or soundness of structures or to interpret any map. An appeal will not be heard until:

1. The applicant or any other person aggrieved by the decision of an administrative official or agency shall file a written appeal with the Zoning Administrator within five working days of the decision.
2. The administrative official or agency from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken.
3. Written notice shall be given to the appellant seven days prior to meeting.
4. The appellant or an authorized agent shall be present at the meeting. Failure to provide a representative may constitute grounds for a denial.
5. The administrative official or agency shall present their decision to the Board of Adjustment for review.
6. The Board of Adjustment shall either uphold, overrule or amend the decision of the Zoning Administrator.

CONDITIONAL USES

- B. The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this ordinance to pass; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this ordinance. A conditional use shall not be granted by the Board unless and until:
 1. A written application for a conditional use is submitted, indicating the section of this ordinance under which the conditional use is sought and stating the grounds on which it is requested.
 2. Notice of public hearing shall be given at least ten (10) days in advance by publication in the legal newspapers of the County. The owner of the property for which conditional use is sought or his agent shall be notified by mail.
 3. A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than seventeen (17) inches in height and eleven (11) inches in width with a white background and black letters not less than one (1) inch in height. Such posted notice shall be so placed upon such premises that it is easily visible from the road and shall be so posted at least seven (7) days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings.

4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The applicant or an authorized agent shall be present at the hearing. Failure to provide a representative may constitute grounds for a denial.
6. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the conditional use, grant with conditions, or deny the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
7. Before any conditional use is granted, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
 - a. ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - b. off-street parking and loading areas where required; with particular attention to the items in (a) above and the economic, noise, glare, odor or other effects of the conditional use on adjoining properties and properties generally in the district;
 - c. refuse, waste and service areas, with particular reference to the items in (a) and (b) above;
 - d. utilities, with reference to locations, availability, and compatibility;
 - e. screening and buffering with reference to type, dimensions, and character;
 - f. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district;
 - g. required yards and other open spaces; and
 - h. general compatibility with adjacent properties and other property in the district;

VARIANCES

- C. The Board of Adjustment shall have the power to hear requests for variances from this Ordinance in instances where strict enforcement would cause unnecessary hardship, and to grant such variances only when the following provisions apply:
 1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district

and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, and caprice.

2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance.
3. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; that literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district.
4. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
5. Notice of public hearing shall be given, as in Section 1107 (B)(2), (B)(3) above; the public hearing shall be held. Any party may appear in person or by agent or by attorney; the Board of Adjustment shall make findings that the requirements of this Section have been met by the applicant for a variance; the Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
6. The applicant or an authorized agent shall be present at the hearing. Failure to provide a representative may constitute grounds for a denial.
7. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 1503 of this ordinance.
8. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or

any use expressly or by implication prohibited by the terms of this ordinance in said district.

- D. The Board of Adjustment has the powers of a Zoning Administrator on Appeals and Reversing Decision of the Zoning Administrator.

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

The concurring vote of two-thirds (2/3) of the full membership of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variation in this Ordinance.

- E. Any persons, jointly or severally aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the County, may appeal to the Board of County Commissioners and by a majority vote reverse any decision of the Board of Adjustment. The applicant or any other person aggrieved by the decision of the Board of Adjustment shall file a written appeal with the County Auditor within five (5) working days of the Board of Adjustment decision. The County Auditor shall present the Board of Adjustment's decision to the Board of County Commissioners for review. Notice of the meeting shall be given as required by Section 1107 B(2) B(3). Review may be sought by a court of record of such decision, in a manner provided by the laws of the State of South Dakota.

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ARTICLE 12

DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF COUNTY COMMISSIONERS AND COURTS ON MATTERS OF APPEAL

Section 1201 Duties of Zoning Administrator, Board of Adjustment, County Commission and
Courts on Matters of Appeal

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator, and that such questions shall be presented to the County Commission only on appeal from the decision of the Board of Adjustment and that recourse from the decisions of the County Commission shall be to the courts as provided by law.

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ARTICLE 13

AMENDMENTS

Section 1301 Regulations

The regulations, restrictions, and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed, or repealed, provided that such modification or repeal in each instance be proposed in an Ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original Ordinance.

