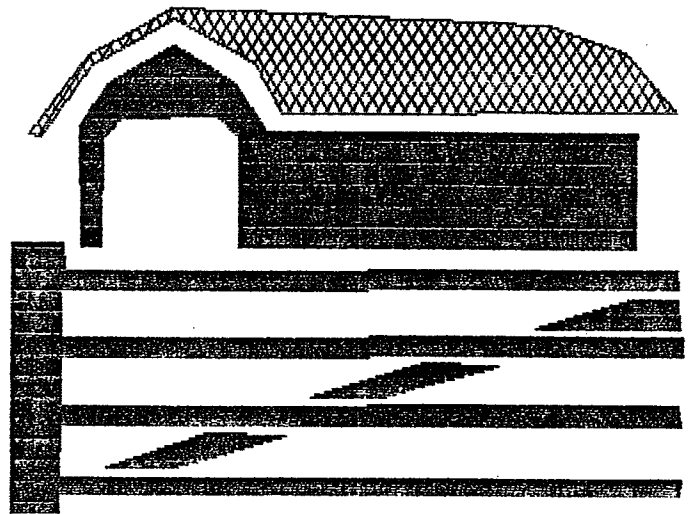
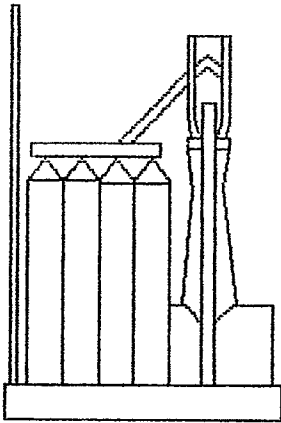


HOWES TOWNSHIP ZONING ORDINANCE

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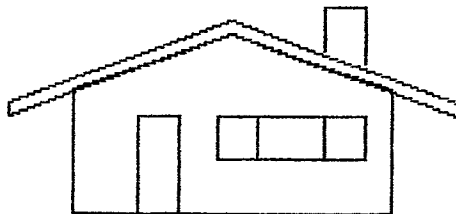


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DIV. OF WATER QUALITY

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RESOLUTION

WHEREAS, the Howes Township Board of Supervisors in conjunction with the Howes Township Zoning Commission, composed of members from the affected areas, have investigated and determined the necessity of amending the "Howes Township Zoning Ordinance"; and

WHEREAS, after investigation and consultation with the Cass County Planning Department, the Howes Township Zoning Commission has prepared an amended "Howes Township Zoning Ordinance" to be submitted herewith to the Howes Township Board of Supervisors and filed in the office of the Howes Township Clerk and the Cass County Planning Department; and

WHEREAS, after filing of the proposed amended "Howes Township Zoning Ordinance", the Howes Township Zoning Commission held a public hearing thereon at which the proposed amendments were submitted for discussion, and parties in interest and citizens had an opportunity to be heard. Notice of the time, place, and purpose of the hearing was published fifteen days prior to the hearing in the official newspaper of the County. Said notice described the nature, scope, and purpose of the proposed rules and regulations, and stated the times at which it would be available to the public for inspection and copying at the office of the Cass County Planning Department; and

WHEREAS, the Howes Township Zoning Commission has approved this draft of the amended "Howes Township Zoning Ordinance" and recommends it be adopted by the Howes Township Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that the Howes Township Board of Supervisors hereby adopts the amended "Howes Township Zoning Ordinance".

Approved and adopted this 7 day of April, 1992.

Lee K. Frase
Chairman

ATTEST:

Kenneth Mauthner
Clerk



Article I

Introduction

- I. Authority: This ordinance is adopted under the authority granted in Chapter 58-03 of the North Dakota Century Code.
- II. Purpose: The purpose of this ordinance is to:
 1. Implement the Howes Township Comprehensive Plan
 2. Promote public health, safety, & general welfare
 3. Preserve prime agricultural land and property values
 4. Facilitate provision of adequate public facilities
 5. Control population density & distribution
 6. Secure safety from fire, flood, panic, & other dangers
 7. Prevent overcrowding of land.
 8. Lessen governmental expenditures
 9. Conserve & develop natural resources
 10. Regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures; and land for trade, industry, residence, or other purposes.
- III. Severability: If any provision or section of this ordinance is adjudged invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected.
- IV. Repeal: All other ordinances or parts of ordinance of Howes Township in conflict with this ordinance are hereby repealed.
- V. Title: This ordinance shall be known as "Zoning Ordinance of Howes Township".
- VI. Effective Date: This ordinance shall become effective after a public hearing adoption by the Howes Township Board of Supervisors.

Article II

General Provisions

- I. Jurisdiction: The jurisdiction of this ordinance shall include all unincorporated areas of Howes Township.
- II. Compliance: Except as hereinafter provided, no building, structure, or land shall be erected, repaired, or used except in conformance with this ordinance.

- III. Agriculture Exempted: Nothing in this ordinance shall be applied for the purpose of preventing or prohibiting the use of land or buildings for agriculture or any of the normal incidents of agriculture.
- IV. Interpretation: In the interpretation and application of this ordinance the provisions of this ordinance shall be held to be the minimum requirements. Where this ordinance imposes a greater restriction than existing law, the provisions of this ordinance shall govern.
- V. Non-Conforming Uses:
1. Lawful, non-conforming uses of land or buildings existing at the date of adoption of this ordinance may continue provided no structural alterations except for normal maintenance are made and such non-conforming uses shall not be extended to occupy a greater area of land that occupied at the time of adoption.
 2. No building or structure destroyed where a non-conforming use has been discontinued for a period of 1 year or has changed to a permitted use shall again be devoted to a non-conforming use.
 3. A non-conforming structure destroyed or damaged less than 50 percent of its fair market value may be reconstructed within 1 year of such casualty. If damaged more than 50 percent of its fair market value, such building shall be reconstructed in conformance to this ordinance.
 4. The provisions of this section shall not be applicable to conditional uses or any use made non-conforming by a change in district regulations.
- VI. Amendments: In accordance with Section 58-03-13 of the North Dakota Century Code, the Board of Township Supervisors may from time to time amend the provisions of this ordinance. Such amendment shall not become effective until after a public hearing at which parties of interest and citizens shall have the opportunity to be heard. At least 15 days notice of the time and place shall be published in the official newspaper of the county. The description of any land within any zoning district, together with any restriction therein, or any amendment to the zoning ordinance, shall be filed with the Board of Township Supervisors.
- VII. Definitions: For the purpose of this ordinance, the following definitions have been adopted:

A. Rules:

1. Words used in the present shall include the future, the singular number shall include the plural.
2. The word "person" includes a firm, partnership, association, corporation, or individual.
3. The word "shall" is mandatory.

