

Hawkeye Township

Divide County

North Dakota

# **ZONING ORDINANCES**

**August 31, 2001**

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## **ARTICLE I - GENERAL PROVISIONS**

### **SECTION 1.00 - PURPOSE AND INTENT**

This is an Ordinance for the purpose of promoting the public health, safety, and general welfare, preserving prime agricultural land, preserving property values, facilitating the provision of adequate public facilities by regulating the location and size of buildings and other structures; the percentage of lot which may be occupied; the size of yards and other open spaces; the density and distribution of population; the uses of buildings and structures for trade, residence, recreation, public activities, or other purposes; and the use of land for trade, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands and river bottoms, flood control or other purposes, and establishing standards and procedures regulating such uses.

### **SECTION 2.00 - RULES AND DEFINITION**

#### **Subsection 2.01 - Rules:**

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

1. The word person includes an owner or representative of the owner, firm, association, organization, partnership, trust, company or corporation as well as an individual.
2. The present tense includes the future tense, the singular includes the plural, and the plural includes the singular.
3. The words shall and will are mandatory, the word may is permissive.
4. For terminology not defined in this Ordinance, the most current Merriam-Webster dictionary shall be used to define such terms.

#### **Subsection 2.02 - Definitions:**

1. Accessory Building or Accessory Structures: A detached building or structure on the same lot with, and of a nature customarily incidental and subordinate to the principal structure.
2. Accessory Use: A use subordinate to and exclusively for a purpose incidental to the principal use.
3. Agricultural Service Establishment: Any service establishment primarily engaged in performing animal husbandry or horticultural services, including businesses performing agricultural milling and processing, harvesting or agricultural land preparation, farm

equipment sales and service, veterinary services, boarding or training of horses, and agricultural produce stands.

4. **Animal Unit:** Shall mean the unit of measure used to determine the appropriate density of mature livestock and poultry which shall be kept subject to the restrictions imposed by this Ordinance. For the purpose of this Ordinance, the following equivalents shall apply:

One dairy cow	1.4 animal unit	about 7 cows = 10 units
One head of cattle, excluding the above	1.0 animal unit	
One horse	1.0 animal unit	
One swine or one sheep	.4 animal unit	2.5 sheep or swine = 1 unit
One duck	.02 animal unit	50 ducks = 1 animal unit
One turkey	.018 animal unit	about 55 turkeys = 1 unit
One chicken	.01 animal unit	100 chickens = 1 unit

For animals not listed above, the number of animal units shall be defined as the average weight of the mature animal divided by 1,000 pounds.

5. **Automotive Repair Shop:** A place where the following services for vehicles may be carried out – sale of engine fuels; general mechanical repair and engine rebuilding; specialty automotive services such as radiator service and repair.
6. **Automobile and Truck Body Repair Shop:** A place where the primal purpose is to repair frames and/or vehicle bodies.
7. **Building:** Any structure for the shelter, support or enclosure of persons, animals, or property of any kind.
8. **Club or Lodge:** A non-profit association of persons who are bona fide members paying annual dues, with the use of the premises being restricted to members and their guests.
9. **Commercial Agriculture:** The use of land for primarily agricultural purposes including farming, dairying, pasturage, horticulture, floriculture, animal and poultry husbandry and the necessary accessory buildings and accessory uses for packing, treating or storing produce; provided agricultural revenues shall be the principal source of income from any operations.
10. **Comprehensive Plan:** Unless otherwise stated, it is the general plan for land use, housing, transportation and community facilities prepared, adopted, and maintained by the Township Board for the Township.
11. **Commercial Feedlot:** A confined animal feeding operation of more than 300 animal unit size.

12. Conditional Use: A use other than those permitted which must meet certain conditions to insure compatibility with the land uses in a zoning district before such a use may be approved and permitted by the Township Board.
13. Day Care Facility: Any facility licensed by the State of North Dakota, public or private, which for gain or otherwise, regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than twenty-four (24) hours per day, in a place other than the person's own home.
14. Dwelling, Farm: A single family dwelling located on a farm which is used or intended for use by a farmer.
15. Dwelling, Single-Family: A residential building designed for or occupied by one family only.
16. Dwelling Unit: A residential building or portion thereof providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.
17. Efficiency Dwelling Unit: Any one room unit having cooking facilities and used for combined living, dining, and sleeping purposes.
18. Essential Services: Underground or overhead gas, electrical, steam, water, television, telephone, sanitary or storm sewer distribution systems, including poles, wires, pipes, conduits, cables and accessory equipment in conjunction with buildings, as are required for the protection of the public health, safety, and general welfare.
19. Family: An individual or two or more persons related by blood, marriage or adoption, living together, or a group of not more than five persons who need not be related by blood, marriage or adoption living together as a single housekeeping unit in a dwelling unit.
20. Farm: Real property used for commercial agriculture comprising at least 40 contiguous acres and which may contain other contiguous or non-contiguous acreage, all of which is owned or rented, and operated by a single family, family corporation, individual, corporation or partnership.
21. Farm Building: Any building or accessory structure other than a farm or non-farm dwelling which is used in farming operations.
22. Feedlot: A confined feeding, breeding, raising, or holding of one hundred (100) animal units or more of livestock, but less than 300 animal units or fur bearing animals, in enclosures, yards or pens, but not including range areas normally used for pasture or crops.

