

SECTION 1.1 TITLE

This ordinance, its regulations, and the County Zoning Map shall be known and cited as the Stutsman County Zoning Ordinance.

SECTION 1.2 PURPOSE AND INTENT

The purpose of this ordinance is to promote the health, safety and welfare of the people of Stutsman County. It is intended that the establishment of this ordinance will promote orderly and non-conflicting uses of land and property, protect property rights, ensure the provisions of adequate public services and promote conservation of land, water and other natural resources. Further, it is intended that enactment and enforcement of this ordinance shall assist in the realization of goals and objectives of the Stutsman County Comprehensive Policy Plan and subsequent amendments thereto.

SECTION 1.3 AUTHORITY

This zoning ordinance is developed and enacted under authority granted to Stutsman County in Chapter 11-33 of the North Dakota Century Code (NDCC).

SECTION 1.4 JURISDICTION

This ordinance shall affect all unincorporated territory over which the Board of County Commissioners have jurisdiction in Stutsman County, North Dakota except as indicated below.

This ordinance shall not affect any property, real or personal, which is located within the zoning or subdivision authority of any township having lawfully enacted regulations as provided in Sections 58-03-11 through 58-03-15 of the North Dakota Century Code (NDCC), except where such township supervisors relinquish to the County their powers or any portion thereof, to enact zoning regulations. This ordinance shall not affect any property, real or personal, located within the zoning or subdivision authority of any city of this state, except that any such city may by resolution of its governing body relinquish to the county its authority, or any portion thereof, to enact zoning or subdivision regulations under Chapter 40-47 or 40-48 of the North Dakota Century Code, in which case such property shall be subject to the provisions of this ordinance.

SECTION 1.5 NON-RESTRICTION OF FARMING

No regulation or restriction contained in this ordinance shall be construed to prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

SECTION 1.6 DISCLAIMER

This ordinance shall not create liability on the part of Stutsman County, any officer or employee thereof, or the Federal Insurance Administration for any damage that results from reliance on this

ordinance or any administrative decision lawfully made thereunder.

SECTION 1.7 SEPARABILITY

If any part or provision of this ordinance or the application thereof to any person, property or circumstance is adjudged invalid by any court of competent jurisdiction, such judgement shall be confined in its effect to that part, provision, section, phrase or application expressly involved in the controversy and shall not affect or impair the integrity or validity of the remainder of the ordinance or its application to other persons, property or circumstances.

The County Commission of Stutsman County, North Dakota, hereby declares that it would have enacted the remainder of this ordinance even without the affected part, provision, section, phrase or application.

SECTION 1.8 DEFINITION OF TERMS

Generally, terms and words used herein shall be interpreted such that the present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. Further, the word **shall** is mandatory and the word **may** is permissive. The word **used** or **occupied** includes the words **intended**, **designed** or **arranged to be used or occupied**. The words **district** and **zone** are used interchangeably.

The meaning of specific terms or words shall be as follows:

Abutting

Land having a common property line or district line or separated only by a private street, alley or easement.

Accessory

Incidental and subordinate, helpful but not essential(Webster).

Accessory use or structure

A use or structure that is subordinate or incidental to the principal use or structure of the premises.

Agriculture

The preparation of soil, crops and livestock for man's use.

Agricultural building or structure

A building or structure which is used principally for the practice of agriculture or operation of a farm.

Airport

A tract of land or water that is maintained for the landing and takeoff of aircraft in accordance with all applicable Federal Aviation Agency standards and regulations.

Amendment

Any change, revision or modification of either the text of this ordinance or the official zoning map.

Animal hospital or clinic

An establishment where animals are admitted principally for examination, treatment, board and care by a Doctor of Veterinary Medicine.

Area of special flood hazard

The land in a flood plain which is subject to a one percent or greater chance of flooding in any given year.

Base flood

The flood having a one percent chance of being equaled or exceeded in any given year.

Board of Adjustment and Appeals

The body authorized to hear appeals concerning the enforcement of this ordinance.

Building

Any structure designed and constructed to house people or property and having a roof and enclosed by three or more walls.

Building heights

The distance measured from the average grade at the point where the walls, foundation walls, footings or piers of a building meet the ground to the highest point of the building roof line, parapet walls or buildings facade, but excluding chimneys or antennae.

Cemetery

Land used or intended to be used for the burial of the human dead, including crematories and mausoleums if operated in connection with and within the boundaries of such cemetery.

Conditional use

An exception from permitted uses which may be allowed if a Conditional Use Permit is issued which specifies the location, use and conditions of such use, pursuant to Section 4.5 of this ordinance.

County

The county of Stutsman, North Dakota

Crops

Plant or animal products grown and harvested extensively for profit or subsistence.

Development

Any man made change to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Dwelling

Any building or portion thereof which is designed or used exclusively for residential purposes.

Easement

A natural or acquired right to use land, other than as a tenant, for a specific purpose, such right being held by someone other than the owner who holds title to the land .

Family

One or more persons occupying premises as a single housekeeping unit.

Farm

A tract of land of not less than five acres which is devoted to agricultural activities.

Feedlot

Any livestock feeding, handling or holding facility in which forage is not grown and where either more than 200 animal units are held or where less than 600 square feet of space is available per animal unit.

Flood or flooding

A general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Foreign substance

Substance not normally occurring in a particular place or situation.

Frontage road

Minor roadway which is adjacent to county or township maintained roadways, and which provides access to abutting properties and protection from through traffic.

Home occupation

Small scale business venture(s) which occupy no more than 30 percent of the floor area of a residential home, including the areas of garages, basements and storage sheds as well as normally occupied rooms, when such businesses are operated by the residents of said home.

Housing unit

Those rooms or portions of a building exclusively used by a family as living quarters.

Junk and/or salvage yard

A tract of land, structure or part thereof, used primarily for the collecting, storage and sale of scrap or discarded material or for the collecting, dismantling or storing and salvaging of machinery or vehicles not in running order or for the sale of parts thereof.

Kennel, commercial

Any lot or building in which four or more dogs and/or cats at least four months of age are kept commercially for board or propagation or treatment.

Livestock

Large domestic animals such as horses, cattle, pigs, sheep and goats.

Livestock sales arena

An enclosure or structure designed or used for holding livestock for the purpose of sale or transfer by auction, consignment or other means.

Lot

A tract of land under singular ownership of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open space as are herein required.

Lot of record

A parcel of land which is recorded and platted at the office of the County Recorder.

Mobile home

A structure that is transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation as a dwelling when connected to the required utilities. Recreational vehicles or travel trailers are not included.

Mobile home court

Any privately owned place where mobile homes are placed in such a manner as not to qualify as single family residences pursuant to Section 2.3 of this ordinance.

Non-conforming uses and buildings

Uses and buildings which do not conform to the provisions of this ordinance for the zone in which said uses or buildings are located.

Off-street parking

Space allotted on private property for use as a spot to temporarily keep vehicles.

Park

An area open to public access which may or may not include facilities to enhance recreational use such as archery ranges, beaches, boat docks, tennis courts, playground equipment and hiking trails. Park facilities do not include commercial or retail establishments or residential structures.

Ranch

Same as “farm”.

Recreational Vehicle

A vacation trailer or other vehicular or portable unit which is either self-propelled or towed or is carried by a motor vehicle and which is intended for human occupancy and is designed for vacation or recreational purposes but not a residential use.

Right of way

A strip of land dedicated or acquired for use as a public thoroughfare, which normally includes streets, sidewalks and other public utilities or service areas.

Sanitary landfill

A tract of land used for disposal of solid and liquid waste not produced on the site and subsequent burial of such waste according to regulations and provisions of this ordinance.

Sign

Any structure or device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or governmental agency.

Slaughterhouse

A building used for the killing, butchering or processing of animals for human consumption.

Street

A public thoroughfare which affords the principal means of access to abutting properties.

Structure

A combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences less than six feet in height, retaining walls, rockeries and similar

improvements of a minor character less than three feet in height.

Substantial Improvement

Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

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

Utilities

Installations for conducting water, sewage, gas, electricity, television, storm water and similar facilities providing service to and used by the public.

Variance

A relaxation of the requirements of the Zoning Ordinance as to lot size, lot coverage, width, depth, setback distances, road access, building height or other ordinance provisions, not to include the allowance of any use other than those allowed under existing district regulations and boundaries.

SECTION 2.1 ACCESSORY USES

Accessory uses, as defined in Section 1.8 of this ordinance, shall be allowed in any zone district to which the ordinance applies.

SECTION 2.2 HOME OCCUPATIONS

Home occupations, as defined on page 4 are permitted as a conditional use in any zoning district and shall require a Conditional Use Permit. The procedure for application and issuance of a Conditional Use Permit is presented in Section 4.5 of this ordinance.

SECTION 2.3 MOBILE HOMES AND MOBILE HOME COURTS

When not located in a designated mobile home court, mobile homes and prefabricated housing shall be considered single-family residences for the purposes of this ordinance and are therefore subject to all regulations and inferences applied to such residences as defined for each zone herein established. In addition, it is hereby established that garages used for parking and/or storage of motor vehicles shall be unattached to any mobile home whether located in or outside of a mobile home court.