B. List of Definitions:

1. Agriculture: The use of land for agricultural purposes, including the necessary building or structures for farm or farm labor use. Agriculture shall include farming, dairying, pasturage, horticulture, animal and poultry husbandry, and accessory uses and buildings for packing, treating, or storing produce, providing accessory uses are secondary to normal agriculture activities.
2. Accessory Use or Accessory Structure: A use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use, such as a garage or tool shed.
3. Building: Any structure used for shelter or enclosure of persons, animals, or chattels.
4. Conditional Use: A use conditionally permitted in order to reduce any adverse effects on surrounding property.
5. Dwelling: A building or portion thereof occupied exclusively for residential purposes, but not including mobile recreational vehicles.
6. Dwelling, Farm: A single family dwelling or mobile home located on a farm which is occupied by the farm's owner or person employed thereon.
7. Dwelling, Non-Farm: One and two-family dwellings located on a farm or otherwise of which the occupant does not derive at least 50 percent of his income from agricultural activities.
8. Family: A group of one or more persons occupying a single premise and living as a single housekeeping unit.
9. Farm: Any aggregate area operated by one person, family, partnership, corporation, or joint venture for agriculture or farming purposes.
10. Feedlot: The use of land or buildings for the exclusive purpose of concentrated feeding or fattening of

livestock for marketing. The application of feedlot regulations shall be limited to non-farm related enterprises.

11. Home Occupations: Any occupation carried on solely by the occupants of a residence provided: that no more than one room of a dwelling be used for such purposes; no use shall require internal or external alteration or construction; that anything not produced on the premises is sold; and no display of goods or services is visible from the road.
12. Junk Yard: Any land or building used for the storage, sale, or dismantling of obsolete vehicles, junk, and other machinery.
13. Lot: a parcel of land sufficient to provide the yard requirements of the ordinance.
14. Mobile Home: A mobile home is a dwelling unit designed for transportation after construction. A recreational travel trailer is not to be considered a mobile home.
15. Non-Conforming Use: Any structure, land, or building existing at time of adoption or amendment of this ordinance which does not conform to the provisions of the ordinance.
16. Setback: The open space extending the full width of a lot between a building and the centerline of a public road.
17. Structural Alteration: Any change in the supporting members or any substantial change in the roof or exterior walls of a building.
18. Variance: The grant of relief from the requirements of the ordinance where it can be shown that due to unusual conditions of the property, strict application of the ordinance would result in undue hardship.

Article III

District Regulations

- I. Establishment of District Regulations: For the purpose of this ordinance, the entire area of Howes Township is zoned agricultural.

A. Zoning Map - The location and boundaries of the zoning districts are hereby established as shown on the map entitled "Zoning District Map" which accompanies and is hereby made a part of the ordinance.

1. Location of District Boundaries

- a) Where the district boundary lines on the Zoning District Map are indicated to follow highway, road, or railroad rights of way, such boundary lines shall be construed to be the centerline of said rights of way unless clearly shown to the contrary.
- b) Where any uncertainty exists as to the exact location on the Zoning District boundary line, the Township Board of Supervisors, with a recommendation from the Zoning Commission, shall determine the location of such boundary lines.

II. Agricultural District:

A. Purpose: To establish and preserve areas of agriculture and low intensity development which does not significantly change the existing character of the area.

B. Permitted Uses: Agriculture and agricultural buildings, including farm dwellings, non-farm dwellings, cemeteries, churches, existing railroad rights of way, home occupations, accessory uses to the permitted uses.

C. Conditional Uses: All other lawful use of land may be permitted on conditions as set by the Township Board of Supervisors.

D. Dimensional Standards:

1. Setbacks: Structures - 150 feet
Windbreaks - As specified by the Township Board of Supervisors
2. Minimum Lot Size: Two Acres (87,120 sq. ft.)
3. Lot Width - 100 feet
4. Side Yard - 25 feet
5. Height - 35 feet

Article IV

Certificate Required

- I. Certificate of Zoning Compliance: No building or other structure shall be erected, moved, added to or structurally altered without a certificate issued by the Zoning Administrator. No certificate shall be issued except in conformity with the provisions of this Ordinance except after written order from the Township Board of Supervisors.
1. Permitted Use:
- A. Applications: All applications for certificates shall be accompanied by site plans. The site plans shall be 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 buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; existing or proposed parking; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this Ordinance.
- B. Expiration: If the work described in any certificate has not begun within twelve (12) calendar months from the date of issuance thereof, or such work described ceases for a period of twelve (12) calendar months, or if work described in the certificate is not completed within twenty-four (24) months said certificate shall expire. Time limitations cited above shall also apply to accessory buildings. The Zoning Administrator may grant a reasonable extension subject to the demonstration of a hardship condition. If canceled by the Zoning Administrator, a written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled certificate shall not proceed unless and until a new certificate has been obtained.
- C. Construction and Use to be as Provided in Applications, Plans, and Certificate: Certificates issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and

applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be a violation of this Ordinance.

- D. Septic Permit Condition to Certificate: When, for any use, a private sewer system will be used, a septic permit from the Environmental Health Office of the Community Health Dept. of the City of Fargo will be required before any certificate is issued.

2. Conditional Use:

A. Applications: All applications for conditional use certificates shall be accompanied by site plans. The site plans shall be 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 buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; existing or proposed parking; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this Ordinance.

B. Conditions May Be Imposed: If the Township Board grants the conditional use, the Board may impose such conditions, including time limits, as may be deemed necessary for or appropriate to serve the purposes of the Comprehensive Plan, the Zoning Ordinance and to protect the public health, safety and welfare.