23. Garage: A building detached or attached to a main building and generally providing for the storage of automobiles.
24. Home Occupation: An occupation, profession or craft which is customarily incidental to or conducted at a residential dwelling site or farm homestead.
25. Home for Temporary Lodging and Meals: The accessory use of a private residence for the overnight lodging of guests for a fee, such as "bed and breakfast" uses. Such uses shall conform to all pertinent Federal, State and local regulations.
26. Hotel (Motel): Any commercial building containing nine or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.
27. Kennel: Any lot or premises where three (3) or more dogs or cats are boarded for compensation, or where dogs or cats are bred, kept or raised for commercial purposes.
28. Landscaping Items: Plantings, such as trees, grass, and shrubs.
29. Lot: A parcel of land at least sufficient size to meet the minimum zoning requirements of this Ordinance for use, coverage, area, and yards, and intended as a unit for the purpose, whether immediate or future, for sale, separate use or development.
30. Manufactured Home (Mobile Home or Prebuilt Home): A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected onsite, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without permanent foundation when connected to the required utilities.
31. Manufactured/Mobile Home Park: Any site, lot or tract of at least eight acres of land which harbors manufactured/mobile homes and any building, structure, or enclosure used or intended for use as part of the equipment of such manufactured home park.
32. Neighborhood Commercial Establishments: Establishments such as small retail business and personal service stores which provide services and products to the immediate residential neighborhood in which they are located. Such establishments should not be of a type that will generate an influx of consumers from outside areas. Such establishments must be arranged and designed to be functional and harmonious with the surrounding neighborhood.
33. Non-conforming Use: A use of a building, structure or land which does not conform to the applicable use regulations of this Ordinance for the district in which it is located.
34. Nursing Home (Rest and Convalescent Homes): A health care institution licensed to serve aged or firm persons who require nursing care and related assistance. Types of nursing care provided in a nursing home include giving medications, applying dressings

and bandages and providing bedside care and other physician-prescribed treatments which require the technical knowledge, skill and judgment possessed by professional nurses.

35. **Parking Space:** A space adequate for parking an automobile with room for opening doors on both sides, together with unimpeded access to a public street or alley and maneuvering room.
36. **Playhouse:** Any structure used primarily for children's recreation and that is accessory to a residential use.
37. **Principal Structure or Use:** One which determines the predominant use as contrasted to accessory use or building.
38. **Poultry Lot:** A confined area or structure used intensively for raising, feeding, breeding or holding chickens, turkeys and other poultry for eventual sale or for the production of eggs.
39. **Salvage Yard:** A place where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled or handled; including auto wrecking yards, house wrecking yards, used material yards; but not including uses occurring entirely within an enclosed building.
40. **Service Station (Gas Station):** A place where gasoline, kerosene or any other motor fuel, lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles. This definition includes greasing and oiling and the sale of automobile accessories on the premises. It also includes minor repairs, replacement of parts and motor services for vehicles.
41. **Setback:** Any required distances between structures, a structure and a lot line, a structure and the centerline of a public right-of-way or a structure and the normal high water mark.
42. **Street Classification:** All streets and roads are to be considered classified under the following categories:
  - A. "Arterial Roads" are those which are intended used primarily for fast or heavy traffic.
  - B. "Collector Roads" are those which are intended to carry traffic from local roads to the major system of arterial streets and highways, including principal entrance streets of a residential development and streets for circulation within such a development.
  - C. "Local Roads" are all roads not classified as Arterials or Collectors which are used to provide access to abutting properties.

43. Structure: Anything erected with a fixed location on the ground, or attached to something having a fixed location on the ground or in the ground in the case of earth sheltered buildings.

Among other things, structures include buildings, manufactured homes, walls, fences, billboards, and poster panels.

44. Variance: A relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for area, size of structure, size of yards, setback and side yard requirements, and parking requirements; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or adjoining zoning districts.
45. Warehouse: Any building designed or used primarily for the commercial storage of property and equipment of all kinds.
46. Yard: An open space on a lot unoccupied and unobstructed from the ground upward, except as otherwise provided in this ordinance.

### **SECTION 3.00 - JURISDICTION**

The jurisdiction of these regulations shall apply to all areas within Hawkeye Township except areas within the corporate or extraterritorial zoning jurisdictional limits of incorporated cities.

### **SECTION 4.00 - APPLICATION OF DISTRICT REGULATIONS**

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

#### **Subsection 4.01 - All-Encompassing:**

No building, structure, or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered uses in conformity with all of the provisions of this ordinance.