Operation of a mobile home court shall require an Operator’s Permit which may be obtained from the Planning and Zoning Commission.

The following provisions must be met prior to issuance of an Operator's Permit:

1. Mobile home courts shall be a minimum of 20 acres in area;
2. Individual mobile home lots shall be a minimum of 6,000 square feet in area and be a minimum of 60 feet in width.
3. No more than one single-family mobile home shall be placed on each lot;
4. Minimum setback of mobile homes or other structures shall be 25 feet from any roadway and 10 feet from any lot line;
5. Maximum intensity of buildings or other structures shall not exceed 40 percent of the lot area;
6. Underground utility hookups shall be provided for each lot. These utilities include water, sewer, electricity and telephone. Water and sewer systems must meet minimum county, state and federal standards for health and sanitary conditions;
7. Individual streets, separate from existing public roads, shall be required to serve all lots in any mobile home court. Access to previously existing public roads from any mobile home court shall be limited to one access per 1/4 mile. A frontage road shall be required along all frontage of a mobile home court which lies along a previously existing public road;
8. Where individual mobile home units in a mobile home park are served by a private street system, those streets shall:
 - a. where parking is to be allowed on both sides of the street, provide a driving surface of forty-four feet within an easement of fifty feet;
 - b. where parking is prohibited on both sides of the street, provide a driving surface of twenty-four feet within an easement of thirty feet;
 - c. provide an additional easement width sufficient to accommodate a four foot wide pedestrian walkway on one side of the street;
 - d. all streets and walkways shall be hard surfaced;
 - e. be accessible at all times to emergency vehicles.
9. All entrances, exits and streets shall be lighted by electricity. At least one sixty watt light shall be provided for each one hundred lineal feet of street.

SECTION 2.4 SEWAGE DISPOSAL

Certain soil types in Stutsman County have severe limitations for soil absorption disposal systems (septic tanks) as is indicated in the maps and tables of the Soil Conservation Service Survey of Stutsman County Soils. Said soils shall be avoided when designing a septic tank system. If said soils cannot be avoided, proof that adequate precautionary steps will be taken, shall be provided to the Planning and Zoning Commission.

All soil absorption systems shall adhere to the following restrictions:

1. Soil absorption systems shall be located at a point lower than elevation grade of any nearby water well or spring;

2. Soil absorption systems shall not be located within fifteen(15) feet of a dwelling, within one hundred(100) feet of a private water supply, or within one hundred(100) feet of any public water supply, stream, river, lake, reservoir or other water area;
3. No part of a seepage pit or drain field shall be located closer than fifteen(15) feet to any property line nor closer than one hundred twenty(120) feet to any lake or drainage ditch.

A soil absorption system shall not be constructed on any lot smaller than one(1) acre (43,560 square feet) in soils with slight limitations; nor on any lot smaller than two(2) acres (87,120 square feet) in soils with severe sewage disposal limitations.

Inspection and approval by the County Sanitarian of any proposed sewage disposal system site shall be required prior to the issuance of a building permit for said site or to the installation of any sewage disposal system. Disapproval of any such site by the County Sanitarian may be appealed to the County Planning and Zoning Commission, which shall then either uphold or reverse the decision of the County Sanitarian.

The County Sanitarian and/or the County Planning and Zoning Commission may require percolation testing of the proposed site prior to its decision. The costs of said testing shall be borne by the developer of the test site(s).

SECTION 2.5 STRUCTURES IN FLOOD PRONE AND FLOOD HAZARD AREAS

Construction of any structure other than agricultural buildings in flood prone areas and flood hazard areas identified by the Federal Insurance Administration, the State Water Commission or other government body shall be in accordance with the regulations set forth in this section.

Description

The flood hazard areas in Stutsman County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base.

Methods of Reducing Flood Losses

In order to limit flood damages in Stutsman County, this ordinance has provisions for restricting, prohibiting or guiding development activities that are subject to flood damage.

Permit Review

All building permit applications shall be reviewed by the County Planning and Zoning Commission to determine if the proposed development adversely affects the flood carrying capacity of a flood prone area to assure that all development sites are reasonably safe from flooding. All applications shall also be reviewed to determine if all necessary permits have been obtained from those Federal, State or Local agencies from which prior approval is required. For the purposes of this ordinance,

“adversely affects” means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent over-bank areas.

- a. If it is determined that there is no adverse effect and the development is not a building, then the permit may be granted.
- b. If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer) for the proposed development shall be required.
- c. If the proposed development is a building, then the following provisions of this ordinance shall apply:

General Standards

If a proposed building site is located in a flood prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall conform to the following standards:

1. Anchoring

- a. All new construction and substantial improvements shall be anchored to prevent flotation collapse or lateral movement of the structure.

2. Construction Materials and Methods

- a. All new construction and substantial improvements shall be constructed using methods and materials that minimize flood damage.

3. Utilities

- a. All new and replacement water supply systems and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- b. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4. Subdivision Proposal

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;
- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

SECTION 2.6 GEOPHYSICAL EXPLORATION REQUIREMENTS

Any persons intending to carry out geophysical (including seismic) exploration activities in Stutsman County shall obtain a Geophysical Exploration permit at least two weeks prior to commencement of such activities. In addition, a copy of the surety bond filed with the ND Industrial Commission shall be affixed to the permit. Only the County Commission may issue a Geophysical Exploration permit, it may also at its discretion suspend or revoke said permit, with or without prior notice to the permit holder or other parties. The fee for geophysical exploration shall be as follows:

Geophysical Exploration Permit.....	\$50.00
Drilling Fee-first 10 holes.....	\$25.00 per hole
-after first 10 holes.....	\$10.00 per hole

Suspension or revocation of a Geophysical Exploration Permit shall be accompanied by cessation of all activities at all sites covered by said permit, excepting those activities specifically allowed to continue, which shall be specified in written form. Notice of suspension or revocation of any Geophysical Exploration Permit shall be delivered to the permit holder or any of his agents at any site covered by the permit or at any office of the permit holder. Any damages, special meeting costs, or other costs associated with any Geophysical Exploration Permit or exploration activities which are incurred after issuance of said permit may be assessed against the permit holder.

Geophysical exploration activities are further required to be conducted in compliance with all State and Federal laws and regulations relating thereto, including but not limited to those summarized in Appendix I.

SECTION 2.7 NON-CONFORMING USES AND BUILDINGS

Any building, structure or use which is/was lawful prior to the passage of this ordinance, but does not conform to the provisions of the ordinance, shall be regarded as a non-conforming use. The continuation of non-conforming uses shall be allowed, except as elsewhere provided in this chapter.

If a non-conforming use is discontinued for a period of 24 consecutive months, any subsequent use of the property shall conform to the regulations of that zoning district in which the property is located, unless a Conditional Use Permit is obtained.

Repair or restoration of non-conforming structures or portions thereof shall be allowed, provided that the structure’s volume when it became non-conforming is not increased. Any structural alteration that would reduce the degree of non-conformity, or change the use to a conforming use, shall be permitted. If a non-conforming structure is damaged to the extent that the cost of repairs is greater than 50 percent of the replacement cost, the use shall be discontinued.

A non-conforming use may not be changed to another non-conforming use, nor enlarged or extended except as cited above.

If two or more lots or a combinations of lots and portions of lots with continuous frontage or abutting boundaries in single ownership are of record at the time of enactment of this ordinance, and if all or part of the lots do not meet the requirements established for the zoning district in which they are located, the lands involved shall be considered to be an undivided parcel for the purpose of this ordinance.

No portion or parcel of land shall be used or sold in a manner which diminishes compliance with the terms of this ordinance.

SECTION 2.8 SIGNS

All signs must be erected in compliance with any and all state and federal laws and regulations applying thereto. All signs shall be located in commercial or industrial zoning districts or within 600 feet on either side of the roadway of an operating commercial or industrial site. No two signs shall be placed less than 300 feet apart. No sign may be located on nor suspended above any public road right-of-way. Any sign upon which the face of the sign is located less than 12 feet above grade at the lowest point of said sign face must be located a minimum of 75 feet from the centerline of the nearest vehicular traffic lane. Signs may not be located in a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal or device or obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic. Erection of signs shall require a building permit. Alteration of the advertising upon the face of the sign shall not require any further permit nor consultation. Upkeep of signs shall be the responsibility of the owner. Failure to maintain signs in acceptable appearance may result in revocation of the owner's Certificate of Compliance. The County may subsequently cause such signs to be removed and the cost of the removal shall be billed to and paid by the owner.