C. Criteria for Approval: No conditional use shall be granted unless the Township Board finds the following:

1. The use will not create an excessive burden on parks, schools, streets, and other public facilities and utilities which serve or are proposed to service the area.
2. The use will be sufficiently compatible or separated by distance or screening from adjacent residentially zoned or used land.
3. The structure and site shall have an appearance that will not have any adverse effect upon adjacent residential properties.

4. The use in the opinion of the Township Board is reasonably related to the existing and projected land use of the Township.
 5. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.
 6. The use is not in conflict with the Comprehensive Plan of the Township.
- D. Public Hearing: When considering an application for a conditional use, the Zoning Commission shall hold a public hearing. At least fifteen (15) days prior to the date of hearing, notice of the purpose, time and place of such hearing shall be published in the official newspaper of Cass County.
- E. Order a Certificate be Issued: If the Township Board of Supervisors approve the conditional use application, the Board shall order the Zoning Administrator to issue a certificate of zoning compliance.
- F. Expiration: Where applicable, unless otherwise specified by the Board at the time it is authorized, a conditional use shall expire if the applicant fails to utilize such conditional use within one (1) year from the date of its authorization.
- No application for a conditional use of a particular piece of property shall be accepted more than once in any twelve (12) month period except.
- G. Construction and Use to be as Provided in Applications, Plans, and Certificate: Certificates issued on the basis of plans and applications approved by the Township Board of Supervisors authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be a violation of this Ordinance.
- H. Septic Permit Condition to Certificate: When, for any use, a private sewer system will be used, a septic permit from the Environmental Health Office of the Community Health Dept. of the City of Fargo will be required before any certificate is issued.
3. Variance: As used in this ordinance, a variance is authorized only for height, area, or size of structures or yards.

- A. Application: All applications for Variances shall be accompanied by site plans. The site plans shall be 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 buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; existing or proposed parking; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this Ordinance.
- B. Conditions May Be Imposed: If the Township Board grants the variance, the Board may impose such conditions, including time limits, as may be deemed necessary for or appropriate to serve the purposes of the Comprehensive Plan, the Zoning Ordinance and to protect the public health, safety and welfare.
- C. Criteria for Approval: No variance shall be granted unless the Township Board finds the following:
1. That there are exceptional or extraordinary circumstances applying to the property in question or to the intended use of the property that do not apply generally to other properties or class or use in the same zoning district.
 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity.
 3. That the authorization of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the ordinance or the public interest.
 4. The owner cannot otherwise obtain a reasonable return on this property.
 5. The hardship is not self-created.
 6. The variance request is the minimum necessary to permit a reasonable use of the land.

- D. Public Hearing: When considering an application for a variance, the Zoning Commission shall hold a public hearing. At least fifteen (15) days prior to the date of hearing, notice of the purpose, time and place of such hearing shall be published in the official newspaper of Cass County.
- E. Order a Certificate be Issued: If the Township Board of Supervisors approve the variance application, the Board shall order the Zoning Administrator to issue a certificate of zoning compliance.
- F. Expiration: Where applicable, unless otherwise specified by the Board at the time it is authorized, a variance shall expire if the applicant fails to utilize such variance within one (1) year from the date of its authorization.

No application for a variance of a particular piece of property shall be accepted more than once in any twelve (12) month period.

- G. Construction and Use to be as Provided in Applications, Plans, and Certificate: Certificates issued on the basis of plans and applications approved by the Township Board of Supervisors authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be a violation of this Ordinance.
- H. Septic Permit Condition to Certificate: When, for any use, a private sewer system will be used, a septic permit from the Environmental Health Office of the Community Health Dept. of the City of Fargo will be required before any certificate is issued.

Article V

Administration and Enforcement

- I. Zoning Administrator: A person shall be appointed by the Township Board of Supervisors to administrate and enforce this ordinance. The person appointed shall be known as the "Zoning Administrator". He may be provided with the assistance of such other persons as the Township Board of Supervisors may direct.

Duties of the Zoning Administrator shall include:

1. Issuance of all certificates,

2. Conduct inspections,
3. Maintain records of the ordinance and applications,
4. Transmit to the Zoning Commission all applications for appeals, variances, conditional use certificates, and all applications for amendments.

II. Zoning Commission: A Zoning Commission shall be appointed with the membership composed of the three Township Supervisors.

The duties of the Zoning Commission shall be:

1. Recommend the establishment of plans, rules, regulations, and procedures for the purpose of administrating this ordinance.
2. Assist the Zoning Administrator in conducting inspection of land uses and administrating this ordinance.
3. Hear and forward recommendations on appeals where it is adjudged by the applicant that an error in judgement has been made by the Zoning Administrator.
 - A. Procedure:
 - i. Any person aggrieved by any order of determination of the Zoning Administrator may within 60 days of such action petition the Zoning Commission for a hearing. Such appeal shall be in writing and shall specify in detail the grounds for the appeal. The appeal shall be filed with the Zoning Administrator.
 - ii. Within 30 days of filing, the Zoning Commission shall fix a date for a hearing.
 - iii. Notice in writing shall be given to the petitioner at least 5 days prior to the hearing.
 - iv. Within 15 days after the hearing, the Zoning Commission shall take action and shall mail by registered mail a copy of its order to the petitioner.
 - v. If the petitioner is aggrieved by the determination of the Zoning Commission, the petitioner may petition the Township Board of Supervisors for a hearing.
 - vi. The procedure followed by the Zoning Commission shall be followed by the Township Board of Supervisors in hearing the appeal petition.
 - vii. If the petitioner is aggrieved by the determination of the Township Board of Supervisors, the petitioner may make an appeal to the Cass County District Court. This appeal must be taken in accordance with the procedure provided in Section 28-34-01 of the North Dakota Century Code.
4. Conduct public hearings and forward recommendations to the Township Board of Supervisors on applications for

conditional uses, variances, and amendments of this ordinance

5. Review and study from time to time the provisions of this ordinance.

- III. Township Board of Supervisors: The Township Board of Supervisors shall have final authority in all matters of this ordinance.
- IV. Violations: If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used, in violation of this ordinance, the Zoning Administrator, Zoning Commissioners, or Township Supervisors, or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding as outlined in Section 58-03-14 of the North Dakota Century Code.
- V. Fees: For the purpose of administrating this ordinance, fees may be instituted by the Board of Township Supervisors.

