

## **AQUIFER PROTECTION**

Nothing in this ordinance shall be construed to imply that Brookings County, by issuing a permit, has accepted any of an owner/developer's liability if a permitted development contaminates water in shallow/surficial aquifers.

### **Section 4.06.10. Underlying Zones.**

Underlying zoning restrictions apply along with restrictions set forth in the Aquifer Protection Overlay District.

### **Section 4.06.11. Saving Clause.**

Should any section provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

## **ARTICLE VI ADMINISTRATION**

### **CHAPTER 6.01. GENERAL.**

#### **Section 6.01.01. Permits Required.**

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a building permit issued by the Brookings County Zoning Official. The Zoning Official, except in conformity with the provisions of this ordinance, shall issue no permit unless said Official received a written order from the Brookings County Board of Adjustment in the form of an administrative review, a conditional use permit, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit, unless the building meets the requirements of 6.01.03(a) or 6.01.03(b). A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

#### **Section 6.01.02. Applications.**

All applications for permits shall be accompanied by a site plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Official, including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance. All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05 and shall require an updated building permit and/or a conditional use a permit.

#### **Section 6.01.03. Building Permits.**

1. Building Permits Required. It shall be unlawful to commence the excavation for, or the construction of, any building, structure, or any accessory building, or to commence the moving or alteration of any buildings, including accessory buildings, until the County Zoning Official has issued a building permit for such work. Furthermore, it shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

- a. No building permit is necessary for a structure under one-hundred twenty (120) square feet or less.
  - b. No building permit is necessary for the following: shingling, replacement siding, window replacement, painting of exterior, and any interior improvements that do not involve the moving of load-bearing walls.
2. Issuance of a Building Permit. In applying to the County Zoning Official for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size, and height and location of all buildings, to be erected, altered, or moved and of any building already on the lot. The County Zoning Official shall also state the existing and intended use of all such buildings, the location of existing or proposed water and sewer facilities, and supply such other information as may be required by the County Zoning Official for determining whether the provisions of this regulation are being observed. If the proposed excavation or construction, as set forth in the application, are in conformity with the provisions of this regulation, and other regulations of the County then in force, including the International Building Code (IBC) and International Residence Code (IRC), as adopted by the Brookings County Commission, the County Zoning Official shall issue a building permit for such excavation or construction. If a building permit is refused, the County Zoning Official shall state such refusal in writing, with the cause, and shall thereupon mail notice of such refusal to the applicant at the address indicated upon the application, and a copy retained by the County Development Department. The County Zoning Official shall grant or deny the permit within a reasonable time from the date the application is submitted.
3. The issuance of a building permit shall, in no case, be construed as waiving any provisions of this regulation. All building permits shall be valid for eighteen (18) months after the date of issuance; however, a building permit shall become void six (6) months from the date of issuance unless substantial progress has been made by that date on the project described therein. A six (6) month extension may be granted if requested in writing at least one (1) month prior to the expiration date. Maximum extension authorized is six (6) months.

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

1. Permits Displayed. It shall be unlawful to commence work until the building permit is displayed in a conspicuous place visible from public right-of-way. The permit shall be placed upon the premises at all times from the beginning until the completion of such construction, alteration, repair, occupancy or change of use. Deviations shall be deemed a violation of this Ordinance, and punishable in accordance with 6.05.05.

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

1. The Board of County Commissioners shall establish, by resolution, a schedule of fees, charges, and expenses and a collection procedure for building permits, appeals, and other matters pertaining to this regulation. The schedule of fees shall be posted in the County Development Department and may be altered or amended only by the Board of County Commissioners. Changes in the zoning regulations or maps which are initiated by incorporated communities or the County shall not require a fee.

2. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

## **CHAPTER 6.02. ZONING OFFICIAL.**

### **Section 6.02.01. Enforcing Officer.**

The provisions of this Ordinance shall be administered and enforced by the Zoning Official appointed by the Board of County Commissioners, who shall have the power to make inspection of buildings or premises necessary to enforce this Ordinance.

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

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

1. Issue all building permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any building permit, which was unlawfully issued, or any building permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records, in accordance with the State of South Dakota Record Retention, as adopted by resolution by the Brookings County Commission, of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare all necessary documents as required by this Ordinance, or at the direction of the Brookings County Planning Commission and/or the Brookings County Board of Adjustment and/or the Brookings County Commission. The Zoning Official shall consult with the States Attorney's Office as needed for assistance with drafting said documents.
8. Provide public information relative to all matters arising out of this Ordinance.
9. Forward to the Brookings County Planning Commission all plats and/or applications for amendments to this Ordinance.



10. Forward to the Brookings County Board of Adjustment, applications for appeals, conditional use permits, variances, or other matters on which the Board of Adjustment is required to pass under this Ordinance.
11. Initiate, direct, and review, from time to time, a study of the provisions of this Ordinance, and to make such reports available to the Brookings County Planning Commission.
12. The Zoning Official shall receive applications required under this Ordinance, specifically but not limited to Building Permits, Conditional Use Permits, Variances, and Zoning Amendments.
  - a. For building permits, the Zoning Official shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
  - b. For Conditional Uses and Variances, the Zoning Official shall review the application, and shall make recommendations regarding said application to the Brookings County Board of Adjustment.
  - c. For Zoning Amendments, the Zoning Official shall review the application, and shall make recommendations regarding said application to the Brookings County Planning Commission and Board of County Commissioners.

#### **Section 6.02.03. Right of Entry.**

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

When the Zoning Official or an authorized representative shall have first obtained a court order 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 Official or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

#### **Section 6.02.04. Stop Order.**

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

#### **Section 6.02.05. Occupancy Violation.**

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

In the event of a violation or a threatened violation of these regulations or restrictions, the Board of County Commissioners or any member thereof, in addition to other remedies, may institute an appropriate action or proceeding to seek an injunction in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation, and it is the duty of the State's Attorney to institute such action.

### **CHAPTER 6.03. PLANNING AND ZONING COMMISSION.**

#### **Section 6.03.01. Establishment.**

Within Brookings County, outside of incorporated municipalities and joint jurisdictional areas, the power and jurisdiction related to this article shall be executed by the County Planning and Zoning Commission.