SECTION 2.9 ANIMAL FEEDING OPERATIONS

1. General Provisions
 - A. Definitions
 - B. Equivalent Animal Numbers
 - C. Environmental Provisions
 - D. Holding Facilities
 - E. Enforcement
 - F. Penalty
 - G. Severability
 - H. Closure and Abandonment
 - I. Complaints
2. Setback Requirements
 - A. Water Resource Setbacks
 - B. Odor Setbacks
3. Conditional Uses
 - A. Permit Procedures
 - B. Fees
 - C. Application Requirements

2.9.1 General Provisions

2.9.1A Definitions

Terms used in this ordinance have the same meaning as given by the laws and rules of the state of North Dakota, specifically chapter 33-16-03 of the North Dakota Administrative Code. The definitions for these terms and for additional terms (bold print) are:

“Agriculture (Farming, Ranching)” means the art or science of cultivating the soil and activities incidental thereto; cultivating land for production of agricultural crops or livestock; raising, feeding, or producing livestock, poultry, milk, or fruit. The term shall include incidental retail selling by the producer of products raised on the premises, provided that space necessary for parking of vehicles of customers shall be furnished off the public right-of-way. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies, provides grain, harvesting grain, or other farm services. See also Section 11-33-02 of the North Dakota Century Code.

This definition shall replace the definition of agriculture as stated on page 2 of these Ordinances.

“Animal feeding operation” means a place where: livestock have been, are or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops or other vegetation are not normally managed or sustained for grazing during the normal growing season; and , animal waste or *manure* accumulates. This term does not include an *animal wintering operation*. Two or more feeding operations under common ownership shall be considered a single animal operation, if they use a common system for manure handling.

“Animal Feeding Operation Structure” means lagoon, formed manure storage, wash water storage structure, earthen manure storage basin, or any animal confinement building.

“Animal wintering operation” means 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 (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 150 days and that are not retained for breeding purposes.

“Applicant” means an individual, corporation, group of individuals, partnership, joint venture, owners, or any other business entity having charge or control of one or more animal feeding operations.

“Aquifer” means a geologic formation, group of formations, or part of a formation capable of storing and yielding ground water to wells and springs.

“Closure” means taking of those actions to close and reclaim a feedlot. Closure actions may include, but are not limited to, cleaning of buildings, disposal of manure, and demolition and/or removal of all manure storage structures.

“**Due process**” involves two essential elements; (1) notice and (2) an opportunity for a hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.

“Earthen Manure Storage Basin” means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from an animal feeding operation and from which accumulated wastes from the basin are removed at least once a year.

“Established Residence” means any residence established by a personal presence, in a fixed and permanent dwelling with an intent to remain there.

“Existing” means an animal unit handling facility in place on the date this ordinance is effective.

“Farming” - see Agriculture

“Feedlot” - delete definition as found on page 4 of these Ordinances.

“Flood plain” means lowland and relatively flat areas adjoining inland and coastal waters that are inundated by a one-hundred (100) year flood.

“Ground Water” means water below the land surface in a geological unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

“Lagoon” means an impoundment made by excavation or earth fill for biological treatment of animal or other agricultural wastes. Lagoons can be aerobic, anaerobic or facultative, depending on their loading and design.

“Livestock” means 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 fur animals raised for pelts.

This definition shall replace the definition of livestock as defined on page 5 of these Ordinances.

“Manure” means 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.

“Operator” means 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*.

“Pollution, Air” means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal, or plant life or which unreasonably interferes with the enjoyment of life or property.

“Pollution, Water” means manmade or man-induced alteration of the physical, chemical, biological integrity of any Waters of the State.

“Shall” means that the requirement is mandatory, rather than optional.

“Source-Water Protection Area” means a boundary which defines the surface and subsurface area surrounding a water well or a well field, which supplies a public water system and through which contaminants are likely to move toward and reach such water well or field.

“Stream” means any running body of surface water that ordinarily flows within a channel. This includes both perennial and intermittent streams.

“Surface water” means *water of the state* located on the ground surface such as lakes, reservoirs, rivers and creeks.

“Waters of the state” means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, 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 just defined.

2.9.1B EQUIVALENT ANIMAL NUMBERS

An “animal unit equivalent” is a unitless number developed from the nutrient and volume characteristics of *manure* for a specific *livestock* type. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific livestock type which produce comparable bulk quantities of *manure*. The animal unit equivalents for types of *livestock* and the numbers of *livestock* for facility size thresholds of 500 animal units (a.u.) and so forth, are listed in the following table.

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		500 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	250 hd	500 hd	1,000 hd	2,500 hd
1 dairy cow	1.33	375	750	1,500	3,750
1 mature beef	1.0	500	1,000	2,000	5,000
1 beef feeder finishing	1.0	500	1,000	2,000	5,000
1 beef feeder backgrounding	0.75	666	1,333	2,667	6,667
1 mature bison	1.0	500	1,000	2,000	5,000
1 bison feeder	1.0	500	1,000	2,000	5,000
1 swine, > 55 lbs	0.4	1,250	2,500	5,000	12,500
1 goose or duck	0.2	2,500	5,000	10,000	25,000
1 sheep	0.1	5,000	10,000	20,000	50,000
1 swine, nursery	0.1	5,000	10,000	20,000	50,000
1 turkey	0.0182	27,500	55,000	110,000	275,000
1 chicken	0.01	50,000	100,000	200,000	500,000

2.9.1C 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.

2.9.1D HOLDING FACILITIES

Earthen Manure Storage Basin

- (a) Plans for an earthen structure for any operation shall be approved by Professional Engineer (P.E.) Registered in the State of North Dakota.
- (b) Soil testing to determine the engineering properties of the earthen structure and natural liner materials shall be conducted under the supervision of a qualified professional soil scientist.
- (c) The bottom side slopes shall be made of relatively impervious material that will permit a maximum seepage rate not to exceed 1/56 inch per day.
- (d) The bottom of the storage facility shall be at least four (4) feet above the highest water table elevation.
- (e) Any manure storage structure which is unused or abandoned for three (3) or more years shall have proper closure to the satisfaction of the State Health Department.

All manure holding facility valves shall have proper security measures to prevent accidental or malicious opening.

2.9.1E ENFORCEMENT

2.9.1E(1) County Zoning Administrator

This Animal Feeding Operation Ordinance shall be administered by the County Board with supervisory assistance from the County Zoning Administrator and supplemental assistance from other County departments. The Zoning Administrator shall have the following duties.

- (a) Conduct preliminary administrative reviews of permits, management plans and other information as required by this Ordinance and forward recommendations for disposition to the County Board.
- (b) If there is probable cause to believe work is being done or a condition exists that is contrary to the provisions of this Ordinance, the Zoning Administrator may recommend to the County Board that a stop work order be issued. Such notice shall be served upon the owner and/or operator in accord with the provisions of Rule 4 of the North Dakota Rules of Civil Procedure.
- (c) Mail notice of authorization to proceed to the owner and/or operator after the County Board has determined that a violation of this Ordinance, for which a stop work order was issued, has been remedied.
- (d) Review applications to ensure compliance with this Ordinance.
- (e) Mail permits issued by the County Board to the owner and/or operator.
- (f) Maintain records and permits as required by this Ordinance. Any records required to be maintained by the State Health Department shall be provided by the Zoning Administrator upon request.
- (g) Provide open records to feedlot owners and operators and the general public concerning this Ordinance in accord with the open records laws.
- (h) Inspect feedlot operations to insure compliance with the standards of this Ordinance.

2.9.1E(1) County Board

The County Board has responsibility for decisions on zoning. Although the Board may use the Planning and Zoning Commission or the Zoning Administrator to administer files, investigate complaints, devise draft policies, and/or recommend stop work orders or revocation of permits; final decisions on matters of zoning, including but not limited to: whether to issue or lift a stop work order, whether to grant or revoke a permit, are matters for the discretion of the County Board; not delegation.

In the event of a violation of this ordinance or a judgement on a civil action by the North Dakota Department of Health, the County, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the *operator* corrects or abates the cause(s) of the violation. The County may institute appropriate actions or proceedings, including but not limited to, requesting injunctive relief, to prevent, restrain, correct or abate such violations. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the County, the permit may be revoked. All costs incurred for corrective action may be recovered by the County in any manner recommended by the Office of the States Attorney. These and other

remedies, as determined appropriate, may be imposed upon the owner, operator or other responsible person either in addition to or separate from other enforcement actions.

2.9.1F PENALTY

If any Animal Feeding Operation is in violation of any portion of this Ordinance or regulation thereunder, the offending party may be criminally prosecuted under the provisions of North Dakota Century Code section 11-33-21, a class B misdemeanor.

If such violations are not remedied within a reasonable period of time as set by the Board of County Commissioners, the Special Use Permit for Animal Feeding Operations may be revoked. Such notice shall be served upon the owner or operator according to the North Dakota Rules of Civic Procedure.

2.9.1G SEVERABILITY

If any paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.

If the application of this Ordinance to any particular property, building, or structure is for any reason held to be invalid or unconstitutional by a decision of competent jurisdiction, such decision shall not affect the validity of any other property, buildings, or structures.

2.9.1H CLOSURE AND ABANDONMENT

The landowner, owner and operator of any concentrated animal feeding operation shall be responsible for the ongoing management of manure and the final closure of the feedlot including the cleaning of buildings and proper disposal of manure from all manure storage structures and demolition and/or removal of all manure storage structures.

Owners and operators of any concentrated animal feeding operation shall have joint and several liability for clean-up, closure or remedy of abandoned sites.