### **SECTION 5.00 - NON-CONFORMING USES**

#### **Subsection 5.01 - Intent:**

It shall be deemed non-conforming when, with the districts established by this ordinance or amendments that may later be adopted, there exist lots, structures and uses of land and structures

which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. This ordinance permits these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses not permitted in the district.

Nothing herein contained shall require any change in plans, construction, or designated use of a building or structure for which a building permit has been issued prior to the effective date of this ordinance.

Subsection 5.02 - Non-conforming Uses of Structures and Land in Combination:

If a lawful use of structures, or of structures and land in combination exists at the effective date of this ordinance that would not be allowed in the district under the terms of this ordinance, that use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. No existing use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use to a use permitted in the district in which it is located.
2. Any non-conforming use may be extended throughout any parts of a building which were arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.
3. Should any principal structure be destroyed by any means to an extent of not more than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
4. On any structure devoted in whole or in part to any non-conforming use, work may be done in any time period for ordinary repairs, or for repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic volume of the building as it existed at the effective date of this ordinance shall not be increased.
5. Nothing in the ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
6. Any non-conforming use may be changed to another non-conforming use provided that the Zoning Commission, by making findings in the specific case, shall find that the proposed use is equally or more appropriate to the district than the existing non-conforming use. In permitting such change, the Zoning Commission may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

7. When a non-conforming use is discontinued for twenty-four (24) months, the original non-conforming use shall not be resumed unless otherwise approved by the Township Board.
8. Where a non-conforming use applies to a structure and land in combination, continuing use of the land in a non-conforming manner shall not be permitted if the structure is removed or destroyed in excess of 50% of its replacement cost at the time of destruction.
9. Any non-conforming use which is replaced by a permitted or conditional use, shall thereafter conform to the regulations as prescribed by this ordinance or amendments hereto. The non-conforming use may not thereafter be resumed.

#### Subsection 5.03 - Status of Variances or Conditional Use Permits:

If a conditional use permit or a variance has been granted as provided in this Ordinance, it shall not be deemed a non-conformity, but shall without further action be deemed permitted in such district.

#### Subsection 5.04 - District Changes:

Whenever the boundaries of a district are changed so that an area is designated as being in a different zoning district, said area shall be considered part of the different zoning district upon the change of district boundaries of the Official Zoning Map.

### **SECTION 6.0 - OFFICIAL ZONING MAP**

#### Subsection 6.01 - Official Zoning Map:

The Township is, as of the date of effectiveness of this ordinance, established in total as an Ag P-1 zone and will be shown as such on the Official Zoning Map.

The Township may be divided into zones, or districts, which will be shown on the Official Zoning Map. The current map, with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

The Official Zoning Map shall be identified by the signature of the Township Board chairman attested by the Township Clerk.

If, in accordance with the provisions of this ordinance, changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Township Board certifying such change. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly published.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon

except in conformity with the procedures set forth in this ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this ordinance and punishable as provided under Subsection 9.08 of this ordinance.

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

**Subsection 6.02 - Replacement of Official Zoning Map:**

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

**ARTICLE II - ADMINISTRATION AND ENFORCEMENT**

**SECTION 7.00 - ADMINISTRATION AND ENFORCEMENT**

The Zoning Administrator appointed by the Township Board shall administer and enforce this ordinance. He may be provided with the assistance of such other persons as the Township Board may direct.

If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, building or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; 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.

**SECTION 8.00 - BUILDING PERMITS**

**Subsection 8.01 - Building Permits Required:**

No non-farm related building or other structure shall be erected, moved, added to or structurally altered without a permit issued by the Zoning Administrator. No building permit shall be issued except in conformity with the provisions of this ordinance except after written order from the Zoning Commission.

#### Subsection 8.02 - Application for Building Permit:

All applications for building permits 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 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.

One copy of the plans shall be returned to the applicant by the Zoning Administrator, after he/she shall have marked such copy either as approved or disapproved and attested to same by his/her signature on such copy.

#### Subsection 8.03 - Expiration of Building Permit:

If the work described in any building permit 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 building permit is not completed within twenty-four (24) months said permit 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 permit shall not proceed unless and until a new building permit has been obtained.

#### Subsection 8.04 - Construction and Use to be as Provided in Applications, Plans, and Permits:

Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be a violation of this ordinance.

### **SECTION 9.00 - CONDITIONAL USES AND REZONING ADMINISTRATION**

#### Subsection 9.01 - Initiating Rezoning and Conditional Uses:

Either the Zoning Commission or Township Board may initiate a proposed rezoning or conditional use permit. A property owner or representative of the property owner may request a rezoning or conditional use permit if it applies to his property. In such case, the property owner or his representative shall fill out an application, copies of which are available from the Zoning Administrator. No application for a conditional use permit or rezoning of a particular piece of property shall be accepted more than once in any twelve (12) month period except as follows:

1. Rezoning - Applications which are withdrawn prior to action taken by the Township Board.
2. Conditional Use Permits - Applications for conditional uses allowed in the particular zoning district different from that applied for within a twelve (12) month period.
3. Changing Circumstances - If the Zoning Commission determines that the circumstances surrounding a previous application for a rezoning or conditional use permit have changed, an application for a rezoning or conditional use may be submitted more than once within a twelve (12) month period.