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

1. If the proposed changes affect a particular piece of property a notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than seventeen (17) inches in height and eleven (11) inches in width with a white background and black letters not less than one and one-half (1.5) inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the road and shall be so posted at least seven (7) days before the date of such hearing. It shall be unlawful for any person to remove, mutilate, destroy or change such posted notice prior to such hearings.
2. At least ten (10) days before the date of the Planning Commission hearing, the County shall have published in the County's legal newspapers a notice of the time, place, and subject matter of such hearing.
3. The Planning Commission shall hold the Public Hearing, review the proposed amendment(s) and make recommendations to the County Commission.
4. The applicant or an authorized agent shall be present at the meeting. Failure to provide a representative may constitute grounds for a denial.
5. At least ten (10) days before the date of the County Commission hearing, the County shall have published a notice of the time, place, and subject matter of such hearing in the County's legal newspapers.
6. The County Commission shall hold the Public Hearing, review the proposed amendment(s) and by Ordinance deny or pass the recommendations.
7. The applicant or an authorized agent shall be present at the meeting. Failure to provide a representative may constitute grounds for a denial.
8. If the changes are adopted the Planning Commission shall prepare a summary of the changes.
9. Once the summary is prepared the States Attorney shall review the changes and forward the changes to the County Auditor for publishing.
10. The summary of changes must be published once in the in the County's legal newspapers. The changes will take effect twenty (20) days after publication.

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ARTICLE 14

NON-CONFORMANCE

Section 1401 General

Within the districts established by this Ordinance or amendments that may later be adopted, there exists (a) lots, (b) structures, (c) uses of land and structures, and (d) characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment; it is the intent to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent that nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

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

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

Section 1403 Nonconforming Lots of Record

In any district in which single-family dwellings are permitted, 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 lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

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

Section 1405 Nonconforming Uses of Land or Land with Minor Structures Only

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

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If any such nonconforming use of land ceases, for any reason, for a period of more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and
4. No additional structure, not conforming to the requirement of this Ordinance, shall be erected in connection with such nonconforming use of land.

Section 1407 Nonconforming Structures

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

1. No such nonconforming structure may be enlarged or altered in any way, which increases its nonconformity, but any structure or portion thereof, may be altered to decrease its nonconformity;
2. Should such nonconforming structure, or nonconforming portion of structure, be destroyed by any means, to an extent of more than seventy-five (75) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance; and
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 1409 Nonconforming Uses of Structures or of Structures and Premises in Combination

If the nonconforming use involving individual structures with a replacement cost of one thousand (1,000) dollars or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

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

2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structure and premises may, as a conditional use, be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance;
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of more than one (1) year (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
6. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 1411 Uses Under Conditional Use Provisions are Conforming Uses

Any use, which is permitted as a conditional use in a district, under the terms of this Ordinance, shall be deemed a conforming use in such district without further action. A nonconforming use can never be allowed in a defined district without a change in the district definition or boundaries.

Permitted Principal Uses	Conditional Uses	Nonconforming
Allowed within defined district.	Allowed within defined district AFTER Board grants permission.	Never allowed within defined district without change in district definitions or boundaries.

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ARTICLE 15

VIOLATIONS, COMPLAINTS, PENALTIES, AND REMEDIES

Section 1501 Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint with the Board of Adjustment and investigate and take action thereon as provided by this Ordinance.

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, they shall notify, in writing by certified mail with return receipt, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The party responsible for the violation shall respond within seven (7) working days from receipt of the letter; otherwise, they will be considered in violation and punishable under Section 1503.

Section 1503 Penalties for Violations

The owner or agent of a building or premises in or upon which a violation of any provisions of this Ordinance has been committed or shall exist, or lessee or tenant of an entire building or entire premises in or upon which such violation shall exist, shall be guilty of a Class II misdemeanor and shall be punished by a fine not to exceed two hundred (200) dollars or imprisonment for not more than thirty (30) days in the County jail, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be a separate offense.

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

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

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ARTICLE 16

LEGAL STATUS PROVISIONS

Section 1601 Separability

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

Section 1603 Purpose of Sub-Titles

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

Section 1605 Repeal of Conflicting Ordinances

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

Section 1607 Effective Date

This Ordinance shall take effect and be in force from and after its adoption

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ARTICLE 17

WIND ENERGY SYSTEMS (WES)

(Amended 11/3/15)

Section 1701 Intent

The intent of this ordinance is to ensure that the placement, construction and modification of a Wind Energy System (WES) facility is consistent with the Bon Homme County's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety and welfare of the County's citizens.

Section 1703 Authority and Jurisdiction

South Dakota Codified Law 11-2-2 delegates the responsibility to the Board of County Commissioners of each county to adopt and enforce regulations designed for the purpose of promoting health, safety, and general welfare of the county.