2.9.1I COMPLAINTS

Any complaint against a Concentrated Feeding Operation must be in writing and signed.

All such complaints shall be investigated by the Zoning Administrator and, if necessary, referred to the State Department of Health or other appropriate agency. The Stutsman County Sheriff will assist the Zoning Administrator by conducting investigation of complaints of zoning ordinance violations.

2.9.2 SETBACK REQUIREMENTS

2.9.2A WATER RESOURCE SETBACKS

The *operator* of a new *animal feeding operation* that has more than 500 animal units shall not locate or establish that operation:

- A. Within ½ mile of a delineated source of water protection area for a public water system. 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. Within a designated 100 year flood plain.

2.9.2B ODOR SETBACKS

An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any existing *animal feeding operation*. The separation distances, or setbacks, are listed in the following table. An owner of property who is an *operator* may locate the owner’s residence or business within the setbacks.

Setback Distances for <i>Animal Feeding Operations</i>			
Number of Animal Units	Hog Operations	Other Animal Operations	
fewer than 500	none	none	
501- 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)	
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)	
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)	
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)	
	Animal Units	Hog Operations	Other Animal Operations
Federal or State Highway ROW	Less than 500	None	None
	500 to 1,000	½ Mile	½ Mile
	1,001 to 10,000	½ Mile	½ Mile
	More than 10,000	½ Mile	½ Mile

County Road ROW and Adjacent Property Lines	Less than 500	None	None
	500 to 1,000	150 Feet	150 Feet
	1,001 to 10,000	150 Feet	150 Feet
	More than 10,000	150 Feet	150 Feet

The *operator* of a new *animal feeding operation* shall locate the site of that operation from the above stated existing areas so as to exceed the corresponding listed setback.

If notified in writing by an *operator* of a planned future expansion of an *animal feeding operation*, the local unit of government may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

The County may, upon recommendation of the Planning and Zoning Commission or Zoning Administrator, increase or decrease a setback distance for a 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, environmental or public welfare concerns.

2.9.3 CONDITIONAL USES

2.9.3A PERMIT PROCEDURES

Applicability

The *operator* of a new *livestock* facility or an *existing livestock* facility, which meets the definition of an *animal feeding operation* and which is a conditional (or special) use of land as listed below, shall apply for a conditional (or special) use permit.

1. A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 500 animal units is a conditional (or special) use of land.
2. An existing *animal feeding operation* that expands to handle more than 500 animal units is a conditional (or special) use of land.

Whenever the capacity of an *animal feeding operation* is expanded to handle more than 1,000 or 10,000 animal units, the *operator* shall apply for a new conditional (or special) use permit.

Whenever a signed complaint has been received by the Zoning Administrator or the North Dakota Health Department and inspection reveals that the animal feeding operator should have had a permit pursuant to this Ordinance, the operator shall apply for a Special Use Permit.

Whenever a change in ownership or operational control occurs, the new owner or operator shall apply for a new Special Use Permit.

The Zoning Administrator will review permit applications and forward them with recommendation for approval or denial to the County Board. If the recommendation is denial, the Zoning Administrator will give the reasons for that recommendation in writing to the Board and the applicant. The Board's consideration of the application will be taken up at a meeting of the Board noticed in accord with the open meetings laws. The Discussion of the Board in relation to approval or denial of the application will be recorded on audio tape and preserved.

Ownership Change

An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the County of the sale or the transfer of the ownership of that operation.

Operating Change

An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the Zoning Administrator of intent to include an alternate livestock type. The notice shall be given at least one hundred and twenty (120) days prior to the anticipated date of the change.

Procedure

1. Application for a conditional use(or special use) permit shall be submitted to the Zoning Administrator for tentative approval. The Zoning Administrator shall notify the Department of Health that it has received such application. The conditional use(or special use) permit application shall be available for public inspection at the Office of the Zoning Administrator for fourteen(14) days prior to the Public Hearing.
2. The Zoning Administrator shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new *animal feeding operation* or the expansion of an existing animal feeding operation. This notification must occur within 21 days of receiving the application. Along with the application, the applicant shall provide the names and addresses of all landowners to be notified.
3. Upon receipt of the Special Use Permit application, the County Planning and Zoning Commission shall hold at least one (1) Public Hearing in a location to be prescribed by the Planning and Zoning Commission. At least fourteen (14) day in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the County and any other such paper as deemed necessary by the Zoning Administrator. All townships within the set back requirements shall be notified by U.S. mail as to the time and place of the Public Hearing.

4. The County Planning and Zoning Commission shall report its findings to the Board of County Commissioners.
5. Following tentative approval or denial of the application by the Board of County Commissioners, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
6. The applicant shall then forward its application for a conditional (or special) use permit, together with the tentative approval by the Board of County Commissioners, to the North Dakota Department of Health.
7. Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the County of its decision.
8. The conditional (or special) use permit will become final following the granting of a permit by the Department of Health.
9. A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator must re-apply.
10. No construction shall take place until the permit has been issued by the North Dakota Department of Health.

2.9.3B FEES

The fee for each Special Use Permit application shall be similar to the building permit fees of this Ordinance.

2.9.3C APPLICATION REQUIREMENTS

- (1) The application for a conditional use (or special use) permit to operate a facility for an *animal feeding operation* shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The site plan shall include building and waste system locations, ground elevations, setback from roads and/or highways and adjoining property, current land use, location of any active or abandoned wells, the location of any surface water, the drainage patterns of the site, and all existing or proposed accesses.
- (2) Owners name, address and telephone number.
- (3) Legal description of the site
- (4) Number and type of animals
- (5) Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.

- (6) A copy of the application submitted to the Department of Health including photocopies of the manure management and operation plan, the management plan for fly and odor control, the management plan for disposal of dead animals, and the nutrient management plan.
- (7) Information on soils and aquifers.
- (8) Other information as required in the application and/or requested by the Zoning Administrator or the Planning and Zoning Commission.

Miscellaneous

- (1) The applicant shall develop, maintain, and follow a nutrient plan to ensure safe disposal of manure for the protection of surface and ground water as per guidelines listed in the latest draft of the “North Dakota Department of Health Guidelines for Approval of Livestock Waste Systems”. A copy of such plan as submitted to the North Dakota Health Department shall be provided to the Zoning Administrator.
- (2) The applicant shall develop, maintain, and follow a manure management and operation plan to ensure safe storage and application of manure and to protect surface and ground water as per North Dakota Health Department requirements. A copy of such plan shall be submitted to the zoning Administrator.
- (3) The Planning and Zoning Commission may request information relating to an animal feeding operation not contained in these regulations.
 - (4) The Planning and Zoning Commission may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Planning and Zoning Commission considers necessary to protect the public health, safety, and welfare of Stutsman County citizens. This shall include additional monitoring if the possibility exists that groundwater or surface water quality may be compromised.
 - (5) Any and all cost to implement any additional conditions as set forth by the Planning and Zoning Commission shall be borne by the owner of the facility.
 - (6) When considering an application, the Planning and Zoning Commission will take into consideration current and past violations relating to animal feeding operations that the applicant or operator has or has had an interest in .
 - (7) All State and Federal regulations shall be adhered to.

SECTION 3.1 ZONING DISTRICTS ESTABLISHED

Stutsman County is hereby divided into zoning districts for purposes of controlling the use of lands and structures as authorized by Section 11-03-02 of the NDCC. Said districts shall be known as:

- A - Agricultural Zone
- RR - Rural Residential Zone
- RC - Residential Community Zone
- C - Commercial Zone
- I - Industrial Zone
- R/O - Recreation/Open Space Zone

The zoning districts as described in this ordinance shall be mapped. Said maps shall be known as the Stutsman County Zoning Map, shall have attached or be filed with all materials necessary for the interpretation of the maps, shall have date of adoption and date of each amendment to the map printed on the map and shall be on file in the office of the County Auditor.

SECTION 3.2 AGRICULTURAL DISTRICT (A)

The intent and purpose of the A Zone is to allow and encourage the use of land so designated for agricultural purposes and to discourage those uses that might interfere with or be detrimental to carrying out agricultural practices. Further, the provisions of this district are set forth to provide for other low density uses which do not place unreasonable demands upon rural public services and are in consonance with the orderly and efficient development of the social, economic and physical environs of Stutsman County.

Permitted Uses

1. All types of farming and ranching operations including the raising of livestock and the raising, harvesting and selling of crops, forest products, dairy products, poultry and poultry products;
2. Truck gardening, apiaries, greenhouses, fur farming and the sale of only those garden, apiary, greenhouse and fur products which have been grown on the premises;
3. Public and private conservation/recreation areas;
4. Churches, cemeteries, public, private and parochial schools, subject to the setback requirements detailed below;
5. Animal hospitals or clinics;
6. Single-family non-farm residences on lots being subject to the requirements detailed in the A Zoning District Regulations presented below;
7. Community halls(publically owned);
8. Communication towers, lines and equipment;
9. County road maintenance operations, including sand, gravel and fill, excavation and preparation activities.