#### **Section 6.03.02. Membership and Terms of Members.**

1. The Planning and Zoning Commission shall consist of nine (9) members. One (1) County Commissioner shall serve as a member of the Planning Commission. Two (2) members shall reside in the unincorporated areas of District 1 which consists of Bangor, Volga, Brookings, Lake Sinai, Oslo, and Medary Townships. Two (2) members shall reside in the unincorporated areas of District 2 which consists of Laketon, Preston, Eureka, Winsor, Oakwood, and Sterling Townships. Two (2) members shall reside in the unincorporated areas of District 3 which consists of Argo, Oak Lake, Lake Hendricks, Afton, and Sherman Townships, and the northern portion of Richland (Sections 3-34) Townships. Two (2) members shall reside in the unincorporated areas of District 4 which consists of Alton, Aurora, Trenton, Parnell, and Elkton Townships, and the southern portion of Richland (Sections 3-34) Township. All Members of the Planning and Zoning Commission shall be appointed by the County Commission. District members shall reside in the district they represent. If no person from a district is willing to serve on the Planning and Zoning Commission, the County Commission shall appoint a resident from the unincorporated area of Brookings County to serve that district. (SDCL 11-2-2 and 11-2-14)
2. The Board of County Commissioners shall also appoint two (2) alternates, who reside in the unincorporated area of Brookings County, to the Planning and Zoning Commission. If a Planning and Zoning Commission member is unable to attend a

meeting, or participate in a proceeding, the alternates shall serve on the Planning and Zoning Commission on a rotating basis. Alternates shall be appointed for a three (3) year term.

3. Planning and Zoning Commission Members are appointed to four (4) year terms. These terms shall be staggered with the terms of two (2) members expiring in any given year. (SDCL 11-2-3)

#### **Section 6.03.03. Per Diem and Expenses of Commission.**

Per Diem and expenses of the County Planning and Zoning Commission shall be established by the Board of County Commissioners and paid by the County. (SDCL 11-2-3.2)

#### **Section 6.03.04. Duties of Planning and Zoning Commission.**

The Planning and Zoning Commission shall have the following duties:

1. Comprehensive Land Use Plan:
  - a. The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. (SDCL 11-2-11) Upon preparation the Planning and Zoning Commission shall make recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL 11-2-18.
  - b. The comprehensive plan shall be for the purpose of protecting and guiding the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources. (SDCL 11-2-12)
2. Zoning Ordinance:
  - a. For the purpose of promoting health, safety, or the general welfare of the county, the County Commission, upon recommendation from the Planning and Zoning Commission, may adopt a zoning Ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes. (SDCL 11-2-13)
  - b. For any of the purposes specified in SDCL 11-2-13, the County Commission may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each

class or kind of buildings throughout each district, but the regulations in one (1) district may differ from those in other districts. (SDCL 11-2-14).

- c. The regulations shall be made in accordance with the Comprehensive Plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks; and other public requirements. (SDCL 11-2-14)
- d. The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. (SDCL 11-2-14)
- e. Upon preparation of a zoning Ordinance, or any amendment thereto, the Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.

3. Subdivision:

- a. The Planning and Zoning Commission may make recommendations to the County Commission for the adoption of a subdivision Ordinance which shall be made in accordance with the Comprehensive Plan. The regulations may establish standards and procedures to be employed in land development including subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements. (SDCL 11-2-17)
- b. To review proposals for subdivision Ordinance adoption, or amendments thereto, to determine whether such subdivisions comply with the subdivision Ordinance of Brookings County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.
- c. Upon preparation of a subdivision Ordinance, or any amendment thereto, the Planning and Zoning Commission shall make a recommendation to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18.

4. Amendments:

The Planning and Zoning Commission may from time to time propose and make recommendation on amendments to the comprehensive land use plan, zoning Ordinance, and subdivision regulations to the Board of County Commissioners after complying with the public hearing and noticing requirements set forth in SDCL11-2-18 and SDCL 11-2-28.

#### **Section 6.03.05. Procedures for Meetings.**

1. The members of the Planning and Zoning Commission shall select one (1) of their members as Chair and another as Vice-Chair, who shall act as Chair in the Chair's absence. Both shall serve one (1) year and until their successors have been selected. Meetings of the Planning and Zoning Commission shall be held monthly or at the call of the Chair and at such other times as the Planning and Zoning Commission shall determine. (SDCL 11-2-3.1)
2. The Chair, or in his or her absence the acting Chair, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this article. All meetings of the Planning and Zoning Commission shall be open to the public. The Planning and Zoning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Brookings County Development Department and shall be public record. The Planning and Zoning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

A simple majority vote of a quorum of members of the Planning and Zoning Board in attendance is required to forward a recommendation, pertaining to its duties described in 6.03.04, on to the Board of County Commissioners.

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

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

1. That pursuant to SDCL 11-2-49 the Brookings County Planning and Zoning Commission shall act as the Board of Adjustment.
2. Within Brookings County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.
3. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a Planning Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent Planning Commissioner's place. The term of the Alternates shall be for three (3) years. (SDCL 11-2-50)

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

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chair and at such other times as the Board of Adjustment may determine. The Chair, or in the Chair's absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. (SDCL 11-2-51)
2. The Board of Adjustment 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 Brookings County Development Department and are public records. (SDCL 11-2-52)

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

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

Administrative Review. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by a Zoning Official in the enforcement of this chapter or of any Ordinance adopted pursuant to this chapter. (SDCL 11-2-53)

1. Variance. Authorize upon appeal in specific cases such variance from terms of the Ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance is observed and substantial justice done. (SDCL 11-2-53)
2. Conditional Uses. Hear and determine conditional uses as authorized by the zoning Ordinance. The uses shall be determined by an affirmative vote of the present and voting members of the board of adjustment at a percentage specifically set forth in this zoning Ordinance at 6.05.01(8) (SDCL 11-2-53)

#### **Section 6.04.04. Appeals, Record of Appeal, Hearing and Stays.**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Official and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the Zoning Official that is not a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision. The applicant shall file with the Zoning Official a notice of appeal specifying the grounds thereof. The Zoning Official shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days after the filing of the decision in the Brookings County Development Department. All appeals relating to a particular action or property shall be consolidated and heard at the time of the initial appeal. (SDCL 11-2-55)



3. An appeal to the Board of Adjustment stays all proceedings in the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record, on application, on notice to the officer from whom the appeal is taken and on due cause shown. (SDCL 11-2-56).
4. The Board of Adjustment shall hold at least one (1) public hearing of the appeal. Notice of the time and place shall be given at least fourteen (14) days in advance by publication in a legal newspaper of the county, and notice shall be given to the parties in interest. The Board of Adjustment shall decide the appeal within a reasonable time. Any party may appear at the hearing in person or by agent or by attorney.
5. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Official from whom the appeal is taken. (SDCL 11-2-58)
6. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance. (SDCL 11-2-59)
7. The decision is considered filed with the Brookings County Development Department at the time it is signed by the Chair of the Board of Adjustment.