Official Zoning District Map

HOWES

TOWNSHIP 139 N

RANGE 54 W

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36



KEY

<input type="checkbox"/> Agricultural District	Date Adopted: <u>4-7-92</u>
	BY: <u>Lee R. Froese</u> Chair, Township Board
Amended: _____	

Chapter 2

Howes Township Feedlot Ordinance

AN ORDINANCE REGULATING THE PERMITTING, LOCATION, DEVELOPMENT AND EXPANSION OF FEEDLOTS. PROTECTING THE NATURAL ENVIRONMENT, AND, SAFEGUARDING THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OF THE CITIZENS OF HOWES TOWNSHIP.

SECTION 1. INTENT AND PURPOSE

This ordinance is adopted for the purpose of:

- Establishing a procedure for the permitting of feedlots.
- Regulating the location, development, and expansion of feedlots.
- Protecting the natural environment.
- Protecting human and animal health.
- Protecting human welfare.

SECTION 2. GENERAL PROVISIONS

1. Jurisdiction. The jurisdiction of this Ordinance shall apply to all the areas of Howes Township.
2. Scope. From and after the effective of this Ordinance and subsequent amendments, all existing or proposed feedlots shall be in conformity with the provisions of this ordinance.
3. Application.
 - A. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements to satisfy the Intent and Purpose of this Ordinance.
 - B. Where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.

SECTION 3. DEFINITIONS

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

- A. The word "shall" is mandatory, and not discretionary; the word "may" is permissive.
- B. Words used in the present tense shall include the future; and words used in the singular shall include the plural, and the plural the singular.
- C. Words shall be given their common usage if not defined.
- D. The word "Board" includes the "Howes Township Board" or any other word or words meaning the "Howes Township Board".
- E. The word "Commission" includes the "Howes Township Zoning and Planning Commission" or any other words or word meaning the "Howes Township Zoning and Planning Commission."
- F. The word "person" includes a firm, association, organization, partnership, trust, company, cooperative, corporation, or individual.

2. Animal Manure. Poultry, livestock or other animal excreta or mixture with feed, bedding, water or other materials.

3. Animal Unit (AU). A unit of measure used to compare differences in the production of animal manures that employs as a standard the average weight of the animal divided by 1,000 pounds. The total number of animal units subject to permit or registration shall be determined by including operations under common ownership or management and which utilize a common area or system for manure disposal. For purposes of this ordinance, the following equivalents shall apply (taken from ND century code 58-03-11.1. section 2) For purposes of this section, animal units are determined as follows.

- a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- b. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
- c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- d. One cow-calf pair equals 1.0 animal unit;
- e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- g. One horse equals 2.0 animal units;
- h. One sheep or lamb equals 0.1 animal unit;
- i. One turkey equals 0.0182 animal unit;
- j. One chicken, other than a laying hen, equals 0.008 animal unit;

4. Board. The Howes Township Board of Supervisors.

5. Building, Agricultural. All buildings, other than dwellings, which are incidental to a farming operation.

6. Confined Animal Feeding Operation (CAFO). 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 of facility. Two or more animal feeding operations under common ownership are considered a single operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

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

- (A) If there are fewer than three hundred animal units.
- (B) If there are at least three hundred animal units but no more than one thousand animal units.
- (C) If there are at least one thousand one animal units but no more than two thousand animal units.
- (D) If there are at least two thousand one animal units but no more than five thousand animal units.
- (E) If there are five thousand one or more animal units.

7. Family. For the purpose of this Ordinance a family shall include the feedlot, the feedlot owner's grandparents, parents or stepparents, aunts or uncles, siblings, spouses, children or stepchildren, or grandchildren.

8. Farm. A tract of land which is principally used for agricultural activities such as the production or cash crops, livestock or poultry farming.

9. Feedlot. A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designated as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Pastures shall not be considered feedlots under these rules. Fish farms shall be considered feedlots for the purpose of this Ordinance. Confined Animal Feeding Operations (CAFO) as defined by North Dakota, Federal, or Cass County definitions shall be considered feedlots for the purposes of this ordinance.

10. Feedlot (New). An unpermitted or unregistered feedlot, a feedlot constructed and operated at a site where no feedlot existed previously or where a pre-existing feedlot has been abandoned or unused for a period of two years.

11. Feedlot Operator. An individual, a corporation, a cooperative, a group of individuals, a partnership, joint venture, owner or any other business entity having charge or control of one or more livestock feedlots, poultry lots or other animal lots.

12. Feedlot Runoff. The movement of water from a feedlot, either in the form of rainfall, snow or as water from a waterway, ditch, etc. passing through a feedlot, carrying particles of manure as well as soil into a body of water and thereby constituting a potential pollution hazard.

13. Floodplain. The channel or beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood. Floodplain areas within Howes Township shall encompass all areas designated as Zone A on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency.

14. Floodway. The channel of the water course and those portions of the adjoining floodplains which are reasonably required to carry or store the regional flood discharge.

15. Liquid Manure. Manure that contains less than 15% solids content.

16. Manure Storage Structure. A structure where lot runoff, manure effluent or other diluted animal waste is stored or treated, including earthen manure storage basins, earthen lagoons, concrete or glass-lined storage.

17. Modification. Any change in the feedlot operation that does not result in an increase in animal numbers.

18. NDDH. North Dakota Department of Health.

19. NRCS. Natural Resources Conservation Service.

20. Owner. Any person having possession, control or title to a feedlot.

21. Parcel. A contiguous quantity of land legally described and recorded with the County Register of Deeds as the property of a person.

22. Pastures. Areas where grass or other growing plants are used for grazing, and where the concentration of animals is such that a vegetative ground cover is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.