Subsection 9.02 - Filing Application:

1. Rezoning - The application shall be filed with the Zoning Administrator who shall refer the application together with his comments thereon to the Zoning Commission.
2. Conditional Use Permits - The application shall be filed with the Zoning Administrator who shall refer the application together with his comments thereon to the Zoning Commission.
3. Proof of Ownership - The application shall upon request supply proof of title of the property for which the conditional use permit or rezoning is requested consisting of an Abstract of Title, or Registered Property Abstract, currently certified together with any unrecorded documents whereby the petitioners acquire a legal or equitable ownership interest.

Subsection 9.03 - Notice of Hearing on Rezoning and Conditional Use Permits:

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 Divide County.

Subsection 9.04 - Zoning Commission Consideration:

Providing the applicant has furnished all information as requested by the Zoning Administrator, the Zoning Commission shall consider the application at its next meeting providing the prescribed notification requirements can be met.

Subsection 9.05 - Report to Township Board:

The Zoning Commission shall forward its recommendation to the Board for consideration. Upon the Zoning Commission's failure to do so within 60 days, the applicant may appeal directly to the Board for a decision. Failure to receive a recommendation from the Zoning Commission shall not invalidate the proceedings or actions of the Board.

#### Subsection 9.06 - Board Action:

1. The Township Board may act on the proposal as it deems appropriate. An application for a conditional use permit may be granted by the Board by a majority vote and for a rezoning by two-thirds (2/3) vote.
2. If the Township Board grants the conditional use permit, 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.

#### Subsection 9.07 - Issuance of Conditional Use Permit:

In the issuance of a conditional use permit, the Zoning Commission, may for a good reason, recommend approval, and the Township Board may approve a use that does not meet minimum standards. All aspects that do not meet the minimum standards shall be so noted and enumerated as part of the conditional use permit. The Township Board may attach any such conditions to the permit as it deems necessary in each particular case. No conditional use permit shall be granted unless the Township Board finds the use is not in conflict with the Comprehensive Plan of the Township.

#### Subsection 9.08 - Enforcement and Violations:

The Zoning Ordinance shall be administered and enforced by the Zoning Administrator. The Zoning Administrator may institute in the name of the Township any appropriate actions or proceedings against a violator as provided by law or Township Ordinances. Failure to comply with a condition in a conditional use permit shall be a violation of this ordinance. Each day such violation continues or occurs, constitutes a separate offense and may be prosecuted as such.

#### Subsection 9.09 - Cancellation of Conditional Use Permits:

Where applicable, unless otherwise specified by the Board at the time it is authorized, a conditional use permit shall expire if the applicant fails to utilize such conditional use permit within one (1) year from the date of its authorization.

### **SECTION 10.00 - ZONING COMMISSION - ESTABLISHMENT AND PROCEDURES**

#### Subsection 10.01 - Establishment of Commission:

The administration and functioning of the Township Zoning Ordinance shall be the charge and responsibility of the Township Zoning Commission. Membership of such commission shall consist of three township supervisors and two members at large from the Township. The term of office of Township Zoning Commission members shall be three years or until their successors are duly appointed.

#### Subsection 10.02 - Procedures of the Zoning Commission:

The Zoning Commission shall adopt rules necessary to the conduct of the affairs, and in keeping with the provisions of this ordinance. A majority of Zoning Commission members must be present to constitute a quorum. Meetings shall be held at the call of the chairman and at such other times as the Commission may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Zoning Commission shall keep minutes of its proceedings showing which members were present and how each member voted on each question. Records shall be kept of its examinations and their official actions, all of which shall be a public record and be filed in the office of the Zoning Administrator.

#### Subsection 10.02 - Appeals; Notices; Hearings:

Appeals to the Zoning Commission concerning interpretation or administration of this ordinance may be taken by any person aggrieved or by any Township official affected by any decision of the Zoning Administrator. Such appeals shall be taken within a reasonable time, not to exceed sixty (60) days or such lesser period as may be provided by the rules of the Commission, by filing with the Zoning Administrator and with the Zoning Commission a notice of appeal specifying the grounds thereof. The Zoning administrator shall transmit to the Commission all papers constituting the record upon which the action appealed was taken from.

The Zoning Commission shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

#### Subsection 10.04 - Stay of Proceedings:

An appeal stays all proceedings in furtherance of the action being appealed unless the Zoning Administrator from whom the appeal is taken certifies to the Zoning Commission, after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken, or on due cause shown.