#### **Section 6.04.05. Appeals to a Court of Record.**

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board, or bureau of the county, aggrieved by any decision of the board of adjustment, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the Brookings County Development Department. (SDCL 11-2-61)

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

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

The Board of Adjustment shall have the power to hear and decide, in accordance with 6.04.03 and any other provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether



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

1. A written application for a conditional use permit is submitted which indicates the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.
2. The Zoning Official shall notify adjacent property owners by First Class mail at their last known address of the public hearing time and date at least fourteen (14) days prior to the hearing of the application for the conditional use permit.
3. Notice of time and place of the hearing on an application for conditional use permit shall be published once at least, fourteen (14) days prior to the Board of Adjustment public hearing, in a legal newspaper of the county.
4. The public hearing shall be held. Any party may appear in person, by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.
6. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
  - a. Entrance and exit to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
  - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare or other effects of the conditional use on adjoining properties and properties generally in the district.
  - c. Utilities, refuse, and service areas, with reference to locations, availability, and compatibility.
  - d. Screening and buffering with reference to type, dimensions and character.
  - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, compatibility and harmony with properties in the district.
  - f. Required yards and other open space.
  - g. General compatibility with adjacent properties and other property in the district.
  - h. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any

roads used for the conditional use requested prior to issuance of a Conditional Use Permit.

- i. Any required notifications to law enforcement or fire department.
  - j. Any safety inspections required.
7. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
  8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to pass any application for a Conditional Use Permit.
  9. A conditional use permit shall expire three (3) years from the date upon which it becomes effective if no work has commenced.
  10. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance/Findings of Facts.
  11. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.

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

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

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Official may require the notification of adjacent property owners by First Class mail, at their last known address, of the public hearing at least fourteen (14) days prior to the hearing of the variance request.
3. Notice of time and place of the hearing on an application for a variance shall be published once at least, fourteen (14) days prior to the Board of Adjustment public

- hearing, in a legal newspaper of the county.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
  5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this Ordinance shall not be granted if the following occur:
    - a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
    - b. The literal interpretation of the provisions of this Ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
    - c. The special conditions and circumstances do result from the actions of the applicant;
    - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
    - e. The granting the variance request would confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
    - f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
  6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under the terms of this regulation in accordance with 6.05.05.
  7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
  8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (six (6) votes) shall be necessary to approve an application for a variance.
  9. A variance shall expire three (3) years from the date upon which it becomes effective if no work has commenced.

### **Section 6.05.03. Zoning Amendments (rezoning requests).**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this Ordinance. A proposed change of zoning district boundaries (rezoning) or regulations may be initiated in the following manners:
  - a. The Board of County Commissioners may direct the Planning Commission to consider a change of zoning district boundaries (rezoning) or regulations;
  - b. The Planning Commission may initiate a change of zoning district boundaries (rezoning) or regulations;
  - c. One (1) or more of the owners of property within the area proposed to be rezoned may present a request to change the zoning district boundaries;
  - d. Initiated petitions specifying and requesting amendments to the regulations of this Ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Official.
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an Ordinance describing said changes. The Board of County Commissioners may not consider said Ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said Ordinance amendment.
3. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change (rezoning) shall be followed:

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

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment.
- c. Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan.
- d. A proposed time schedule for beginning and completion of development.

- e. Any additional information, as requested by the Zoning Official, as lawfully may be required to determine conformance with and provide for enforcement of this Ordinance.
- f. The Zoning Official shall review the application, and shall forward a summary of the application, and their comments regarding said application, to the Planning Commission for review.
- g. The Zoning Official shall set the date, time, and place for public hearings to be held by the Planning Commission. An individual landowner may petition the board to change the zoning of all or any part of the landowner's property. The petitioning landowner shall notify abutting and adjoining landowners by registered or certified mail of the petitioned zoning change at least fourteen (14) days before the public hearing is held on the matter by the planning commission. The landowner shall use information provided by the county director of equalization to determine the abutting and adjoining land owners. Property is considered as abutting and adjoining even though it may be separated from the property of the petitioner by a public road or highway. If the affected property abuts, adjoins, or is within one (1) mile of a county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least fourteen (14) days before the public hearing is held on the matter by the planning commission. Certified or registered mailing receipts shall be filed with the Zoning Official fourteen (14) days prior to the hearing. The Zoning Official shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than fourteen (14) days prior to the Planning and Zoning board's public hearing.
- h. Within forty-five (45) days of receipt of a petition for rezoning, the planning commission shall hold a public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least fourteen (14) days in advance by publication in a legal newspaper of the county. At the public hearing, any person may appear and request or protest the requested change. The county planning and zoning board shall consider the requested action and make a recommendation thereon to the board of County Commissioners. The Planning Commission shall recommend approval or disapproval of a requested change either in whole or in part. SDCL 11-2-28.2
- i. The Brookings County Board of County Commissioners shall publish notice of the public hearing in a legal newspaper of the county, such notice shall be published not less than fourteen (14) days prior to the County Commissioner's public hearing.
- j. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of each respective board.
- k. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment with or without changes. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in a legal newspaper of the County.



#### **Section 6.05.04. Reapplication.**

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

#### **Section 6.05.05 Violations and Penalties.**

1. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The maximum penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or thirty (30) days in the County Jail or both. In addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification shall constitute a separate offense. All fines for violation shall be paid to the Finance Office and shall be credited to the General Fund of the County.

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

2. In the event any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Brookings County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation of these regulations, and it is the duty of the State's Attorney to institute such action.

#### **CHAPTER 6.06. REPEAL OF CONFLICTING ORDINANCES.**

Ordinance 2017-02 is intended to replace and repeal the following Articles of Ordinance 2015-03 an Ordinance re-adopting 1997 Revised Zoning Ordinance and all amendments. Adopted on December 29<sup>th</sup>, 2015: Article 5.00, County Zoning Commission, Appeals, Variance and Conditional Uses; Article 6.00, Duties of County Zoning Officer, Board of County Commissioners, and Courts on Matters of Appeal; Repeal - Article 7.00, Enforcement; Article 8.00, Schedule of Fees, Charges and Expenses; and Article 10.00,

Amendments. All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby declared repealed.



**ARTICLE 11.00**  
**AGRICULTURAL DISTRICTS**

Section 11.01. "A" Agricultural District

Purpose

This district is established to maintain and promote farming and related activities within an environment which is generally free of other land use activities. Residential development will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.

Covenants/Waivers

A RIGHT TO FARM Covenant shall be filed with Register of Deeds on all property to be used as a site for a newly constructed residence (farm and non-farm) or church prior to issuance of a building permit and to all new subdividing of property by platting. Such Right to Farm covenant shall be in the form as set forth in Addendum 1 to this Ordinance. (Ord. 2006-03, 9-26-2006)

Permitted Uses

1. Agricultural activities and farm related buildings, including Class E but excluding Classes A, B, C and D Concentrated Animal Feeding Operations.
2. Established residence.
3. Residential dwelling not within 1,320 feet of a Concentrated Animal Feeding Operation unless waiver registered on deed.
4. Single family residences including manufactured, mobile and modular homes on less than 35 acre lots provided that such residences are on an established farm building site, abandoned school site, or are lots of record and further provided that the proposed site has established road access, the lot has clearly delineated boundaries and the site can meet minimum water and sewer standards.
5. Fisheries services and game propagation areas;
6. Orchards, tree farms, truck gardening, nurseries and greenhouses;
7. Public parks and recreation areas;
8. Home occupations.