Conditional Uses

The following uses may be permitted in the A Zone subject to the granting of the Conditional Use Permit:

1. Livestock sales arenas, livestock feedlots and slaughterhouses as previously defined, provided that: no livestock sales arenas, feedlot or slaughterhouse shall be located within 2,640 feet of any natural surface water body that contains water on an average of more than two months of any given year;
2. Commercial dog kennels;
3. Commercial grain elevators;
4. Water treatment facilities, sewage lagoons and sediment ponds, provided that: written proof that all proposed water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative;
5. Sanitary landfills, solid waste disposal facilities and hazardous waste deposition and/or storage sites, provided that: solid waste disposal facilities as regulated by this section shall include all facilities for the incineration or disposal of solid waste or solid waste residue which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. Hazardous waste deposition and/or storage facilities as regulated by this section shall include all facilities for the disposal or storage of hazardous waste which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. Written proof that all proposed sanitary landfills solid waste disposal facilities and hazardous waste deposition and/or storage sites meet or exceed the approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative. A solid waste disposal facility or a hazardous waste deposition and/or storage site may be allowed in any "A" Agricultural Zone as a conditional use provided:
 - a. It is located at least one-half (1/2) mile from any residence or residentially zoned area unless written approval is obtained from the owner of any residence within this area.
 - b. It is continuously licensed and approved by the State Health Department as to location and operation.
 - c. There is no substantive evidence that the facility will endanger the public health or the environment.
 - d. The Conditional Use Permit will be valid for a period of time set by the Board of County Commissioners. For the permit to be approved sixty percent (60%) of all property owners within one-half (1/2) mile of the proposed location must approve of the proposed facility.
6. Oil and/or gas production, extraction and drilling provided that: any lubricants, anti-corrosives or other foreign substances used in or resulting from the drilling of oil and/or gas wells which are not consumed in the actual drilling process shall not be disposed of at nor near the drilling site. Said substances shall be disposed of in an existing approved sanitary landfill or retained by the driller. Any water emerging from sub-glacial-drift

- aquifers during drilling and/or extraction of oil and/or gas shall not be applied to surrounding land nor allowed to enter surface waters;
7. Governmental administrative, maintenance and research facilities;
 8. Commercial surface and subsurface mineral extraction;
 9. Airports;
 10. Campgrounds, seasonal recreational camps, commercial stables, gun clubs and recreational resorts;
 11. Wrecking, junk and salvage yards.

A Zone District Regulations

1. Single family non-farm residences shall be located on lots of not less than five acres and no more than one such lot or residence may be situated on any legal quarter-quarter section located in the A Zone;
2. Minimum setback of non-farm structure shall be 100 feet from any public road right-of-way and 50 feet from any lot line of any lot of record;
3. Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 100 feet from any public right-of-way.

SECTION 3.3 RURAL RESIDENTIAL (RR) ZONE

The intent and purpose of the RR Zone is to allow the development of moderate-density residential areas in a manner that does not interfere with normal farming and business activities and is not unduly destructive to the infrastructure or environment of Stutsman County.

Permitted Uses

1. Agricultural;
2. One and two family residences;
3. Schools, churches and cemeteries;
4. Public parks, playgrounds and open spaces;
5. Community meeting halls.

Conditional Uses

1. Medical care facilities and nursing homes;
2. Mobile home courts, provided that the provisions of Section 2.3 are met;
3. Animal hospitals or clinics;
4. Commercial dog kennels;
5. Government administrative, maintenance or research facilities;
6. Campgrounds;
7. Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any and all North Dakota State agencies or officials shall be required prior to approval of a Conditional Use Permit for such use.

Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

RR Zone District Regulations

1. The minimum size of a RR District shall be 10 acres;
2. Minimum lot size shall be 20,000 square feet for lots served by public water or sewer and 1 acre for lots not served by public water or sewer;
3. Minimum setback of any structure shall be: 100 feet from any right-of-way & 50 feet from any lot line;
4. Any structure exceeding 35 feet in height shall require a Conditional Use Permit, with the exception of metal towers such as windmills and antennas;
5. The maximum intensity of buildings or other structures on any lot shall be 30% of the lot area;
6. Any two family residential structures shall include off-street parking space for at least two full size automobiles;
7. Points of ingress and egress from any public road shall be limited to one per 1/4 mile in or from any RR Zone properties. A frontage road shall be constructed as necessary to allow access to public roads via the allowable points of ingress and egress;
8. Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 100 feet from any public right-of-way.

SECTION 3.4 RESIDENTIAL COMMUNITY ZONE (R-C)

The intent and purpose of the R-C Zone is to preserve the integrity and character of rural residential areas and incorporated or unincorporated cities and small towns in Stutsman County.

Permitted Uses

1. Agriculture, excluding the keeping of livestock;
2. Single -family residences;
3. Multi-family residences containing four units or less;
4. Schools, churches, cemeteries;
5. Public parks, playgrounds and open spaces;
6. Community and meeting halls;
7. Medical care facilities and nursing homes;
8. Mobile home courts, provided the provisions of Section 2.3 are met.

Conditional Uses

1. Campgrounds;
2. Keeping of livestock on lots of 30,000 square feet or more;
3. Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all proposed water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any or all North Dakota State agencies

or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

R/C Zone District Regulations

1. The minimum size of an R/C District shall be 40 acres;
2. Minimum lot size shall be 5,000 square feet for lots served by public water or sewer and 20,000 square feet for lots not served by public water or sewer;
3. Minimum setback of any structure shall be: 25 feet from any public right-of-way, 10 feet from any lot line;
4. Any structure exceeding 35 feet in height shall require a Conditional Use Permit with the exception of metal towers such as windmills and antennas;
5. The maximum intensity of buildings or other structures on any lot shall be 40% of the lot area;
6. Any two or more family residential structures shall include off-street parking space for at least one full-size automobile per housing unit.

SECTION 3.5 COMMERCIAL (C) ZONE:

The intent and purpose of the C Zone is to provide areas in the county in which commercial sales and service establishments may be situated such that they compliment the surrounding land uses, economy and social structure.

Permitted Uses

1. Agriculture, including any permitted use in an A Zone, as listed in Section 3.2;
2. Retail business;
3. Auction houses or stores, excluding livestock sales;
4. Automobile, motorized vehicle, boat, motor home and implement sales, including repair and storage facilities;
5. Business, professional and government offices;
6. Repair shops, upholstery shops, auto body shops and equipment retail shops;
7. Hotels, motels and seasonal campgrounds less than one acre in size;
8. Lodges, clubs, fraternal and community meeting halls;
9. Warehousing, not to include any outside storage;
10. Fabrication and manufacturing enterprises occupying not more than 100,000 square feet of floor space;
11. Commercial eating and drinking establishments;
12. Race tracks, drive-in theaters, movie houses, gun clubs, carnivals, circuses and other similar entertainment enterprises;
13. Animal hospitals or clinics;
14. Governmental research or maintenance facilities;
15. Communication towers, lines, equipment, maintenance facilities and offices.

Conditional Uses

1. Residential dwellings of not more than four housing units;
2. Commercial dog kennels;
3. Medical care facilities and nursing homes;
4. Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

C Zone District Regulations

1. Minimum lot size shall be 20,000 square feet for lots served by public water and sewer and 1 acre for lots not served by public water and sewer;
2. Minimum setback of any structure shall be 100 feet from any public road right-of-way and 10 feet from any lot line;
3. Any structure exceeding 35 feet in height shall require a Conditional Use Permit, with the exception of metal towers such as windmills and antennas;
4. Off-street parking shall be provided at the minimum rate of 2 spaces per management employee on the premises;
5. All loading docks, truck bays, etc., shall be located in such a manner that no public right-of-way is wholly or partially blocked during normal cargo loading or unloading procedures;
6. Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 100 feet from any public road right-of-way.

SECTION 3.6 INDUSTRIAL (I) ZONE

The intent and purpose of the I Zone is to allocate specific locations for large-scale manufacturing, processing and/or related enterprises where such enterprises may utilize natural and manmade resources to their benefit while imposing minimal adverse effects on surrounding uses.

Permitted Uses

1. Agriculture;
2. Processing of food, fiber, agricultural products, petroleum and mineral resources;
3. Manufacturing and fabrication enterprises;
4. Railroad yards, including maintenance, storage, repair facilities, and offices;
5. Communication towers, lines, equipment, maintenance facilities, and offices;
6. Water treatment facilities, sewage lagoons and sediment ponds, provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed that approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use.

- Said written proof shall be signed by the acting agency director or official or his/her authorized representative;
7. Rock, sand or gravel excavation, crushing and handling;
 8. Truck and freight terminals, warehousing, bulk terminals involving dry, liquid and gaseous substances;
 9. Concrete and concrete product plants.

Conditional Uses

1. Single-family residential dwellings;
2. Temporary work camps, provided that: such camps shall provide occupancy only for those persons directly involved in the construction of industrial facilities during such construction. No such camp shall be in existence for more than 18 months. All such camps must be approved prior to occupancy by the County Sanitarian;
3. Electrical generation facilities with greater than five megawatts (5 MW) rate output;
4. Livestock slaughter and meat processing operations, provided that: written proof shall be provided to the Stutsman County Planning and Zoning Commission that any livestock slaughter and/or meat processing operations meet or exceed State Health Department standards and are approved by the County Sanitarian shall be furnished prior to commencement of any such operations;
5. Wrecking, junk and salvage yards.