23. Permit, State. A document issued by the NDDH which contains requirements, conditions, and compliance schedules relating to the discharge of animal manure pollutants, and, issued to the contractor, owner or operator, cooperative, stating that the feedlot meets the minimum standards as required by this Ordinance and the NDDH.

24. Permit, Township. A document issued by Howes Township which contains conditions and compliance schedules relating to the discharge of animal pollutants, and, issued to the contractor, owner or operator, cooperative, stating the feedlot meets the minimum standards as required by this Ordinance and the NDDH.

25. Potential Pollution Hazard. A condition which indicated a potential for pollution of land and waters including,

- A. Allowing a discharge of biological oxygen demand (BOD) pollutants in excess of 25 parts per million;
- B. A feedlot or manure storage area located within a shore-land or floodplain.
- C. A feedlot or manure storage area located above a groundwater supply considered Waters of the State

26. Public Well. A well that accesses the Waters of the State for distribution to the public. This includes the Wellhead Protection Area.

27. Setback. The distance from a property boundary enclosing a concentrated animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or non-ranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes.

28. Solid Manure. Manure which has at least 15% solids content and contains added fibrous material excluding mineral solids.

29. Surface Waters. Waters of the State which include, but are not limited to rivers, streams, creeks, coulees, ponds, intermittent streams, and wetlands.

30. USDA. United States Department of Agriculture.

31. Waters of the State. All waters defined under North Dakota Century Code as Waters of the State.

32. Wetlands. Wetlands as defined by the USDA.

SECTION FOUR. CONFINED ANIMAL FEEDING OPERATION PERMIT REQUIREMENTS

1. Owners of Class A, Class B, Class C, Class D and Class E Concentrated Feeding Operations are required to complete a permit application whenever any of the following occur.
 - A. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
 - B. An expansion is proposed beyond what a current permit allows.
 - C. A cumulative expansion by 300 or more animal units after 2/25/16 of existing feedlot that does not have a permit.
 - D. A change in ownership.
 - E. An existing feedlot is to be restocked after being idle for two (2) or more years.
 - F. A signed complaint has been received by the Howes Township Zoning and Planning Committee or the Cass County Zoning Officer and after inspection reveals that the Concentrated Animal Feeding Operation is in violation of Township, County, or State regulations.

SECTION FIVE. CONFINED ANIMAL FEEDING OPERATION CONTROL REQUIREMENTS

1. No Significant Contribution or 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, B, C, D and E Concentrated Animal Feeding Operations shall obtain a North Dakota Department of Health Permit pertaining to the animal species of the Concentrated Animal Feeding Operation.
3. County Special Use Permit. A Cass County Special Use Permit must be obtained.
4. 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 Howes Township Zoning and Planning Commission must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer shall update the plan annually to reflect the current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management.
 - A. A generic nutrient management plan that the applicant may use in developing a nutrient management plan is available from the North Dakota Department of Health. 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 permit. 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 adhere with recognized agronomic rates. Land for application of manure shall have soil tests yearly, with a minimum of four

soil samples per forty acre parcels, in a transect across the parcel, that detail nitrogen levels or chemical derivatives. Results and copies of such tests shall be submitted annually to the Board. The applicant shall maintain records to show compliance with the plan.

- B. The Howes Township Zoning and Planning Commission also requires applicants to develop nutrient management plans for phosphorous and potassium. Phosphorus and potassium, in addition to that allowed in the nutrient management plan, may be applied up to the amounts as indicated by soil or crop phosphorus and potassium test results that are necessary to adhere to recognized agronomic rates. Land for application of manure shall have soil tests yearly, with a minimum of four soil samples per forty acre parcels, in a transect across the parcel, that detail phosphorus and potassium levels or their chemical derivatives. Results and copies of such tests shall be submitted annually to the Board. The applicant shall maintain records to show compliance with the plan. The plan shall comply with Township and County Manure Application Setbacks.
- C. Manure shall be applied only to land which is suitable for the production of crops and where crops shall routinely grow to utilize the nutrient value of the applied manure on a yearly basis. Manure shall not be applied to land which will lie fallow in the upcoming crop year.
- D. Applicants shall provide proof of sufficient cropland acreage for application of total manure volume. If applicant does not own sufficient cropland acreage, binding written manure application agreements for the expected life of the facility shall be provided.
- E. Animal manure shall be applied within two (2) miles of the Concentrated Animal Feeding Operation. If sufficient suitable cropland cannot be obtained within two (2) miles of the Confined Animal Feeding Operation, a variance of no more than four (4) miles may be granted by the Board.
- H. Binding easements for transportation of manure waste via pipeline, hose or vehicular transport shall be provided, including township right of ways and ditches, legal drains or other properties or easements.
- I. A minimum of eight test wells shall be located no greater than one quarter mile from and surrounding the waste manure holding facility, two or more on four sides of the facility. These wells shall be located to a depth no greater than but sufficient to sample ground water in a downslope hydraulic grade from the waste manure storage facility, in the same ground water profile as the waste manure storage facility. Tests indicating levels of Nitrogen, Phosphorus, and Potassium or chemical derivatives shall be maintained by the applicant and copies shall be submitted annually to the Board. Violations of state water quality standards attributable to the waste management facility or ground application may be cause or grounds for revocation of the conditional use permit.

SECTION 6. REQUIRED SETBACKS AND SEPARATION DISTANCES FOR MANURE APPLICATION AND NEW CONFINED ANIMAL FEEDING OPERATIONS AND THOSE EXPANDING BY 300 OR MORE ANIMAL UNITS AND FOR AFTER 2/25/16.

Required Setbacks and Separation Distances for New Confined Animal Feeding Operations.

A. New animal feeding operations shall be set back from any existing residence, church, school, business, public building, park, or campground;

- (1) If there are fewer than three hundred animal units (Class A), there is no minimum setback requirement.
- (2) If there are at least three hundred animal units but no more than one thousand animal units (Class B), the setback for any animal operation is one mile.
- (3) If there are at least one thousand one animal units but no more than two thousand animal units (Class C), the setback for a hog operation is one and one-half mile and the setback for any other animal operation is one and one quarter mile.
- (4) If there are at least two thousand one animal units but no more than five thousand animal units (Class D), the setback for a hog operation is one and one-half mile and the setback for any other animal operation is one and one-half mile.
- (5) If there are five thousand one or more animal units (Class E), the setback for a hog operation is two and one-quarter mile and the setback for any other animal operation is one and one-half mile.