Section 1705 Federal and State Requirements

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

Section 1707 Requirements for Siting Small Wind Energy Systems

A Small Wind Energy System shall be a permitted use in all zoning districts subject to the following requirements:

- a) Setbacks. The minimum setback distance between each wind turbine tower and all surrounding property lines, overhead utility or transmission lines, other wind turbine towers, electrical substations, public roads and *habitable residential dwellings* shall be equal to no less than one point one (1.1) times the system height, unless written permission is granted by each affected person.
- b) Access. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access, and the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.

- c) Lighting. A SWES shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
- d) Noise. SWES facilities shall not exceed forty-five (45) dBA, as measured at the closest neighboring **habitable residential dwelling**. The level, however, may be exceeded during short-term events such as utility outages or wind storms.
- e) Shadow Flicker. When determined appropriate by the County, a Shadow Flicker Control System shall be installed upon all turbines which will cause a perceived shadow effect upon a habitable residential dwelling. Such system shall limit blade rotation at those times when shadow flicker exceeds thirty (30) minutes per day or thirty (30) hours per year at perceivable shadow flicker intensity as confirmed by the Zoning Administrator are probable.

The permittees shall submit a report of predicted shadow flicker levels at habitable residential dwellings within one and one-half miles of proposed tower locations to the Board no less than forty five (45) days prior to commencing construction.
- f) Appearance, Color, Finish. The SWES shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved in the building permit.
- g) Signs. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a SWES visible from any public road shall be prohibited.
- h) Code Compliance. A SWES shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
- i) Utility Notification. No SWES shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

Section 1709 **Permit Requirements**

- a) A building permit shall be required for the installation of a SWES.
- b) The building permit shall be accompanied by a plot plan which includes the following:
 - 1. Property lines and physical dimensions of the property;
 - 2. Location, dimensions, and types of existing major structures on the property;
 - 3. Location of the proposed SWES;
 - 4. The right-of-way of any public road that is contiguous with the property;

5. Any overhead utility lines;
6. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type (monopole, lattice, guyed);
7. Tower foundation blueprints or drawings;
8. Tower blueprint or drawing;
9. Proof of notification to the utility in the service territory in which the SWES is to be erected, consistent with the provisions of 5(3)(h) herein; and
10. The status of all necessary interconnection agreements or studies.

c) Expiration. A permit issued pursuant to this ordinance shall expire if:

1. The SWES is not installed and functioning within twenty-four (24) months from the date the permit is issued; or
2. The SWES is out of service or otherwise unused for a continuous 12-month period.

Section 1711 Abandonment

A SWES that is out-of-service for a continuous 12-month period will be deemed to have been abandoned. The Board may issue a Notice of Abandonment to the owner of a SWES that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Board shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the SWES has not been abandoned.

If the SWES is determined to be abandoned, the owner of the SWES shall remove the wind generator from the tower at the Owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Board may pursue legal action to have the wind generator removed at the owner's expense.

Section 1713 Building Permit Procedure

- a) An owner shall submit an application to the Board for a building permit for a SWES. The application must be on a form approved by the Board and must be accompanied by two (2) copies of the plot plan identified.
- b) The Board shall issue a permit or deny the application within one month of the date on which the application is received.
- c) The Board shall issue a building permit for a SWES if the application materials show that the proposed SWES meets the requirements of this ordinance.
- d) If the application is approved, the Board will return one signed copy of the application with the

permit and retain the other copy.

- e) If the application is rejected, the Board will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may reapply if the deficiencies specified by the Board are resolved.
- f) The owner shall conspicuously post the building permit on the premises so as to be visible to the public at all times until construction or installation of the SWES is complete.

Section 1715 Violations

It is unlawful for any person to construct, install, or operate a SWES that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. SWES facilities installed prior to the adoption of this ordinance are exempt.

Section 1717 Severability

The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 1719 Requirements for Siting Large Wind Energy Systems

A Large Wind Energy System as defined herein shall be a permitted use in all zoning districts subject to the standards identified within the following sections.

Section 1721 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 LWES.
- 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 on the LWES site from project operations during all phases of the project's life.
- e) **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.
- f) **Roads**
 - 1. **Public Roads.** Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practicable, existing roadways shall be used for all activities associated with the WES. Where practicable, all-weather roads shall be used to deliver concrete, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.
 - 2. 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 Zoning Office of such arrangements.
 - 3. **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. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be 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.
 - 4. **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.
 - 5. **Control of Dust.** The permittees shall utilize all reasonable measures and practices of

construction to control dust during construction.