I Zone District Regulations

1. All enterprises in the I Zone shall comply with all regulatory and legislative requirements set forth by any and all federal, state and local government agencies and offices. Written verification of such compliance shall be submitted to the Stutsman County Planning and Zoning Commission prior to commencement of operations in an I Zone.
2. Minimum lot size in I Zone shall be 25,000 square feet;
3. Minimum setback shall be 50 feet from any lot line and 100 feet from any public road right-of-way;
4. Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1st of any year shall be 100 feet from any public road right-of-way.

SECTION 3.7 RECREATION/OPEN SPACE (R/O) ZONE

The intent and purpose of the R/O Zone is to encourage the conservation of public and private lands to be used for outdoor recreation and to preserve natural features and wildlife habitat.

Permitted Uses

1. Agriculture;

2. Harvesting of natural crops;
3. Raising of game animals, fowl and fish;
4. Public parks, recreation areas, playgrounds, picnic areas and natural preserves;
5. Flood water management structures;
6. Historical structures and monuments;
7. Structures and facilities used directly for the administration and/or management of lands in the R/O district.

Conditional Uses

1. Residential dwellings, either seasonal or permanent;
2. Commercial retail businesses related to recreation, such as marinas, bait shops and souvenir shops;
3. Private docks, ramps and boat houses;
4. Campgrounds.

SECTION 4.1 DESIGNATION OF ADMINISTRATIVE OFFICIALS

Administration of this ordinance shall be assigned to the County Zoning Administrator appointed by the Planning and Zoning Commission. Said administrator shall carry out the duties and directives of and be responsible to the commission.

SECTION 4.2 BOARD OF ADJUSTMENT AND APPEALS

The Board of County Commissioners shall act as a Board of Adjustment and Appeals. The Board of Adjustment and Appeals shall hear appeals from any person, party, firm or organization aggrieved by the actions or decisions of the Planning and Zoning Commission. The Board of Adjustment and Appeals may by resolution affirm, reverse or modify in whole or in part any decision, determination or requirements of the Planning and Zoning Commission. The Board of Adjustment and Appeals shall, before granting any appeal which was denied by the commission or before changing any of the conditions imposed by a condition of the Conditional Use Permit granted by the Commission, make written findings of fact setting forth wherein the Commission findings were in error.

SECTION 4.3 DETERMINATION OF ZONE BOUNDARIES

Where uncertainty exists as to the boundaries of any zone as shown on any zoning map or part thereof, the following rules shall apply:

1. Where such boundaries are indicated as approximately following street lines, alley lines or lot lines, such lines shall be construed to be such boundaries.
2. In the case of unsubdivided property and where a zone boundary divides a lot, the location of such boundaries, unless the same are indicated by dimensions, shall be determined by the use of the scale appearing on such zoning map.

3. Where a public street or alley is officially vacated, the zoning regulation applicable to abutting property on each side of the center line shall apply up to the center line of such vacated street or alley on each respective side thereof;
4. Areas of dedicated streets or alleys and railroad right-of-ways, other than those designated on the zoning map as being classified in one of the zones provided in this Article, shall be deemed to be unclassified.

SECTION 4.4 BUILDING PERMIT REQUIRED

No person, firm or corporation shall erect, construct, make structural changes or move any structure, excluding agricultural buildings without first obtaining a Building Permit. Application for a building permit shall be made to the County Auditor, who may issue said permit and who shall inform the Zoning Administrator and Planning and Zoning Commission of said application. No building permit shall be issued if the actions described in the application would constitute a violation of this ordinance.

If, for any reason, a building permit is initially denied, the Zoning Administrator shall so inform the applicant within seven days of the date of application. The applicant may then request a hearing before the Planning and Zoning Commission to appeal for a reversal of such denial or may reapply after making whatever changes in the application deemed necessary by the Zoning Administrator.

The fee for a Building Permit shall be \$10.00.

SECTION 4.5 VARIANCE PROCEDURE

Application for a variance (as defined on page of this ordinance) shall be made to the Planning and Zoning Commission. Application may be made by a property owner or his/her authorized agent. Upon receiving application for a variance, the Planning and Zoning Commission shall direct the Zoning Administrator to notify the owners of all property within 660 feet of that property to which the application applies as to the specific requests included in the application. Such notification shall be by certified mail within two weeks (14 days) from the date of application. Said notification shall include the solicitation of comments in regard to the variance application, and any such comments returned shall be forwarded to the Planning and Zoning Commission. The Planning and Zoning Commission shall, after consideration of comments received and within 30 days of the date of application, act to either grant or to deny a variance. No variance shall be effective until eight days after its approval by the Planning and Zoning Commission.

If either the applicant or the owner of the property within 660 feet of that property to which the proposed variance applies wishes to appeal the decision of the Planning and Zoning Commission, they may do so to the Board of Adjustment and Appeals within 7 days of said decision. Said appeal shall be filed with the County Clerk and no variance shall be effective until final resolution of any appeal applying thereto.

SECTION 4.6 CONDITIONAL USE PERMIT PURPOSE, REQUIREMENT and PROCEDURES

Special consideration by the Planning and Zoning Commission shall be given to uses other than those specifically listed as a permitted use. The location and operation of a conditional use shall be subject to review and issuance of a Conditional Use Permit. The purpose of review shall be to determine that the characteristics of any such use shall not be unreasonably incompatible with types of uses permitted in surrounding areas, and for the further purpose of stipulating such conditions as may be reasonable so that a conditional use does not adversely affect surrounding uses.

No building permit may be issued when a Conditional Use Permit is required by the terms of this ordinance unless a Conditional Use Permit has been granted, and then only in accordance with the terms and conditions of the Conditional Use Permit.

Application for issuance of a Conditional Use Permit may be made to the Zoning Administrator. Applications for a Conditional Use Permit shall be made by the owner of the affected property or his/her authorized agent, on a form prescribed by the Zoning Administrator and shall be accompanied by reasonably accurate drawings of the site and building plans, drawings and elevations and operational data as may be required to enable the pertinent information to be applied to the proposal. Applications shall be accompanied by an application fee of \$5.00.

A public hearing on the Conditional Use Permit shall be held following proper notice pursuant to NDCC Section 11-33-08. The notice shall include a description of actions and location as described in the application in sufficient detail for concerned parties to determine the possible impact of the Conditional Use.

Following the public hearing, the Planning and Zoning Commission may grant or deny the issuance of a Conditional Use Permit (by the Board of Appeals or by the County Clerk). The Planning and Zoning Commission shall not be required to issue a Conditional Use Permit despite the meeting of criteria set forth in Article III of this ordinance. No Conditional Use Permit shall become effective until ten (10) days after the date said permit is acted upon by the Board of Appeals. During the ten day period following the Planning and Zoning Commission's action upon a Conditional Use Permit, written appeals of said action may be submitted to the Board of County Commissioners (County Clerk) by the applicant or by other interested parties. In the event of an appeal of Planning and Zoning Commission action, the Conditional Use Permit shall not become effective until the termination of any appeal pending against it.

Action by the Board of County Commissioners on an appeal shall be decided by the majority of members present at the meeting where such appeal is considered.

In the event of an appeal of Board of Adjustment and Appeals action, the Board of County Commissioners, at the next duly held meeting, shall set a date for a public hearing on the appeal and notify those concerned.

Said public hearing shall be held within (15) days of the findings of the Board of Adjustment and Appeals by said Board or its authorized representative. The Board of County Commissioners shall within 31 days affirm, reverse or modify in whole or in part any action taken by the Board of Adjustment and Appeals.

Discontinuance of any conditional use for a period of 18 months shall be regarded as forfeiture of the Conditional Use Permit allowing said uses to exist. A new Conditional Use Permit shall be required before a Conditional Use may again be permitted.

SECTION 4.7 AMENDMENTS

Amendments to this ordinance may be made in the manner prescribed by law pursuant to Chapter 11-33 of the NDCC. The Stutsman County Commission, Planning and Zoning Commission, any person, persons, firm or corporation may initiate amendments to this ordinance.

Applications for amendments shall be filed with the County Auditor. The Application shall include:

1. Name and address of applicant;
2. Date of application;
3. The applicant's statement of interest;
4. A description and map of the area and its relationship to surrounding land use;
5. The present zoning district designation and proposed designation.

Upon receipt of an application for amendment, the County Auditor shall present such to the Planning and Zoning Commission, which shall set a date for a public hearing on the proposed amendment. The County Auditor shall notify the applicant of the date of the hearing at least one week (7 days) prior to such hearing. The Zoning Administrator shall cause notice of the hearing to be published once a week for two consecutive weeks in the official newspaper of the county and in such other newspapers as the Board of County Commissioners deems necessary. Notice shall include the time, place and purpose of the hearing. Proof of such publication shall be filed in the office of the County Auditor.