B. New animal feeding operations shall be set back from any existing municipality, town, city, village, military facility or incorporated area.;

- (1) If there are fewer than three hundred animal units (Class A), there is no minimum setback requirement.
- (2) If there are at least three hundred animal units but no more than one thousand animal units (Class B), the setback for any animal operation is one mile.
- (3) If there are at least one thousand one animal units but no more than two thousand animal units (Class C), the setback for a hog operation is two and one-half miles and the setback for any other animal operation is one and one-quarter mile.
- (4) If there are at least two thousand one animal units but no more than five thousand animal units (Class D), the setback for a hog operation is three and one-half miles and the setback for any other animal operation is two and one-quarter miles.
- (5) If there are five thousand one or more animal units (Class E), the setback for a hog operation is four miles and the setback for any other animal operation is two and three-quarter miles.

C. Concentrated Animal Feeding Operation expansion of 300 or more animal units or more can apply to the Howes Township Zoning and Planning Commission for a variance to the required setback and separation distance regulations. Expansion of permitted animal units up to twenty-five percent shall require notification of the Howes Township Board of Supervisors within ten days of expansion. Expansion of permitted animal units exceeding permit are allowed only on one occasion.

D. If a Concentrated Animal Feeding Operation is closer than the separation distances provided in these regulations, the applicant can request a written waiver from the separation distance. A public hearing shall be required for any variance from the setback distances. Written notice of such hearing shall be provided to each person in the Township, and to every person within 4 miles of the facility in any adjoining townships or municipalities, or any persons attending schools, places of businesses, and members of church congregations within 4 miles of the proposed facility.

E. Required Manure Application Setback Distances for New Confined Animal Feeding Operations.

The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

	Irrigation Applied	Surface Applied with Immediate Incorporation or Injection
Established Residences	Not allowed	½ mile
Churches, Businesses, Parks, and Commercially Zoned Areas	Not allowed	½ mile
Municipalities	Not allowed	½ mile
Lakes, Streams, and Water Impoundment Areas	Not allowed	1 mile
Shallow Aquifers	Not allowed	1 to ½ mile
Wildlife Easement Areas	Not allowed	1 mile
Wells, Private and Public	Not allowed	1 mile
Cemeteries	Not allowed	½ mile
Road ROW	Not allowed	300 feet

No solid manure shall be applied on frozen ground or on snow cover. Spread solid manure must be incorporated before ground freezes to avoid pollution hazards.

SECTION 7. MANURE STORAGE AND TRANSPORTATION

1. **Compliance with State, County, and Local Standards.** All animal manure shall be stored and transported in conformance with the Howes Township Feedlot Ordinance.
2. **Potential Pollution Hazard Prohibited.** No manure storage area shall be constructed, located, or operated so as to create or maintain a potential pollution hazard.
3. **Vehicles, Spreaders.** All vehicles used to transport animal manure on County, State, and Township highways and roads shall be leak proof. Manure spreaders with end gates shall be in compliance with this provision provided the end gate works effectively to restrict leakage and the manure spreader is leak proof.
4. **Utilization as Domestic Fertilizer.** Animal manure, when utilized as domestic fertilizer, shall not be stored longer than one year.
5. **Stacking of Manure Onsite.** For Class A, Class B, Class C, Class D and Class E Confined Animal Feeding Operations, solid manure that is stacked for more than six (6) months shall be stored on a concrete containment pad designed with a water containment and diversion plan approved by the NDDH.
6. **Runoff Control Structures.** All outside manure storage areas shall have runoff control structures to contain the liquid.
7. **Manure Storage and Utilization.** The manure Management Plan shall provide for twelve (12) months of storage and utilization capacity for new or expanding feedlots. A nutrient management plan shall also be required. The Plan must be approved by the Township Zoning and Planning Commission.
8. **Storage Design Approval.**
 - A. All plans for manure storage structures shall be reviewed and approved by the Township.
 - B. Plans for all earthen manure storage structures and all manure storage structures of 500,000 gallons or larger shall be approved by the NDDH.
9. **Minimum Location, Design, Construction and Maintenance Standards for Earthen Manure Storage Structures.**
 - A. **Location Standards.**
 - i. All location criteria for earthen manure storage structures, as established by the NDDH, shall be included in this standard.

- ii. No earthen manure storage structure shall be located in an area where the seasonal high groundwater table will be within two (2) feet of the bottom of the structure sealing liner. The installation of a groundwater drainage system to lower the seasonal high groundwater table shall be prohibited.
- iii. No earthen storage structure shall be located in an area identified as having a high susceptibility to groundwater contamination.
- iv. No earthen manure storage structure shall be located in an area identified as primarily sand and/or gravel.
- v. No earthen storage structure shall be located in an abandoned gravel pit, or other surface mined area.
- vi. Before approval, a minimum of one (1) year of groundwater monitoring shall be implemented to determine hydraulic gradients at the site. This information shall be essential to lagoon design and proper placement of long-term monitoring wells.

B. Design Standards.

- i. Site Investigation.
 1. A minimum of five soil borings for the first $\frac{1}{2}$ acre of site area plus two soil borings per acre thereof shall be made at the proposed location of the structure by an ARCPACS certified soil scientist. The borings shall be advanced to a depth of ten (10) feet below the proposed bottom of the structure.
 2. A record of the findings of the soil borings shall be made and will include the following:
 - a. A listing of the soils types by USDA classification and the thickness of the soil layers encountered in the boring;
 - b. The depth to the highest evidence of seasonal high groundwater table;
 - c. The depth to saturated soil conditions or groundwater table; and
 - d. The date and location relative to the proposed basin to be shown on the plan set of the borings, the elevation of the ground at the borings and the name of the ARCPACS certified soil scientist conducting the boring operation and soils interpretation.
- ii. Basic Design.
 1. The earthen storage structure shall be designed with sufficient volume to hold the waste from the proposed number of animals for the design period while providing at least two (2) feet of freeboard between the surface of the waste and the lowest point in the surrounding embankment.
 2. The design period shall not exceed 365 days.
 3. The design of the structure shall be prepared and signed by a registered Professional Engineer qualified in the design of earthen structures.
- iii. Liner Design.
 1. Liner thickness shall be based on liquid depth and storage capacity.