- (g) 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 Zoning Office no less than forty five (45) days prior to commencing construction. 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 re-vegetation plan that uses native plant species 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.

Section 1723 Setbacks

- a) Distance from currently occupied off-site residences, business and public buildings shall be not less than one thousand (1,000) feet. Distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater. For the purposes of this section only, the term “business” does not include agricultural uses.
- b) Distance from right-of-way (ROW) of public roads shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater.
- c) Distance from any property line shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater, unless appropriate easement has been obtained from adjoining property owner.

Section 1725 Electromagnetic Interference

The permittees shall not operate the LWES 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 LWES or its operation, the permittees shall take the measures necessary to correct the problem.

Section 1727 **Lighting**

Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA.

This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.

Section 1729 **Turbine Spacing**

The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.

Section 1731 **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 extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the LWES is constructed.

Section 1733 **Electrical Cables**

The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This paragraph does not apply to feeder lines.

Section 1735 **Feeder Lines**

The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way or immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement(s) negotiated. The permittees shall submit the site plan and engineering drawings for the feeder lines to the Board no less than forty five (45) days prior to commencing construction.

Section 1737 **Height from Ground Surface**

The minimum height of blade tips at their lowest possible point shall be twenty-five (25) feet above grade.

Section 1739 **Towers**

- a) Color and finish shall be as required by State and Federal regulations to include those of the Federal Aviation Administration
- b) All towers shall be singular tubular design, unless approved by the Board.

Section 1741 **Noise and Shadow Flicker**

Noise level produced by the LWES shall not exceed forty five (45) dBA, average A-weighted sound pressure at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the residence.

The permittees shall submit a report of predicted noise levels at habitable residential dwellings within one mile of proposed tower locations to the Board no less than forty five (45) days prior to commencing construction.

When determined appropriate by the County a Shadow Flicker Control System shall be installed upon all turbines which will cause a perceived shadow effect upon a habitable residential dwelling. Such system shall limit blade rotation at those times when shadow flicker exceeds thirty (30) minutes per day or thirty (30) hours per year at perceivable shadow flicker intensity as confirmed by the Zoning Administrator are probable.

The permittees shall submit a report of predicted shadow flicker levels at habitable residential dwellings within one and one-half miles of proposed tower locations to the Board no less than forty five (45) days prior to commencing construction.

Section 1743 **Permit Expiration**

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

Section 1745 Required Information for Permit Application

- a) Boundaries of the site proposed for LWES and associated facilities on United States Geological Survey Map or another map as appropriate.
- b) Map of easements for LWES.
- c) Map of occupied residential structures, business and public buildings within one half mile of the proposed LWES site boundaries.
- d) Preliminary map of sites for LWES, access roads and utility lines. Location of other LWES within five (5) miles of the proposed LWES site.
- e) Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with the following agencies with evidence of such consultation included within the application
 - 1. South Dakota Department of Game, Fish and Parks;
 - 2. U.S. Fish and Wildlife Service; and
 - 3. South Dakota State Historical Society
- f) Project schedule
- g) Mitigation measures
- h) Status of interconnection studies/agreements.

Section 1747 Decommissioning

- a) Cost Responsibility. The owner or operator of a LWES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.
- b) Useful Life. A LWES is presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of twelve (12) months. The presumption may be rebutted by submitting to the Board for approval of a plan outlining the steps and schedule for returning the LWES to service within twelve (12) months of the submission.

- c) Decommissioning Period. The facility owner or operator shall begin decommissioning a LWES facility within eight (8) months after the time the facility or turbine reaches the end of its useful life, as determined in 14(b). Decommissioning must be completed with eighteen (18) months after the facility or turbine reaches the end of its useful life.
- d) Decommissioning Requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWES. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.
- e) Decommissioning Plan. Prior to commencement of operation of a LWES facility, the facility owner or operator shall file with the Board the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The Board may at any time require the owner or operator of a LWES to file a report describing how the LWES owner or operator is fulfilling this obligation.
- f) Financial Assurance. After the tenth (10th) year of operation of a LWES 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 LWES facility.
- g) Failure to Decommission. If the LWES 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 LWES facility and seek additional expenditures necessary to do so from the facility owner.

Section 1749 Pre-construction Filing

At least forty-five (45) days prior to commencement of construction, the applicant/permittee shall submit reports of predicted noise levels, predicted shadow flicker levels, soil erosion and control plan, final maps depicting the approximate location of the proposed wind turbines, access roads and collector and feeder lines. Upon completion, the applicant shall also supply an “as-built” ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.