### **SECTION 11.00 - THE ZONING COMMISSION - POWERS AND DUTIES**

#### Section 11.01 - Powers:

The Zoning Commission shall have the following powers and duties:

1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, interpretation, or determination made by the Zoning Administrator in the enforcement of the Zoning Ordinance.

2. To hear requests for variances from the literal provisions of the ordinance in instances where the strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. Undue hardship includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

Variances shall be granted for earth sheltered buildings when in harmony with this ordinance. The Zoning Commission shall not permit as a variance any use that is not permitted under the ordinance for property in the zone where the affected person's land is located.

Subsection 11.02 - Requirements for Variances:

The Zoning Commission should recommend that the Board of Supervisors grant a variance from the terms of this Ordinance only under the following provisions:

1. A written application for a variance is submitted demonstrating:
  - A. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
  - B. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
  - C. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district under the same conditions.
2. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
3. Variance requests for the same property shall not be heard within six (6) months of a previous request unless it can be demonstrated to the Zoning Administrator that the conditions for the variance have changed.

Subsection 11.03 - Decisions of the Zoning Commission:

1. In exercising the above-mentioned duties, the Zoning Commission may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may make such other requirement, decision, or determination, and to that end shall have powers of the Zoning Administrator from whom the appeal is taken.

2. The concurring 2/3 majority vote of the Commission in attendance at the meeting shall be necessary to reverse any order, requirement, or determination of the Zoning Administrator, 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.
3. A copy of the decision of the Zoning Commission shall be served on the applicant by mail.

#### Subsection 11.04 - Cancellation of Variances:

Unless otherwise specified by the Zoning Commission 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. All variances which have been heretofore authorized and have not been utilized shall expire one (1) year from the effective date of this Ordinance unless utilized prior to such time.

### **SECTION 12.00 - APPEALS FROM THE ZONING COMMISSION**

Any person or persons, or any board, taxpayer, department, board or bureau of the Township aggrieved by any decision of the Zoning Commission may seek review by a court of record of such decision.

### **SECTION 13.00 - DUTIES OF ZONING ADMINISTRATOR, ZONING COMMISSION, TOWNSHIP BOARD, AND COURTS ON MATTERS OF APPEAL**

It is the intent and decree of this ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Zoning Commission only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Zoning Commission shall be to the Board of Supervisors.

It is further the intent and decree of this Ordinance that the duties of the Township Board in connection with this ordinance shall include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this Section and this ordinance. Under this ordinance, the Township Board shall have the duties of (1) considering, and adopting or rejecting proposed amendments or the repeal of this ordinance, as provided by law; (2) establishing a schedule of fees and charges as stated in Section 14.00; (3) making final determination on conditional uses; and (4) making final determination on all matters contained in this ordinance.

### **SECTION 14.00 - SCHEDULES OF FEES, CHARGES, AND EXPENSES**

The Township Board shall establish a schedule of fees, charges, and expenses and a collection procedure for rezoning applications, building permits, variances, conditional uses, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted in the office of

the Zoning Administrator, and may be altered or amended only by the Township Board.

No rezoning, building permit, conditional use, or variance shall be issued or granted unless and until such costs, charges, fees, or expenses have been paid in full, nor shall any action be taken on proceedings before the Zoning Commission until charges and fees have been paid in full.

#### **SECTION 15.00 - AMENDMENTS TO ZONING ORDINANCE**

The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed, provided however that no such action may be taken until after a public hearing in relation thereto, at which parties with interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in the official newspaper of Divide County.

#### **SECTION 16.00 - COMPLIANCE REGARDING VIOLATIONS**

If any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or if any building, structure, or land is used in violation of these regulations, the Board of Township Supervisors of Hawkeye Township may cause an appropriate action to be instituted:

1. To prevent such erection, construction, reconstruction, alteration, repair, conversion, or maintenance;
2. To restrain, correct or abate such violation;
3. To prevent the occupancy of the building, structure, or land;
4. To prevent any illegal acts, conduct, business, or use in or about such premises.

#### **SECTION 17.00 - SEPARABILITY**

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

#### **SECTION 18.00 - REPEAL OF CONFLICTING ORDINANCES - EFFECTIVE DATE**

All ordinances or parts of ordinances in conflict with this zoning ordinance, or inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect. This ordinance shall become effective upon its passage and publication.

### **ARTICLE III - ESTABLISHMENT OF USE DISTRICT REGULATIONS**

#### **SECTION 19.00 - RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES**

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

Subsection 19.01 - Streets: Boundaries indicated as approximately following the center line of streets or highways shall be construed to follow such center lines.

Subsection 19.02 - Lot Lines: Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

Subsection 19.03 - Railroads: Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks or sets of main tracks.

Subsection 19.04 - Extensions:

Boundaries indicated as parallel to or extensions of features indicated in Subsection 19.01 through 19.04 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map or field survey.