- a. The earthen structure shall have a clay liner that is at least 24 inches in thickness after compaction. The overall thickness shall be increased by 1.5 inches for each additional foot in design depth over 10 feet (not including freeboard depth). Liner thickness shall be increased as required to achieve a demonstrated permeability rate of 10^{-7} cm/second (500 gallons/acre/day) or less; all earthen structures shall also require a synthetic membrane liner of adequate thickness in relation to the depth and volume of the lagoon, and installed according to manufacturer specifications.
 - b. Minimum liner thickness shall be increased to thirty (30) inches for earthen structures of 1-1.5 million gallons of capacity.
 - c. Earthen structures having more than a two million-gallon capacity shall meet the technical standards for solid waste management facilities under NDDH standards.
 - d. The liner design standards required above shall apply to a feedlot where any combination of earthen structures have a total capacity that meet the above thresholds.
2. The interior side slopes of the liner shall not be greater than 2:1 (horizontal : vertical) or 50%, or 3:1 (horizontal : vertical) if compaction efforts on sidewalls are parallel to the slope.
 3. The specified soil used to make up the liner shall be composed of at least 50% material finer than the #200 sieve and at least 25% small than 0.002 millimeters as tested by hydrometer. The soil shall contain no rock larger than 3 inches in diameter and no organic matter such as roots or grass.
 4. The soil used in the liner specifications shall have a minimum liquid limit of 25% and a minimum plasticity index of 15% and be capable of attaining a demonstrated permeability rate of 10^{-7} cm/second (500 gallons/acre/day) or less.

iv. Liner Borrow Area.

1. Soil borings shall be conducted at the proposed source for the soil liner material. A minimum of five soil borings shall be made at the proposed location by an ARCPACS certified soil scientist. The borings shall be advanced to a depth below the proposed bottom of the excavation.
2. A record of the findings of the soil borings shall be made and will include the following:
 - a. A listing of soils types by USDA classification and the thickness of the soil layers encountered in the boring;
 - b. The depth to the highest evidence of seasonal high groundwater table;
 - c. The depth to saturated soil conditions or groundwater table; and
 - d. Size and location in boring hole of any rocks greater than 3 inches in diameter.

- e. The date and location to be shown on plan set of the borings and the name of the ARCPACS certified soil scientist conducting the boring operation and soils interpretation.
- f. An estimate of the volume of borrow material required and available.

C. Construction Standards

i. Liner Placement and Compaction.

1. The soil liner shall be placed in horizontal lifts of no more than six (6) inches in thickness after compaction. The liner on the side walls shall also be placed in horizontal lifts to facilitate compaction, unless the builder can demonstrate the ability to achieve the required compaction on the slopes using other methodologies. The surface of the lifts shall be scarified prior to placement of the succeeding lift to facilitate bonding of the lifts.
2. The moisture content of the liner soil shall be at or above the optimum moisture content identified in the preconstruction testing. In no case shall the moisture content exceed 4% above or fall below the identified optimum moisture content.
3. The soil shall be compacted to a minimum of 95% of the identified Proctor maximum density. The compaction shall be done with a "sheepsfoot" roller or other kneading compactors. The compaction shall be verified by field testing of the compacted material using nuclear density (ASTM D2922), and cone (ASTM D1556) or rubber balloon methods (ASTM D2167). One density test shall be conducted for each 1,000 square feet of surface area of the soil liner (including side walls) for each lift. These tests shall be conducted by qualified personnel.
4. No frozen soil materials shall be used in the construction of the liner nor shall placement or compaction of soil material take place during freezing weather conditions.

ii. Construction Certification.

1. All clay liner placement and compaction shall be observed by a registered Professional Engineer. Records of the construction activities and conditions shall be kept onsite.
2. Upon completion of construction of the liner, a construction report shall be filed with the Howes Township Zoning Commission, the County, and the NDDH. This report shall contain the testing results, a summary of the construction activities, an as-built plan set and a certification that the work was conducted according to the plans and specifications approved by the State, County, and Township for construction.

10. Underground Tanks. Underground tanks for manure storage shall be prohibited.

11. Earthen Pits. Unlined earthen pits for manure storage shall be prohibited.

12. Fly and Odor Control Plan. An Odor Control Plan shall be prepared by the feedlot operator for all new Class A, Class B, Class C, Class D and Class E Confined Animal Feeding Operations. A management plan is required for

submission of a permit. The Township Planning and Zoning Commission shall review the plan, taking into consideration the prevailing wind direction and topography.

13. Groundwater Monitoring. After hydraulic gradient is determined, groundwater monitoring wells shall be placed in such locations as to best monitor any potential flow of leaching wastewater from the liquid manure handling system.

- A. For lagoons and storage facilities a minimum of eight (8) wells, two on each side, and any additional wells being appropriate as determined by NDDH and a groundwater expert designated by the Township.
- B. A minimum of two (2) lateral wells shall also be installed beneath the lagoon or storage facility to monitor for vertical leaching of wastewater.

14. Odor Monitoring. Odors shall be monitored according to the following conditions.

- A. Upon an oral or written complaint of a citizen to the Township Board of Supervisors, the County Health Officer, or the County Sheriff of an unacceptable odor emanating from the facility, the NDDH or a citizens group trained in odor detection under provisions of North Dakota law shall determine if the level of odor is unacceptable. If findings are unacceptable, remedial measures for odor abatement shall be undertaken by the operator until satisfactory odor levels are met on a sustained basis.
- B. Odor levels will be checked within two working days after the receipt of a written or oral complaint.
- C. Odor levels will be checked downwind from the facility an equal distance from the facilities as the residence, place of business, or public facility of the complainant.