Following the public hearing, the Planning and Zoning Commission shall submit its recommendations to the Board of County Commissioners for a decision. The Board of County Commissioners shall hold a public hearing on the proposed amendment following notification to be given by similar means and procedure to that stated above.

Publication of amendment - Effective date. Following public hearing, the Board of County Commissioners may adopt the proposed amendments thereto, with such changes as it may deem advisable. Upon adoption of any amendment, the County Auditor shall file a certified copy thereof with the County Recorder. Immediately after the adoption of any amendment, the County Auditor shall cause notice of the same to be published for two successive weeks in the official newspaper of the county and in such other newspapers published in the county as the Board of County Commissioners may deem necessary. Said notice shall describe the nature, scope and purpose of

the adopted amendment and shall state the times at which it will be available to the public for inspection and copying at the office of the County Auditor. If petition for a separate hearing is filed pursuant to Section 11-33-10, the amendment shall not take effect until the Board of County Commissioners have affirmed such amendment in accordance with the procedures of Section 11-33-10, NDCC, as noted below:

11-33-10. Separate hearings. Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto may, within thirty days after the first publication of such resolution or amendment, petition for a separate hearing thereon before the Board of County Commissioners. The petition shall be in writing and shall specify in detail the ground of the objections. The petition shall be filed with the County Auditor. A hearing thereon shall be held by the board no sooner than seven days, nor longer than thirty days after the filing of the petition with the County Auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing the Board of County Commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take thereon. The Board of County Commissioners, at their next regular meeting, shall either rescind or affirm such resolution or amendment. The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the Board of County Commissioners or any citizens.

SECTION 4.8 PENALTIES FOR VIOLATIONS

Violations of this ordinance may be reported to the Zoning Administrator. Complaints referring to such violations shall be filed in written form and shall state fully the causes and basis thereof. The Zoning Administrator shall record properly said complaint, notify the Planning and Zoning Commission, and make an inspection of the affected site.

Remedies for violations shall be in accordance with Chapters 11-33-17 and 11-33-21, NDCC, as follows:

11-33-17. Violation of zoning regulations and restrictions - remedies. 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 chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies may institute any appropriate action or proceedings.

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

11-33-21. General penalties for violation of zoning regulation and restriction. A violation of any provision of this chapter or the regulations and restrictions made thereunder shall constitute the maintenance of a public nuisance and shall be a Class B misdemeanor.

Each day that a violation of this ordinance exists may be considered as a separate offense.

In relation to feed lot zoning, the County Board may impose, in accord with Appendix II (attached) the following sanctions set out in Appendix II, a temporary suspension of a permit and/or civil fees in the form of monetary sanctions.

SECTION 4.9 CERTIFICATE OF COMPLIANCE

Every application for a building permit shall be deemed to also be an application for certificate of compliance. No structure or addition thereto which is subject to the need for a building permit shall be occupied or used for any purpose until a Certificate of Compliance has been issued by the Zoning Administrator and the Tax Assessor shall be notified of the issuance of said Certificate.

APPENDIX I

Geophysical Exploration Requirements

Chapter 38-08.1 of the North Dakota Century Code applies to geophysical exploration which means any method used in obtaining petroleum related surveys.

Some of the more important provisions of this chapter include:

1. Any person that is engaged in geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration is required to comply with the provisions of this chapter.
2. Any out-of-state person that is engaged in geophysical exploration must file an authorization with the Secretary of State designating an in-state resident agent for the purpose of receiving legal process papers.
3. A person wanting to engage in geophysical exploration in North Dakota is required to file a surety bond with the Industrial Commission. The bond will provide security to all owners of property within the state against physical property damage resulting from geophysical exploration. This will be the only bond required of persons doing geophysical exploration within North Dakota and will supersede any bonds which may be required by individual counties. Upon filing the bond, the Industrial Commission will issue a certificate showing the bond has been filed and showing the name of the person designated as in-state resident agent.
4. Any persons intending to carry out geophysical exploration must notify the County Commission in each county in which exploration is to be carried out. The notice of intention must include: the name and address of the person who intends to explore; the name and address of the resident agent; the date when exploration will begin; the township range, section and quarter section in which exploration is to take place; the estimated depth of the drill holes, if any.
5. Upon filing the notice of intention to explore and upon receiving the certificate issued by the Industrial Commission, the County Commission may issue a "geophysical exploration permit" subject to conditions or restrictions as may be provided by county ordinances. The permit shall show: the name of the person; the name and address of the resident agent; that a notice of intention to explore has been filed; that a sufficient surety bond has been filed. The permit must be signed by the chairman of the County Commission and bear the official county seal. A copy of the permit shall be carried at all times by a member of the exploration crew and shall be shown to the landowner, tenant, government official or respective surface owner upon demand.
6. The County Commission has the right to revoke the permit if it can be shown that county ordinances or other requirements pertaining to geophysical exploration have been violated. The County Commission may

also suspend the permit temporarily in cases where climate and physical conditions are such to cause harm or damages to roads, bridges, pastures, crops or similar factors that could cause undue stress to the normal physical well-being within the county.

7. A monthly report must be filed by the person conducting the geophysical exploration with the County Commission and with the owner or occupier of the land on which the exploration has taken place. The report must contain the location of exploration operations by township, range, section and quarter section and the date on which exploration was begun.
8. In the event that a property owner or occupier of the land believes that physical damage to the property has resulted from exploration activities, that person may file a written complaint requesting the person doing the exploration to furnish a record showing the date of exploration and a legal description of the work site. This record shall include the actual shot point locations and the amount of explosive charge, if any, in each drill hole. The record requested is to be furnished by the persons conducting the exploration within ten days of the receipt of the written request. The complaining person must indicate in his complaint the approximate date of the alleged damage.
9. All drill holes must be properly plugged and the surrounding surface must be restored as nearly as possible to its original condition by the person conducting the drilling unless he and the surface owner agree otherwise.
10. Any person who violates provisions of this chapter is guilty of a Class B misdemeanor and is subject to such penalties as provided by law.

SURFACE OWNERS(TENANTS)NOTICE **RIGHTS OF DAMAGES-OIL & GAS DRILLING OPERATIONS**

North Dakota Geological Survey
University Station Grand Forks ND

The 46th Legislative Assembly passed a law (codified as Chapter 38-11.1 of the North Dakota Century Code) which provides that all persons should be justly compensated for injury to their persons and property and interference with the use of their property occasioned by oil and gas drilling operations commenced after June 30, 1979 , and any production operations that follow. This letter is furnished to you so that you will be advised of your rights and options under this law.

The law provides that a “surface owner”(defined as “the person who has possession of the surface of the land either as an owner or as a tenant”) shall be paid by the mineral developer a sum of money equal to the amount of damages sustained for loss of agricultural production and income, lost land value and lost value of improvements caused by drilling operations. These payments cover only land directly affected by drilling operations and are intended to compensate the person who is actually in possession of the land as an owner or tenant. Reservations or assignments of these payments to someone other than the person in possession of the surface estate is prohibited.

The amount of damages may be determined by any mutually agreeable formula. When determining damages, you may consider the period of time during which the loss occurs, and you may elect to be paid damages in annual installments over such period of time; except that you are entitled to be compensated for harm caused by exploration only by a single sum payment.

Except for certain exploration activities governed by other law(such as seismograph exploration) you are entitled to written notice of any contemplated drilling operations. This notice is given by obtaining your address from the land records of the appropriate County Recorder’s Office. This form and the information disclosing the plan of work and operations contemplated by the mineral developer are intended to assist you in evaluating the effect such activity will have on the use of your property. You are responsible for negotiating the terms of any settlements. You should consult private counsel if you need advice or assistance in making a settlement.

Other provisions of this law provide that the mineral developer shall be responsible for damages to persons or property (real or personal) resulting from the mineral developer’s “lack of ordinary care” or resulting from a “nuisance” caused by drilling operations. In the event any person (not just a “surface owner”) suffers damage, notice of the damage sustained must be given to the mineral developer within two years after the damage occurs or should have been discovered. Unless a written agreement made between the mineral developer and injured person provides otherwise, a mineral developer has 60 days to offer to settle a claim for damages. If the injured person receives a written rejection from the mineral developer, rejects the offer of the mineral developer, or receives no reply from the mineral developer, a court action for damages may be commenced; if the injured person receives a court award greater than the offer of settlement made by the mineral developer the court shall also award reasonable attorneys fees and any court costs in addition to the damage award.

The remedies provided by this law do not preclude seeking other legal remedies. This law, however, does not apply to damages resulting from the operation, maintenance or use of a motor vehicle on highways (e.g. public road rights-of-way).

The following summary of well spacing as regulated by the North Dakota Industrial Commission was provided by Erling A. Brostuen, North Dakota Geological Survey, University Station, Grand Forks, ND 58202.

Well Spacing

The minimum spacing of a well is dependent upon whether it is a “wildcat” well or a development well and whether it is drilled for oil and for gas. A wildcat well is one that is located outside of an established field and pool. A development well is one that is located within an established field and pool.