#### **SECTION 20.00 - AGRICULTURAL PRESERVATION DISTRICT (AG P-1)**

Subsection 20.01 - Intent:

The Ag P-1 District applies to those areas of the Township where it is necessary and desirable, because of the nature of the soils, economic importance of agriculture, availability of water and/or high agricultural productivity and is intended to preserve and promote the use of land for agricultural purposes and to protect such land from encroachment by non-agricultural development.

Subsection 20.02 - Permitted Uses:

1. Commercial agriculture including the raising of one hundred (100) or more animal units of livestock or poultry, but less than 300 animal units.
2. Farm buildings and farm dwellings, provided that the number of farm dwellings shall be limited to two (2) per farm.
3. Farm drainage and irrigation systems.
4. Designated historical sites.
5. Non-farm single family dwellings, including manufactured homes provided they are

certified by a qualified unbiased person to meet HUD title 24 part 3280 for manufactured homes or ANSI manufactured home construction and safety standards. But no more than one non-farm single family or two family dwelling units will be allowed for each quarter quarter section (40 acres) of land in this district.

6. Non-commercial feedlots or poultry lots provided the following setbacks are met:
  - A. All structures and confined lots designed to house or contain livestock shall be set back:
    - (1) 2,500 feet from any existing dwelling except that of the feedlot operator;
    - (2) One mile from any existing church, business, school, recreational area (public or private) or any public buildings;

7. Home for temporary lodging and meals.

Subsection 20.03 - Permitted Accessory Uses:

1. Private garages and storage buildings.
2. Playhouses and fenced swimming pools.
3. Transient agricultural labor dwellings in compliance with State and Federal regulations.
4. Animal units not exceeding two (2) units per acre density for non-farm residential units.
5. Landscaping items.
6. Energy system associated with residential uses such as solar collectors, wind generators, etc.

Subsection 20.04 - Conditional Uses:

1. Outdoor recreation areas, churches, and schools provided that plans for such facilities provide measures that will:
  - A. Prevent any overburdening of local roads that may occur during peak traffic periods;
  - B. Reduce traffic hazards to principal access points.
2. Cemeteries.

3. Private airports, provided:
  - A. All measures necessary are taken to reduce adverse effects from blowing dirt and debris.
  - B. Safeguards are taken so as to minimize any adverse affect on adjacent property.
4. Local government buildings and facilities.
5. Essential services in accordance with Article IV, Section 28.00, Subsection 28.11.
6. Temporary uses.
7. Kennels provided:
  - A. The facility has two hundred fifty (250) feet of continuous frontage on a public road.
  - B. Buildings and fenced running areas are located at least fifty (50) feet from any property line and two hundred (200) feet from any existing dwelling unit, other than the dwelling of the owner.
8. Radio and television transmission towers, including station offices and studios subject to the following conditions:
  - A. Transmitter towers: The following ratios of distances shall apply to all free standing and guyed radio and television transmitter towers:

The number of levels of guys along the height of the tower	Ratio of the height of the tower to the distance from the base to the property line
2 or less	1:1
3	3:2
4	2:1
5	5:2
6 or more	3:1

When guyed towers are used, all anchor points from the guys must be on the same property as the tower. All towers must meet the requirements of the North Dakota Uniform Building and Mechanical Codes and amendments thereafter. For the

purpose of protecting public safety and welfare, additional standards may be added by the Zoning Commission as a condition attached to any permit issued.

- B. Station Offices: Radio or television station offices when located on the same property and used in conjunction with radio or television transmitter towers.
  - C. Studios: Studios seating less than 100 persons, when located on the same property and used in conjunction with radio or television towers.
- 9. Temporary use of a one family dwelling as a two family dwelling.
  - 10. Accessory buildings may be built before main structure is constructed.

Subsection 20.05 - Prohibited Uses: All other uses and structures not specifically permitted by right or conditional use permit in this section shall be prohibited.

Subsection 20.06 - Minimum Lot Size, Yard Requirements, and Spacing Requirements:

- 1. Lot size: The minimum lot size shall be forty (40) acres.
- 2. Access points serving any parcels or lots shall be separated from adjacent access points by the following distances:
  - A. Local Road - 100 feet
  - B. Collector Road - 200 feet
  - C. Arterial Road - 300 feet
  - D. Intersections - 300 feet

Subsection 20.07 - Special District Regulations:

For any residential or agricultural uses existing in an Ag P-1 District at the time of the passage of this ordinance, residential and agricultural buildings and their accessory buildings shall be allowed to be constructed, enlarged, extended, reconstructed, or structurally altered as long as such changes shall conform to the yard requirements in the Ag P-1 District.