**ARTICLE 9.00**  
**LEGAL STATUS PROVISIONS**

Section 9.01. Separability. Should any article, section or provision of this regulation be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this regulation as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 9.02. Purpose of Catch Heads. The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of an index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this regulation.

Section 9.03. Effective Date. This regulation shall take effect and be in force from and after its passage and publication according to law.

## AGRICULTURAL DISTRICTS

9. Accessory buildings of 120 square feet or less are not required to have a building permit.

### Conditional Uses

1. Airports and airstrips;
2. Church or cemetery;
3. Golf course, golf driving range;
4. Sand, gravel or quarry operation, mineral exploration and extraction;
- 5A. Rock Crushers (Ord. 2008-04, 3-18-2008);
- 5B. Concrete Mixing Plant (Ord. 2008-04, 3-18-2008)
- 5C. Asphalt Mixing Plant (Ord. 2008-04, 3-18-2008);
6. Contractors shops and yards;
7. Sanitary landfills provided:
  - a. The site meets the requirements of the State Department of Water and Natural Resources.
  - b. A site plan is provided indicating the following information:
    - (1) Present topography, soil types, depth to groundwater.
    - (2) Location of existing water drainage, existing buildings, existing shelterbelts.
    - (3) Identification of roads leading to the site.
    - (4) Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
    - (5) Proposed monitoring wells, etc.
  - c. A minimum of 1,320 feet from the landfill property line to the nearest residence; excluding the residence of the landfill operator.

## AGRICULTURAL DISTRICTS

8. Institution farms, including religious farming communities;
9. Sewage treatment plants;
10. Fur farms;
11. Class A, B, C, and D Concentrated Animal Feeding Operations. See Section 1211.
12. Stables, dog/cat kennels;
13. Veterinary clinics;
14. Junk/salvage/recycling yards, provided that they meet the following minimum requirements and other restrictions that the County Planning Commission may deem appropriate:
  - a. Storage for junk/salvage/recycling yards shall be set back a minimum of two hundred (200) feet from any adjoining road right-of-way.
  - b. Junk/salvage/recycling yards shall be screened on all sides by a solid wall at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Planning Commission; screening must be maintained in good repair.
  - c. No junk/salvage/recycling yards will be allowed within one thousand three hundred twenty (1,320) feet of any residence other than that of the owner of the land.
  - d. All junk/salvage/recycling yards must have a minimum lot of ten (10) acres.
15. Water pumping stations, elevated tanks and similar essential public utilities and service structures.
16. One manufactured or mobile home as a secondary residence, on an established farmstead to be used for the occupancy of a farm employee, or by parents, grandparents, children or brothers and sisters of the occupant of the land, provided that said home is removed within ninety (90) days of the vacation there from by the qualified occupant or occupants, (Ord. 2006-02, 3-28-2006)
17. Commercial radio and TV towers;



## AGRICULTURAL DISTRICTS

18. Commercial public entertainment enterprises not normally accommodated in commercial areas, including but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races;
19. Seasonal retail stands, excluding garden produce but including fireworks stands;
20. Home extended business;
21. Caretaker residences associated with public or private enterprise;
22. Lodging house.
23. Agricultural processing plants.
24. Spreading of manure with irrigation system.
25. Wind Energy Systems (WES)
26. The County Zoning Commission may permit other uses which, in its opinion, are not detrimental to other uses and are in the general character of the Agricultural District. (Ord. 2004-01, 9-28-2004)

### Area Regulations

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

1. **Lot Size:** All lots for purposes of residential use unless otherwise provided for in this ordinance, shall be a **minimum of thirty five (35) acres**, except as provided in Item 7 below.
2. **Front Yard:** The minimum depth of the front yard shall be one hundred (100) feet. A corner lot will have two front yards.
3. **Side Yard:** The minimum width of a side yard shall be twenty-five (25) feet.
4. **Rear Yard:** The minimum depth of a rear yard shall be fifty (50) feet.
5. **Maximum Lot Coverage:** Dwellings and buildings accessory thereto shall cover not more than twenty-five (25) percent of the lot area.
6. **Shelterbelts.** (See Article 19.00.)

## AGRICULTURAL DISTRICTS

7. The County Zoning Commission may allow a smaller minimum lot size for the "A" Agricultural District under the following condition:
- a. Where a second single family home is requested on an established farmstead, so long as it is immediately connected to the existing farming operation.
  - b. Single family residences legally built under these ordinances shall be considered an established farm building site after it has existed ten (10) years.
  - c. The County Zoning Commission may deny any request for a smaller minimum lot size if it is determined to be an attempt to circumvent the intent or requirements of this ordinance.
  - d. Conditional use permitting of a Religious farming community will include the authorization to construct or utilize an existing building as a church and to construct multiple single family dwelling units. A detailed site plan will be required, and all federal, state, and local laws will be strictly enforced. If a confined animal feeding operation (CAFO) or any other conditional use permitted uses are planned a separate application will be required. In the event that a Religious farming community ceases to exist all single family dwelling units will be required to be removed. (Ord. 2004-01, 9-28-2004)
8. Non-conforming lots of record that are allowed to develop must meet the following setbacks:

	Per Unit Min. Density Sq. Ft	Min. Lot Area Sq. Ft. Well	Min. Lot Area Sq. Ft. Rural Water	Min. Lot Width	Min. Front Yard	Min. Side Yard	Min. Rear Yard
Single Family Dwelling	20,000'	43,560'	20,000'	60'	50'	8'	50'
Other Allowable Uses	20,000'	20,000'	20,000'	60'	50'	8'	50'

## **AGRICULTURAL DISTRICTS**

### Height Regulations

No main buildings shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following:

1. Agricultural buildings;
2. Chimneys, smokestacks, cooling towers;
3. Radio and TV towers;
4. Water tanks;
5. Elevators;
6. Others, providing that they are not used for human occupancy.
7. Wind Energy Systems (WES)



**ARTICLE 17.00  
GENERAL REQUIREMENTS**

Pursuant to the purpose of this regulation are certain general requirements that are not provided for under Articles 11.00 through 16.00. These requirements are set forth under this Article.

Section 17.01. Screening.

Where any "CI" use is adjacent to any residential district, that use (building, parking or storage) shall be appropriately screened from the residential use district by planting, except where planting may be in conflict with vision clearance.