SECTION 8. FEEDLOT CLOSURE

- 1. Responsible Parties. The landowner, owner and operator of any feedlot shall be responsible for the ongoing management of manure and the final closure of the feedlot including the cleaning of buildings and the emptying and proper disposal of manure from all manure storage structures.
- 2. Environmental Financial Assistance. Financial assurance guaranteeing proper closure shall be required with all applications for new or expanding feedlots with a liquid manure storage structure as part of their basic design. Such assurance shall be a \$25,000 bond, letter of credit, or escrow account for each 1.0 million gallons of storage capacity.
- 3. Closure Plan. If a feedlot ceases operation, the owner shall submit to the Township a Closure Plan.
 - A. The Closure Plan shall be submitted at least 60 days prior to the final day of operation. This plan shall be prepared by a registered Professional Engineer.
 - B. Closure may be postponed for a period of 12 months if the property is posted for sale. However, pollution hazards must be remediated immediately.

- C. Manure storage structure closure shall include the removal of the sludge in the facilities and its disposal by proper land application at agronomic rates or by other legally permissible method. Manure storage structure and the seeding of the area.
- D. All wastes from the feedlot operation and its waste control system must be removed and disposed of on land or in some other manner which is legally permissible as soon as practical and in accordance with the approved Plan in order to promote and protect public health.
- E. Each time ownership of the feedlot changes, the new owner must notify the Howes Township Zoning and Planning Commission in writing within 60 days of the transfer of ownership that the approved Plan has been read and is understood and that all provisions of the Plan will be implemented.
- F. If the new ownership will continue to operate the feedlot, closure shall not be required.

SECTION 9. ABANDONMENT

- 1. Owners and operators of feedlots shall have joint and several liability for clean-up, closure or remediation of abandoned feedlot sites, including cases of neglect.
- 2. Abandoned live animals shall be assessed for health by the State Veterinarian and costs of disposal shall be assessed against the bond.

Approved and adopted this 25 day of FEBRUARY, 2016.

Beal Bulke chairman

Howes Township Officer

Attest:

Cynthia Stelton

Clerk

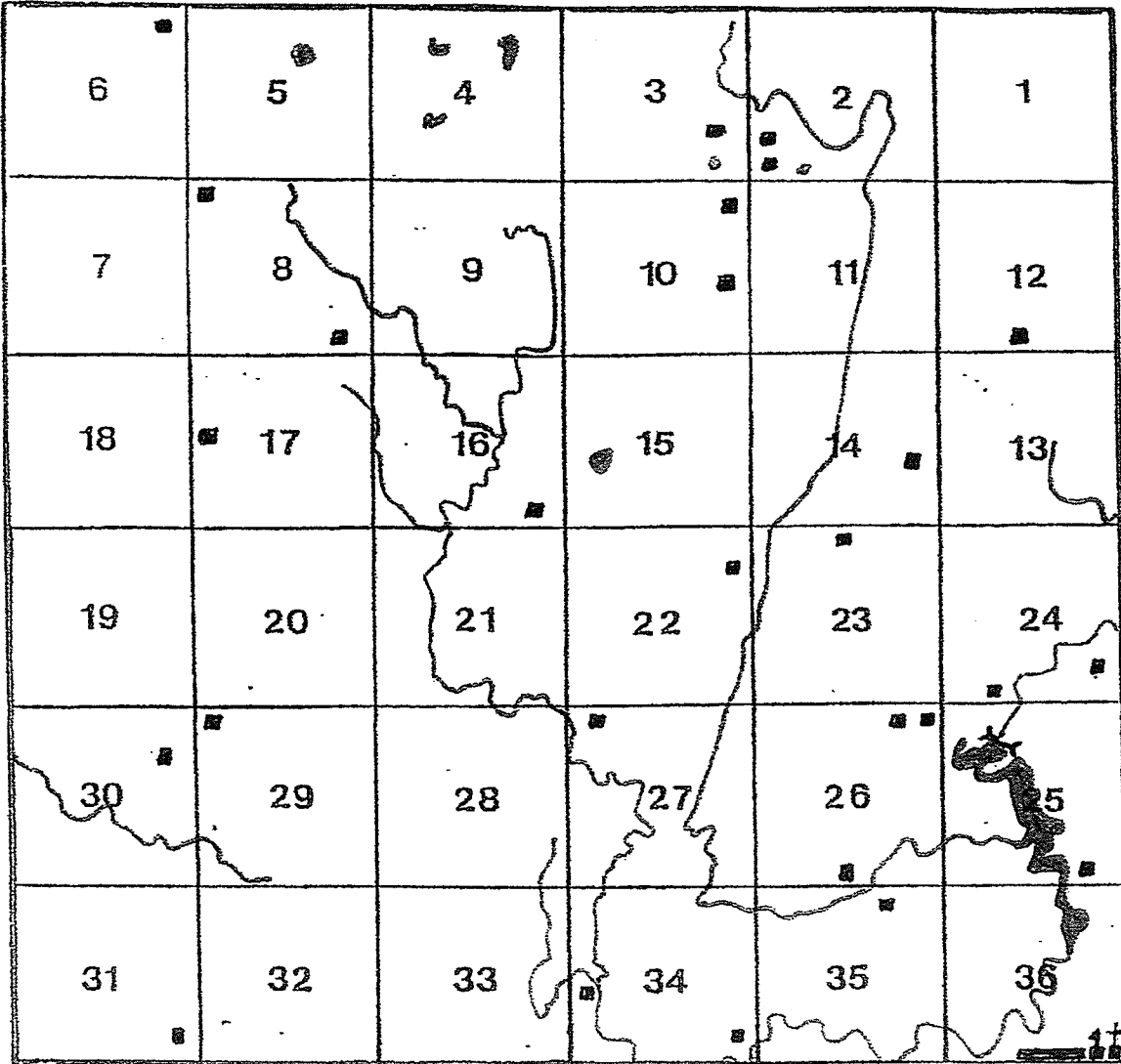
Official

Land Use Map

HOWES TOWNSHIP

Township 139 N

Range 54 W



KEY:

Township Hall	Watercourse	Date Adopted:
Church	Surface Water	<u>2-25-2016</u>
Residence	Flowing Well	By:
Dam		<u>Ben Bull</u>
		Howes Township Board