## **SECTION 21.00 - AGRICULTURAL PRESERVATION/URBAN EXPANSION DISTRICT - (Ag P-2)**

Subsection 21.01 - Intent:

The Ag P-2 District is intended to minimize the amount of agricultural land lost to urbanization

in areas near municipalities by allowing existing rural residential areas to develop at a higher density than residential uses in the Ag P-1 District. This can be accomplished by: 1) encouraging developments in areas adjacent to existing municipalities until urban facilities from those neighboring municipalities are extended to such areas; and 2) by allowing existing rural subdivisions near municipalities to develop at a higher density even though extensions of urban facilities are not expected.

**Subsection 21.02 - Permitted Uses:**

1. All uses as permitted in Ag P-1, excluding feedlots and poultry lots, and subject to the provisions for animal units in Subsection 22.03.
2. Single-family dwellings excluding manufactured homes.

**Subsection 21.03 - Permitted Accessory Uses:**

1. Private garages and storage buildings.
2. Playhouses and fenced swimming pools.
3. Roadside stands for the sale of agricultural produce grown on the site.

**SECTION 22.00 - GENERAL COMMERCIAL DISTRICT**

**Subsection 22.01 - Intent:**

The District is intended to provide for local commercial developments that allow for highway oriented businesses and for general commercial uses in a way that allows orderly and easy access to transportation routes without permitting or creating strip or spot development.

**Subsection 22.02 - Permitted Uses:**

1. Retail, General: Animal hospitals, shelters, and veterinary clinics, (excluding any outside pens and exercise yards); antique stores; appliance sales and repair stores; bakery outlet; boat, snowmobile and motorcycle sales, service and repair; book stores; carpet stores; commercial film developing and processing; confectionaries; dairy products; dance studios; department stores; drapery stores; drug stores; fabric stores; florists; furniture and home furnishings; general contractors (office only); general merchandise; hardware stores; health food stores; hobby shops; interior decorating; jewelry stores; laundries; including laundromats and dry cleaning stores; liquor stores; luggage stores; mail-order houses; meat markets; music stores; office equipment; optical centers; paint and wallpaper stores; pawn shops; pet shops (excluding kennels); pharmacies; photography stores; plumbing and heating shops (excluding contractor's yards); printing shops; sale of wearing apparel of all kinds; rental establishments; shoe stores; sporting goods; supermarkets; tailor shops; tobacco shops; transportation terminal; travel agencies;

variety stores; watch and clock sales and repair.

2. Service, General: Beauty salons; bus and train stations; cable TV distributors; clinics - dental, medical, chiropractic; hotels and motels; insurance office; locksmiths; massage parlors; shoe repair; mortuaries and funeral homes; publishing and bookbinding establishments; radio and television broadcasting studios and offices; realty offices.
3. Agricultural Service Establishments: Provided that all uses and structures shall be located at least two hundred (200) feet from any driveway allowing access to a dwelling and at least three hundred (300) feet from any dwelling unit.
4. Automotive Services: Automobile sales, car washes, service stations, automobile parts and accessories, automotive repair shop - (excluding salvage yards); automobile and truck body repair shop; auto glass sales and service, parking garage.
5. Cultural and Educational: Barber and beauty schools; business colleges; cultural centers such as museums, art galleries or community learning resource centers; modeling schools; trade and vocational schools.
6. Entertainment: Billiard parlors; bowling alleys; cocktail lounges; roller skating and similar indoor recreational uses; night clubs; private clubs or lodges; theaters (excluding outdoor drive-in theaters).
7. Financial Services: Banks and savings and loans, including drive-in facilities; credit unions, loan agencies; financial planning agencies.
8. Health and Social: Hospitals, health clubs - to include tennis, handball, racquetball, aerobic dance, bodybuilding, and weight and diet related facilities.
9. Professional and Business: Business and professional offices.
10. Public/Semi-Public Establishments: Armory; civic centers, city, county, state and federal offices; libraries; parks and playgrounds; police and fire stations; telephone exchange buildings.
11. Religious: Churches; synagogues; temples.
12. Restaurants: Cafes; restaurants, drive-in type restaurants.
13. Parking Lots.
14. Other: Uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

Subsection 22.03 - Permitted Accessory Uses:

1. All accessory uses permitted in C-1 districts.

Subsection 22.04 - Conditional Uses:

1. Home for temporary lodging and meals.
2. Dwelling units.
3. Retirement, nursing, rest or convalescent homes.
4. Kennels.
5. Salvage yards.
6. Yard areas containing general contractor's supplies and equipment.
7. Outdoor drive-in theaters.
8. Warehouses.
9. Agricultural related processing plants provided:
  - A. Odor and/or noise from the plant do not negatively impact adjacent properties.
  - B. Adequate physical separation from adjacent properties is provided for in the form of trees, hedges, fences.
10. Commercial feeding operations which meet Hawkeye Township conditional use requirements.
11. Accessory buildings may be built before main structure is constructed.