Section 17.02. Vision Clearance on Corner Lots.

On a corner lot in any residential district, no fence, building or other structure shall be erected to a height of more than three (3) feet above the elevation of the established grade at the intersection of the streets on that part of any yard which is bounded by the street lines of the intersecting streets, either at the intersection of said street lines or within such area.

Section 17.03. Refuse.

In all zoning districts, refuse (rubbish, garbage, trash, wastes, or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lot shall be responsible for keeping their property free of trash.

Section 17.04. Unlicensed Vehicles.

Vehicles not in use and without current license may not be kept in any uncovered area other than a designated junk, salvage yard, or designated collection site. EXCEPTION: Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

## GENERAL REQUIREMENTS

### Section 17.05. Minimum Water and Sewer Requirements.

A water and sewer system cannot be approved until it meets the following standards:

1. All public utilities and facilities shall be located, elevated, and constructed to minimize or eliminate flood damage; and
2. All new or replacement water supply systems and sanitary sewage systems, in addition to meeting the requirements of the South Dakota Department of Water and Natural Resources, must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

**MINIMUM MOBILE/ MANUFACTURED  
HOME REQUIREMENTS**

**ARTICLE 18.00  
MINIMUM MOBILE/ MANUFACTURED HOME REQUIREMENTS**

Section 18.01. Minimum Mobile Home/Manufactured Home Requirements

1. Any manufactured, mobile or modular home must secure a building permit from the County Zoning Officer.
2. Residences:
  - a. A new residence to be used for a first occupancy, constructed off the property and moved to the location shall not require adjoining landowner's approval for the issuance of a building permit.
  - b. The County Zoning Officer may issue a building permit for a previously occupied residence to be moved into an appropriate district when the application is accompanied by the written consent of one hundred percent (100%) of the adjoining landowners and one hundred (100%) of the landowners within two hundred (200) feet.
  - c. In the absence of the consent of all neighbors above provided, the Brookings County Planning and Zoning Commission by a 2/3 majority may authorize the issuance of a building permit for the moving in of a previously occupied residence after a public hearing. Notice of the hearing shall be provided in writing at least fourteen (14) days prior to the hearing to all adjoining landowners and all landowners within two hundred (200) feet of the property. In determining whether or not to authorize the permit, the Board shall consider the following:
    1. Whether or not the proposed residence is consistent in character with the other residences in the area.
3. All mobile homes, regardless of location, shall be tied down as prescribed by the Protecting Manufactured homes from High Winds, TR75, issued July 1986, by the Federal Emergency Management Agency.
4. Must have been constructed after June 15, 1976 (2006-03, 9-26-2006).

Section 18.02. Moved in Buildings.

1. Any building moved into any use district must secure a building permit from the County Zoning Officer.
2. Residences:

**MINIMUM MOBILE/ MANUFACTURED  
HOME REQUIREMENTS**

- a. A new residence to be used for a first occupancy, constructed off the property and moved to the location, shall not require adjoining landowner's approval for the issuance of a building permit.
- b. The County Zoning Officer may issue a building permit for a previously occupied residence to be moved into an appropriate district when the application is accompanied by the written consent of one hundred percent (100%) of the adjoining landowners and one hundred percent (100%) of the landowners within two hundred (200) feet.
- c. In the absence of the consent of all neighbors above provided, the Brookings County Planning and Zoning Commission by a 2/3 majority may authorize the issuance of a building permit for the moving in of a previously occupied residence after a public hearing. Notice of the hearing shall be provided in writing at least fourteen (14) days prior to the hearing to all adjoining landowners and all landowners within two hundred (200) feet of the property. In determining whether or not to authorize the permit, the Board shall consider the following:
  - 1. Whether or not the proposed residence is consistent in character with the other residences in the area.

**ARTICLE 19.00  
SHELTERBELT SETBACK REQUIREMENTS**

Section 19.01. Shelterbelt Setback Requirements.

A shelterbelt, consisting of one (1) or more rows shall not be established within one hundred (100) feet of the road right-of-way of any road. Shelterbelts at right angles to roads shall have a minimum setback of fifty (50) feet from the right-of-way. Shelterbelts parallel or at right angle to an adjoining property line shall maintain the same setbacks as required on the right-of-way. Shelterbelts may be planted closer to the adjoining property line than required above with the written permission of the adjoining landowner. Trees used for landscaping the area immediately adjacent to farmsteads and residences are exempt from this regulation. (Ord. 2003-01, 4-01-2003)

**ARTICLE 20.00  
HOME OCCUPATIONS**

Section 20.01. Home Occupations.

Home occupations shall be subject to the following requirements:

1. Such use shall be conducted entirely within a dwelling and carried on by not more than two (2) individuals, one of whom is the principal occupant.
2. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof.
3. The total area used for such purposes shall not exceed the equivalent of one-fourth (1/4) the floor area, in square feet, of the first floor of the user's dwelling unit, if any, otherwise of the main floor of such dwelling unit; but in any instance a maximum of three hundred (300) square feet shall be allowed.
4. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) there is used no sign other than a non-lighted and non-reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within, and which name plate must be clearly visible at the entrance to the premises where said home occupation is carried on and must be attached to the building wherein the home occupation is conducted.
5. There shall not be conducted on the premises the business of selling stocks of merchandise, supplies, or products, provided that incidental retail sales may be made in connection with other permitted home occupations.
6. There shall be no exterior storage on the premises of material used in the home occupation or of any highly explosive or combustible material.
7. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
8. A home occupation, including studios or rooms for instruction, shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation of not less than two (2) parking spaces plus the parking spaces required for the dwelling unit. Such parking shall be provided on the same lot as the home occupation.

## HOME OCCUPATIONS

9. For the purposes of this section, provided all requirements contained herein are met, the following shall be considered home occupations:
  - a. Professional and service offices;
  - b. Art and photo studio;
  - c. Dressmaking or millinery;
  - d. Teaching, with musical instruction limited to two (2) pupils at a time;
  - e. The keeping of not more than two (2) roomers or boarders;
  - f. Tea room;
  - g. Barber shop;
  - h. Beauty shop;
  - i. Antique shop;
  - j. Other uses in the opinion of the County Zoning Commission, which would not be detrimental.



**ARTICLE 21.00**  
**EXTENDED HOME OCCUPATIONS**

Section 21.01. Extended Home Occupation.

There are significant differences between home occupations on small tracts and agricultural home occupations. The nature of resources available for use, the benefits and disadvantages created by home occupations, and the problems generated necessitate a distinction between urban home occupations and farm home occupations. Each concept is based on supplementing income, but the districts in which each is practiced has unique characteristics. For the aforesaid reasons, different home occupations may be permitted in agricultural zoning districts than are permitted in the urban residential districts.