Subsection 22.05 - Prohibited Uses:

1. All uses not granted.

**ARTICLE IV - ANIMAL FEEDING OPERATIONS**

**SECTION 23.00 - REGULATIONS FOR ANIMAL FEEDING OPERATIONS**

A place where (1) livestock have been, are, or will be confined, concentrated and fed for forty-five (45) or more days in any twelve (12) month period; (2) pasture, crops, or other vegetation

are not normally managed or sustained for grazing during the normal growing season; and (3) animal waste or manure accumulates. All such operations containing 300 or more animal units shall be defined as an animal feeding operation. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation if they use common areas or systems for manure handling. An animal feeding operation in place and operating on the date this ordinance is effective shall be considered an existing animal feeding operation and shall not be subject to the requirements of this ordinance unless it expands by any number of animal units.

Subsection 23.01 - Animal Feeding Operation Operator:

1. An individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more animal feeding operations or animal wintering operations.

Subsection 23.02 - Animal Wintering Operation:

1. The confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include:
  - A. Breeding operations of more than 300 or more animal units; or
  - B. Weaned offspring which are kept longer than one hundred twenty (120) days and that are not retained for breeding purposes. Animal wintering operations are not subject to the requirements of this ordinance.

Subsection 23.03 - Livestock:

1. Any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry, and horses. Livestock also includes animals raised for pelts.

Subsection 23.04 - Manure:

1. Fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater or snow melt that comes in contact with fecal material or urine.

Subsection 23.05 - Surface Water:

1. Waters of the state located on the ground surface, such as lakes, reservoirs, rivers, and creeks.

Subsection 23.06 - Waters of the State:

1. All waters within the jurisdiction of the State of North Dakota, including all streams,

lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters defined.

## **SECTION 24.00 - GENERAL PROVISIONS - ANIMAL FEEDING OPERATIONS**

### **Subsection 24.01:**

1. The operator of a new livestock facility, or an existing livestock facility which meets the definition of an animal feeding operation and which meets the following criteria shall be considered an animal feeding operation subject to the conditions specified in this section:
  - A. A new animal feeding operation that would be capable of handling more than 300 animal units.
  - B. An existing animal feeding operation that expands to handle more than 300 animal units.
  - C. An existing animal feeding operation with 300 or more animal units that expands by any number of animal units.

**Subsection 24.02:** Animal feeding operations may be permitted in a General Commercial District as a conditional use provided:

- A. *Environmental Protection.* The operator of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The operator of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each operator shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.
- B. *Location Requirements.* The operator of a new animal feeding operation that has 300 or more animal units shall not locate or establish that operation:
  - (1) Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water

system, including all or portions of the surface water's shoreline.

<b>Location Requirements for Animal Feeding Operations - Distance from Ground Water Sources</b>		
<b>Number of Animal Units</b>	<b>Private Ground Water Well</b>	<b>Public Ground Water Well</b>
Less than 1000	1,500 Feet	6,000 Feet
1000 - 1999	3,000 Feet	6,000 Feet
2000 - 4999	4,500 Feet	6,000 Feet
5000 or More	6,000 Feet	6,000 Feet

- (2) Within one thousand five hundred (1,500) feet of surface water which is not included in a source water protection area.
- (3) Within the extra-territorial zoning jurisdiction of an incorporated city.
- (4) Less than the following specified distance from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential:

<b>Odor Setback Distances for Animal Feeding Operations</b>		
<b>Number of Animal Units</b>	<b>Hog Operations</b>	<b>Other Animal Operations</b>
Less than 1000	1.5 miles	1.0 miles
1000 - 1999	2.0 miles	1.5 miles
2000 - 4999	2.5 miles	2.0 miles
5000 or More	3.0 miles	2.5 miles

Hawkeye Township Zoning Commission may increase or decrease a setback distance for any new animal feeding operation after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health or environmental concerns.

- C. *Reverse Odor Setback.* An owner of property shall locate and establish a residence, business, church, school, or public park so as to provide a separation distance from any existing animal feeding operations that meets or exceeds the corresponding setback from those places listed in the above odor setback table. An owner of property who is an operator may locate the owner's residence within the setbacks.
- D. *Temporary Odor Setback.* If notified in writing by an operator of a planned future expansion of an animal feeding operation, the Township may implement the corresponding odor setback for a temporary time period not to exceed two (2) years, after which time the setback will remain in effect only if the expansion was completed.
- E. *Sale or Transfer of Ownership.* An operator of a facility that includes an animal feeding operation having a permit granted by this ordinance shall notify the Township of the sale or the transfer of ownership of the property.
- F. *Inclusion of Alternative Livestock Type.* An operator of a facility that includes an animal feeding operation having a permit granted by this ordinance shall notify the Township in writing of intent to include an alternative livestock type at least one hundred twenty (120) days prior to the anticipated date of the change.

WHOLE TOWNSHIP AG P-1 ZONE

Randy Bummer CHAIRMAN

Attest: Corinne Kenstad Clerk

# HAWKEYE DIRECTORY

Township: 162N

Code: HA

Range: 97V

FILLMORE TWP.