1. For the purpose of this section, provided all requirements are met, the following shall be considered farm home occupations:
  - a. Welding repair conducted in a safe manner;
  - b. Veterinarian's office;
  - c. Blacksmith;
  - d. Service office;
  - e. Others which, in the opinion of the County Zoning Commission would be in the same general character as those noted above.
2. Any home occupation shall be clearly supplementary to the principal use of the land and structures.
3. A home occupation may not be changed to another home occupation except by the issuance of a separate special use permit.
4. If any "A" District or part thereof is rezoned, the rezoned area shall meet the new district regulations and any home occupations shall be considered a non-conforming use until such requirements are met.
5. No sign shall be permitted larger than that allowed for a home occupation (See Article 20.01(4)).

**ARTICLE 22.00**  
**CONCENTRATED ANIMAL FEEDING OPERATION**

Section 22.01. Concentrated Animal Feeding Operation Regulations.

Intent

An adequate supply of healthy livestock, poultry and other animals is essential to the well being of county citizens and the State of South Dakota. However, livestock, poultry, and other animals produce manure, which may, where improperly stored, transported, or disposed, negatively affect the County's environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals. All new and proposed expansions of Concentrated Feeding Operations shall comply with the regulations as outlined herein.

It is the intention of the County Zoning Commission in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.

Definitions

1. A 25-year, 24-hour Storm Event is the amount of rainfall in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 5 inches in Brookings County. The map in Appendix A shows the actual amount of rainfall that constitutes the 25-year, 24-hour storm event for South Dakota.
2. Accessory Buildings and Uses is a subordinate use, which is incidental to that of the main building or to the main use of the premises. Buildings of 120 square feet or less are not required to have a building permit.
3. Anaerobic Lagoon means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic manure, the impoundment is designed to receive manure on a regular basis, and the impoundment's design manure loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

- a. A confinement feeding operation structure.
  - b. A runoff control basin, which collects and stores only precipitation induced runoff from an open feedlot.
  - c. An anaerobic treatment system, which includes collection and treatment facilities for all gases.
- 4. Animal Feeding Operation Structure means an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building.
  - 5. Animal Manure is poultry, livestock, or other animal excreta or mixture of excreta with feed, bedding or other materials.
  - 6. Animal Unit See page 22.00-8.
  - 7. Applicant is an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.
  - 8. Aquifer is a geologic formation, group of formations or part of a formation capable of storing and yielding ground water to wells or springs.
  - 9. Best Management Practices (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage.
  - 10. Building is any structure in excess of 120 square feet designed for the support, shelter and protection of persons, animals, or property.
  - 11. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
  - 12. Change in Operation means a cumulative increase of more than 500 animal units, after May 13, 1997, which are confined at an un-permitted concentrated feeding operation.
  - 13. A Chronic or Catastrophic Event is a single precipitation event, or a series of rainfall events in a short period of time that totals or exceeds the volume of a 25-year, 24-hour storm event. The event includes tornadoes, or other catastrophic conditions. The event would directly result in, or cause, an

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

overflow from the containment structure or lagoon that receives and contains runoff from an open lot.

14. Common Ownership is defined as single, corporate, cooperative or other joint operation or venture.
15. Concentrated Animal Feeding Operation see page 22.00-9.
16. Confinement Feeding Operation means a totally roofed animal feeding operation in which wastes are stored or removed as a liquid or semi-liquid.
17. Confinement Feeding Operation Structure means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.
18. Corner lot is a lot with two front yards.
19. Domestic Animal is 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, sheep and mules.
20. Earthen Manure Storage Basin means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are removed at least once each year.
21. Established Building Site means an established building site shall have been used in the past as a farmstead for a normal farming operation. Any residence established for more than ten (10) years shall become an established building site.
22. Established Residence is any residence established by a personal presence, in a fixed and permanent dwelling and an intention to remain there.
23. Farm Dwelling means any residence farmer owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.
24. Feedlot Operator means an individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more concentrated animal feeding operations.

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

25. Formed manure Storage Structure means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.
26. Housed Lot means totally roofed buildings that may be open or completely enclosed on the sides. Animals are housed over solid concrete or dirt floors, slotted floors over pits or manure collection areas in pens, stalls or cages. Housed lot is synonymous with other industry terms such as slotted floor buildings.
27. Letter of Assurances is a list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.
28. Man-made means a pipeline, ditch, drain, tile, terrace, irrigation system, machine, or other object that carries manure, wastewater, or runoff into waters of the state.
29. Manure Management System means any piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at an concentrated animal feeding operation.
30. Non-farm Dwelling means any occupied dwelling, which is not a farm dwelling.
31. No-till Cropland means land which is subject to a conservation farming practice: where the soil is left undisturbed from harvest to planting; where planting or drilling is done in a narrow seedbed or slot created by coulters, row cleaners, disk openers, or in-row chisel; and where this conservation practice has been ongoing for at least four consecutive years to establish the soil characteristics necessary to reduce or eliminate erosion from runoff.
32. Open Concentrated Animal Feeding Operation is an un-roofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth or post-harvest residues are maintained during the period that animals are confined in the operation.
33. Open Lot means pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Open lot is synonymous with other industry terms such as pasture lot, dirt lot or dry lot.
34. Permit is required by these regulations unless stated otherwise.



**CONCENTRATED ANIMAL  
FEEDING OPERATION**

35. Potential Pollution Hazard A Concentrated Animal feeding Operation of 100 to 500 Animal Units may be classified as a Class D Operation by the County Zoning Officer when a Potential Pollution Hazard exists. Factors to be considered by the Zoning Officer in determining a Potential Pollution Hazard include the following:
- a. The Concentrated Animal Feeding Operation does not meet the minimum setback and separation distances of these regulations.
  - b. A Potential Water Pollution Hazard exists due to sitting over a shallow aquifer or drainage that contributes to the waters of the State.
36. Process Generated Wastewater means water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.
37. Process Wastewater means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.
38. Producer means the owner or operator of the concentrated livestock feeding operation.
39. Sediment Basin is a basin constructed to trap and store water-born sediment and debris.
40. Severe Property Damage means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources, which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
41. Shall means that the condition is an enforceable requirement of this permit.
42. Shallow Aquifer is an aquifer vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

percolation water from transporting contaminants from the land surface to the aquifer.

43. Shallow Well is a well that is located in a shallow aquifer.
44. Should means that the condition is a recommendation. If violations of the permit occur, the County Zoning Commission will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.
45. Significant Contributor of Pollution means to determine if a feedlot meets this definition, the following factors are considered:
  - a. Size of feeding operation and amount of manure reaching waters of the state;
  - b. Location of the feeding operation in relation to waters of the state;
  - c. Means of conveyance of manure and process wastewater into waters of the state; and
  - d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal manure and process wastewater into waters of the state.
46. Solid Waste (reference SDCL 34A-6-1.3, 17.) any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, hazardous waste as defined under chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended to January 1, 1989, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.
47. Solid Waste Facility or solid waste disposal facility, (reference SDCL 34A-6-1.3, 18.) all facilities and appurtenances connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained or operated to facilitate the disposal or storage of solid waste.



**CONCENTRATED ANIMAL  
FEEDING OPERATION**

48. Solid Waste Management System (reference SDCL 34A-6-1.3, 19.) is the entire process of storage, collection, transportation, processing and disposal of solid wastes by any person.
49. Conditional Use. A Conditional Use is a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning division or district as Conditional Uses, as specific provisions for such exceptions is made in these zoning regulations. The County Zoning Commission may, after notice and hearing, revoke a Conditional Use in the event of a violation of any of such conditions. In addition, the Conditional Use permit may not be transferred during any violation.
50. Unauthorized Releases mean the discharge of water from the lower end of the treatment or containment system through a release structure or over or through retention dikes. An unauthorized release is distinguished from a bypass in that a bypass discharges wastewater prior to any treatment or containment.
51. Waters of the State means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.
52. Zoning Complaints. All zoning complaints must be in writing and signed.

**Animal Units**

Animal species and number of a species required to equal 500, 1,000 and 2,000 animal units. Note that these figures relate to inventory rather than animal production. Other animal species equivalents, which are not listed, will be based on species' waste production.

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

**EQUIVALENT NUMBER OF A SPECIES TO EQUAL:**

<u>ANIMAL SPECIES</u>	<u>500 AU</u>	<u>1,000 AU</u>	<u>2,000 AU</u>	<u>ANIMAL UNIT EQUIVALENT SPECIES/ AU</u>
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	357 hd	714 hd	1,428 hd	1.4
Calves (up to 400 pounds)	1250 hd	2,500 hd	5,000 hd	0.4
Finisher Swine (over 55 lbs)	1250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow to Finish*	135 hd	270 hd	540 hd	3.7
Sow and Litter	465 hd	1,076 hd	2,150 hd	0.93
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,750 hd	55,550 hd	11,150 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,300 hd	60,600 hd	0.033
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

\*Figures in the farrow to finish column include sows, pigs born and fed to market weight at one site, at one time.

## CONCENTRATED ANIMAL FEEDING OPERATION

### Classes of Concentrated Animal Feeding Operations

A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 45 days or more during any 12-month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other within one mile, or if they use a common area, or if they use a common area or system for disposal of manure. In the event that a Confined Animal Feeding Operation includes facilities on and off Zone B and are under common ownership, the area not on Zone B may be allowed to expand without including the number of animal units on Zone B in determining what class permit is required.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

UNITS	
Class A	2,000 or more
Class B	1,000 to 1,999
Class C	500 to 999
Class D	100 to 499 (Potential water pollution hazard)
Class E	0 to 499 (No pollution hazard)

### Concentrated Feeding Operation Permit Requirements

Owners of Class A, Class B, Class C, and Class D Concentrated Feeding Operations are required to complete a permit application whenever any of the following occur:

1. A new Concentrated Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows.
3. Accumulative expansion by 500 animal units, after May 13, 1997 if an existing concentrated animal feeding operation that does not have a permit or if expansion takes the animal units into another class.
4. Any complaint against a Concentrated Animal Feeding Operation must be in writing and signed. Names of complainants will be kept confidential. A signed complaint has been received by the Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection



## CONCENTRATED ANIMAL FEEDING OPERATION

reveals that the Concentrated Feeding Operation is in violation of County or State regulations.

5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.

### Concentrated Animal Feeding Operation Control Requirements

1. No Significant Contribution of Pollution.

In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.

2. State General Permit

Classes A and B Concentrated Animal Feeding Operations shall obtain coverage under a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A county permit may be approved conditioned on receiving State approved plans.

Classes C and D Concentrated Animal Feeding Operations will be required to obtain a State General Permit if the following occur:

- a. If an earthen storage basin or lagoon is used for manure storage.
- b. The County Zoning Commission decides conditions require a state permit.

3. Nutrient Management Plan.

The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The nutrient management plan must be either approved by the Brookings County Zoning Officer or by the South Dakota Department of Environment & Natural Resources if a State General Permit is required prior to land application of any manure. Due to crop rotation, site changes, and other operational changes, the applicant should update the plan annually to reflect the current operation and crops grown on the application sites. The applicant should collect, store, and dispose of manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure. If a violation of the nutrient management plan occurs the violator will be required to update the nutrient management plan annually and the collection, storage and disposal of liquid and solid manure will be done according to recognized practices of good agricultural management.

## CONCENTRATED ANIMAL FEEDING OPERATION

A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the South Dakota Department of Environment & Natural Resources and NRCS. The generic nutrient management plan is based on application of nitrogen. The applicant may use other plans, provided the alternate plan contains all the information necessary to determine compliance with conditions of this general permit or Brookings County requirements. Nitrogen, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop nitrogen test results that are necessary to obtain the realistic crop yield. The South Dakota Department of Environment & Natural Resources and Brookings County encourage producers to develop a nutrient management plan for phosphorous. Over application of phosphorous may lead to water quality problems in area lakes and streams.

The applicant must have the manure analyzed, soil tests taken on land where manure is to be applied and take the results to the Cooperative Extension Service and/or an agronomist for recommendations for the correct amount to apply per acre. This must be done the first year and every year thereafter. Phosphorus should be sampled every 3-5 years.

The applicant must maintain records to show compliance with the plan.

Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal waste.

### 4. Manure Management and Operation Plan

Classes A, B, C, and D Concentrated Animal Feeding Operations must submit a Manure Management and Operation Plan.

#### A. Plan must include:

1. The location and specifics of proposed animal manure facilities.
2. The operation procedures and maintenance of manure facilities.
3. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Waste containment facilities will require inspection by an engineer or NRCS technician and as-built plans be submitted to the Brookings County Zoning Officer.
4. Animal manure shall not be stored longer than two years.



**CONCENTRATED ANIMAL  
FEEDING OPERATION**

5. Manure containment structures shall provide for a minimum design volume of 270 days of storage. In addition open outdoor storage shall include storage for direct precipitation and/or runoff from a 25 year, 24 hour storm.
  6. Applicants shall keep records of manure applications on individual fields, which document acceptable manure, and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields. The producer shall retain records of all monitoring information, maintenance and inspection records, copies of reports required by this permit. The producer shall keep the records for at least three years from the date of the sample, measurement, report, or application. Data collected and a copy of this permit must be kept at the confined animal feeding operation or the usual place of business where employees of the operation have access to them. These shall be made available for review by the Brookings County Zoning Board or its representative upon a written request. (Ord. 2006-02, 3-28-2006).
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- B. The applicant must participate in environmental training programs and become a certified livestock manager if available.
  - C. The applicant is responsible for the misapplication of the manure whether applied on the applicants own land or on land where there is a land spreading agreement or in transport. The complaint procedure will be the same as for any other zoning complaint.
  - D. The County Zoning Commission may require manure to be injected or incorporated in order to minimize air and water quality impacts.
  - E. Requests for application of liquid manure by means of irrigation systems will be reviewed by the County Zoning Commission on a site-specific basis. Impact on air and water quality will be taken into consideration.
  - F. All irrigation systems blending manure with ground water must have check valves installed to prevent back flow into the water supply.
  - G. The County Zoning Commission may, after notice and hearing, revoke a Conditional Use in the event of a violation of any of such conditions. In addition, the Conditional Use permit may not be transferred during any violation.

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

**5. Management Plan for Fly and Odor Control**

Classes A, B, C, D and E Concentrated Animal Feeding Operations shall dispose of dead animals, waste and wastewater in such a manner as to control odors and flies. A management plan is required for submission of a permit. Brookings County Zoning Commission will review the need for control measures on a site specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors shall be considered in a management control plan.

- A. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.
- B. Methods to be utilized to dispose of dead animals shall be included in the management plan.

The following procedures to control flies and odors should be considered in a management control plan.

- A. Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.
- B. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
- C. Store solid manure in containment areas having good drainage to minimize odor production.
- D. Consider use of BMP's on open storage systems for liquid manure systems to control odor production.

**6. Required Setbacks and Separation Distance for New Concentrated Feeding Operations and those Expanding by 500 or More Animal Units after May 13, 1997.**



**CONCENTRATED ANIMAL  
FEEDING OPERATION**

**MINIMUMS (Ord. 2006-03, 9-26-2006)**

	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D &amp; E</u>
Established residences	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Adjoining property lines	200 feet	200 feet	200 feet	200 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	1,320 feet	1,320 feet
Municipal Areas and Incorporated Municipal boundary limits	5,280 feet	5,280 feet	2,640 feet	1,320 feet
Lake Park District boundary limits	5,280 feet	5,280 feet	2,640 feet	1,320 feet
Private Wells other than the operator	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams classified as Fisheries as identified by the state	500 feet	500 feet	200 feet	200 feet
Federal, State & County Road ROW Confinement	300 feet	300 feet	200 feet	200 feet
Federal, State & County Road ROW Open lot	50 feet	50 feet	50 feet	50 feet
Township Road ROW Confinement	150 feet	150 feet	150 feet	150 feet
Township Road ROW Open lot	50 feet	50 feet	50 feet	50 feet

The County Zoning Commission shall have the power where exceptional topographic conditions or other extraordinary and exceptional situations or conditions exist to require setbacks in excess of the above minimum for proposals for new concentrated animal feeding operations. (Ord. 2006-02, 3-28-2006)

**Permitted uses in Zone A, Provided They Meet Appropriate Performance Standards Outlined For Aquifer Protection Overlay Zones:**

1. Agriculture;

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

- a. Application of manure is permitted with an approved nutrient management plan.
2. Horticulture;
3. Park, greenways or publicly owned recreational areas;
4. Necessary public utilities/facilities designed so as to prevent contamination of ground water.

Conditional Uses in Zone A:

The following uses are permitted only under the terms of a Conditional Use and must conform to provisions of the underlying zoning district and meet the Performance Standards outlined for the Aquifer Protection Overlay Zones.

1. Expansion of existing conforming and non-conforming uses to the extent allowed by the underlying district. The County Zoning Commission shall not grant approval unless it finds such expansion does not pose greater potential contamination to ground water than the existing use.
2. Sediment basins will be allowed on a case by case basis and must be constructed to current NRCS standards and specifications.

Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New Concentrated Animal Feeding Operations after adoption of this ordinance.
2. Existing Concentrated Animal Feeding Operations will not be able to expand beyond a total of 500 animal units (Class D).
3. Earthen storage basins and lagoons.
4. Disposal of or stockpiling of solid waste.
5. Post harvest application of nitrogen fertilizer prior to October 15<sup>th</sup> except for the spreading of manure.
6. Storage of road salt or disposal of snow containing deicing chemicals.

**CONCENTRATED ANIMAL  
FEEDING OPERATION**

7. Processing and storage of PCB containing oils;
8. Car washes;
9. Auto service, repair or painting facilities and junk or salvage yards;
10. Disposal of radioactive waste;
11. Graveyards or animal burial sites;
12. Open burning and detonation sites;
13. All other facilities involving the collection, handling, manufacture, use storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on ground water quality;
14. Land spreading or dumping of petroleum contaminated soil, waste oil or industrial wastes.
15. Class V injection wells.
16. All uses permitted or not permitted as Conditional Uses in Zone A.

Zone B -- Aquifer Secondary Impact Zones

Zone B is established as the remainder of the mapped shallow/surficial aquifer not included in Zone A.

This portion of the aquifer is being protected because (1) it is a valuable natural resource for future development, (2) it provides drinking water supply for individual households, (3) contamination is not justified, even though this area is not a public water supply wellhead and (4) contaminants could eventually reach Zone A.

Permitted Uses in Zone B:

1. All uses permitted in the underlying zoning districts provided that they can meet the Performance standards as outlined for the Aquifer Protection Overlay Zones.

Conditional Uses in Zone B:

1. New Class D and expansion of existing Class D up to 999 animal units (Class C).

## CONCENTRATED ANIMAL FEEDING OPERATION

2. Sediment basins will be allowed on a case by case basis and must be constructed to current NRCS standards and specifications.
3. All Conditional Uses allowed in underlying districts may be approved by the County Zoning Commission provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

### Prohibited Use in Zone B:

The following use is expressly prohibited in Zone B:

1. New and expansion of Class A, B and C Concentrated Animal Feeding Operations.
2. Earthen storage basins and lagoons.
3. Post harvest application of nitrogen fertilizer prior to October 15<sup>th</sup> except for the spreading of manure.
4. Land spreading or dumping of petroleum contaminated soil, waste oil or industrial wastes.
5. Class V injection wells.

Each application for a new or expanded concentrated animal feeding operation (CAFO) will be reviewed by the County Zoning Commission on a site specific basis. The County Zoning Commission reserves the right to increase the minimum required setbacks and separation distance on a site specific review, based on one or more of the following considerations.

- A. A concentration of CAFO's in the area exists or would occur which may pose an air or water quality concern.
  - B. Due to topography and prevailing wind direction, additional setback and separation distance is appropriate to safeguard air or water quality.
  - C. A concentrated animal feeding operation is in excess of 5,000 animal units.
7. Standards for Conditional Uses
- A. The County Zoning Commission may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.