A wildcat well drilled for oil must be located within a governmental quarter quarter section or governmental lot containing at least thirty-six acres. The well may not be located closer than 500 feet to any boundary of the quarter quarter section or lot. It must not be closer than 1,000 feet to the nearest well that has been permitted to or is capable of producing oil from the pool or producing horizon to which the well is to be drilled.

A wildcat well that is drilled for gas must be located within a governmental quarter section which contains at least 145 acres. The well must not be located closer than 1,000 feet to any boundary of the quarter section. It must not be closer than 1,500 feet to a well that has been permitted to or is capable of producing gas from the pool or producing horizon to which the well is to be drilled.

A development well that is drilled for oil or gas must be located according to the spacing regulations that have been set by the Industrial Commission for the field and pool in which the well is to be drilled. When a wildcat well has been successfully completed as a producing well, the Industrial Commission is required to hold a hearing to determine the spacing and special operating rules for the newly discovered field and pool. During the hearing, the Commission receives testimony and evidence regarding the geology, the reservoir characteristics, and the economic characteristics of the pool. The commission then sets well spacing requirements and special field rules and boundaries for the new field and pool.

APPENDIX II

HEARING PROCESS

- A. Reference in this section to **days or dates** by which an act must be conducted refer to calendar days; not business days.
- B. The Chairman of the County Board may **extend a deadline** if prior to the deadline sought to be extended a party or a board member files a written request for extension with the Auditor, and mails or faxes it to the opposing party, all County Board members, the Auditor, and the State's Attorney. The request must contain the basis for the requested extension. The Chairman may only extend a deadline for good cause and must provide written notice of the decision to extend, or the denial thereof, to all County Board members, the Auditor, the State's Attorney, and the owner and/or operator.
- C. The Chairman of the County Board may **continue a hearing** for good cause if prior to the hearing sought to be continued a party or a board member files a written request for a continuance with the Auditor, and mails or faxes it to the opposing party, all County Board members, the Auditor, and the State's Attorney. The request must contain the basis for the requested continuance. The Chairman may only continue a hearing for good cause and must provide written notice of the decision to extend, or the denial thereof, to all County Board members, the Auditor, the State's Attorney, and the owner and/or operator.
- D. **NO INDEPENDENT INVESTIGATION OR DATA COLLECTION.** Once a notice of termination has been mailed to an owner and/or operator, the independent activities of each and every County Board member are limited as follows. No Board member should base any decision pertaining to violation or disposition on information that has not been provided to every member of the Board, the owner and/or operator, and the State's Attorney in time to allow rebuttal. A County Board member is expressly prohibited from conducting any independent inquiry or investigation. County Board members are not to seek out information on their own. Every County Board member is forbidden from receiving unsolicited information offered to the County Board member. County Board members are expressly forbidden from discussing any case pending before the Board with any person besides the Auditor, another County Board member, or the State's Attorney. No County Board member will discuss the case with any other owner or operator, law enforcement officer, or citizen who wishes to offer an opinion or information on the case. Such persons will be directed by the County Board member to convey the information they have to the Sheriff or his designated Deputy. The Sheriff will ensure that any information the Sheriff collects will be presented to the County Zoning Administrator who shall promptly distribute it to every member of the Board, the owner and/or operator, and the State's Attorney. Any and all information on the case considered by any Board Member should be published to both parties sufficiently prior to any hearing to allow reasonable time for rebuttal. The County Board may, by motion

- passed by a majority of the Board at an open meeting, instruct the Stutsman County Sheriff to investigate one or more specific issues. The results of that investigation will be submitted to the Board, the owner and/or operator, the County Zoning Administrator, and the State's Attorney in a written report. Every party with standing must be given a reasonable time to submit written rebuttal to any material disclosed to him.
- E. Upon probable cause to believe there has been a violation of this zoning ordinance or a regulation promulgated pursuant to this ordinance, the County Board may issue a notice to stop work and/or a notice of termination. Stop work orders are reserved for situations constituting a clear and present danger of substantial damage to the environment, property, or humans but do not allow time for a hearing. Any violation under this Ordinance or subordinate regulation may be addressed with a notice of termination.
- F. Decisions on whether to issue a stop work order and/or a notice of termination are preliminary decisions that would usually be made in a summary proceeding at a regularly scheduled or a special meeting of the County Board during which only the County Board's representative or associates would address the Board. At this summary proceeding, whether the operator or owner will be allowed to address the Board is up to the Chairman of the County Board. According to North Dakota Century Code section 44-04-20(2), if time and circumstances allow for listing the item in the agenda for the County Board meeting, the public notice will contain a reference to a preliminary determination regarding issuance of a stop work order or notice of termination of the conditional (or special) use permit.
- G. NOTICE OF TERMINATION. After the County Board makes a preliminary determination to issue a stop work order and/or a notice of termination, the County Zoning Administrator shall provide a written notice to the owner and if there is an operator, then to the operator in addition to the owner. Notice will specify whether the Board issued a stop work order, a notice of intent to terminate, or both, as the case may be. The notice will contain the following.
- (1) Specific notice of the allegations including listing each and every condition or obligation of the Ordinance alleged to have been violated.
 - (2) Provision of specific notice that if the owner and/or operator wants a hearing on the allegation(s), the owner and/or operator must deliver a written request for a hearing to the County Zoning Administrator's office within 40 days of service of the County Board's notice.
 - (3) Provision of notice that failure to deliver a written request for a hearing to the County Zoning Administrator's office within 40 days of service of the notice of intent to terminate or the stop work order to the owner or operator (whichever is accomplished first) constitutes waiver of the right to a hearing and admission of the allegations in the pre-termination notice.
 - (4) Provision of notice of opportunity to cure for those violations which are amenable to cure and/or specification of any alleged violation that is not subject to cure. If there is an allegation of a violation that is amendable to cure, then the owner and/or

operator will be informed that the owner and/or operator has 30 days from the date of the notice of the violation to cure the alleged violation(s). If there is an allegation of a violation that is amenable to cure, the owner and/or operator will be notified that the owner and/or operator has 40 days from the date on the notice of termination to file a request for a hearing.

- (5) Provision of notice that in cases of stop work orders, the owner and/or operator must immediately stop every portion of the operation that results in the alleged violation. The window for the opportunity to cure does not provide a window within which to continue operations that result in the alleged violation of the ordinance. The window of opportunity to cure creates a time frame within which the owner and/or operator can devise and implement a plan to ensure that when operations resume, the violation will not re-occur.
- (6) Provision of notice that all materials the owner and/or operator wishes the Board to consider must be presented to the Board with the owner and/or operator's initial response to the stop work order or notice of termination including but not limited to a list of witnesses by name, address and phone number and a summary of their testimony; and a list of exhibits and copies thereof.
- (7) Provision of notice that no material will be considered by the Board at the hearing on the stop work order or the termination if the material has not been disclosed in the owner and/or operator's initial reply to the notice of termination. Provision of notice that although the Chairman of the Board may allow leave to amend initial responses, there is not guarantee leave to amend will be granted.

H. OWNER AND/OR OPERATOR'S RESPONSE TO NOTICE OF TERMINATION

The owner and operator must provide a written response within 40 days of the date on the notice of termination or make a written request for extension in accord with subparagraph b or c above. The owner and operator's response must contain the following. Obviously, if there is only an owner and not an operator as well, the response will come only from the owner.

- (1) If represented by legal counsel, the response must identify the lawyer.
- (2) A rebuttal to each of the allegations the owner and/or operator denies and an admission to each allegation the owner and/or operator does not deny.
- (3) A list of witnesses, by name, address, phone number, and summary of testimony for each witness.
- (4) A list of exhibits the owner and/or operator plans to offer and a copy of each exhibit.

I. SETTING DATE FOR HEARING OR FINAL DISPOSITION

- (1) If the parties served fail to deliver a written request for a hearing to the County Zoning Administrator within 40 days of the date of service of the stop work order and/or notice of termination, there will be no hearing on the issue of whether the violations were committed. The violations are deemed admitted by the failure to timely file a request for a hearing. Once the date for filing a request for hearing has passed, the County Zoning Administrator shall schedule the case for

disposition at the next regularly scheduled meeting of the County Board. If the Chairman of the County Board determines the nature of the violation necessitates final disposition sooner than the next regularly scheduled County Board, the Chairman may direct the Auditor to schedule a special meeting of the County Board.

- (2) If the parties served deliver a request for a hearing to the Auditor within 40 days of the date on the notice of termination, the County Zoning Administrator will promptly furnish a copy of the owner and/or operator's response to each County Board member and the State's Attorney. The State's Attorney may, within 5 days of the owner and/or operator's filing of a response and in accord with the provisions of subparagraph C above, request leave of the Chairman of the County Board to amend the list of witnesses or list of exhibits. The Chairman will provide written notice of the decision granting or denying leave to amend to all County Board members, the Auditor, the State's Attorney, and the owner and/or operator. If leave to amend is granted the Chairman will specify a deadline for filing the amendments. If the State's Attorney does file amendments within the time allotted by the Chair, the owner and/or operator may in turn request leave to amend. If the owner and/or operator requests leave to amend, the Chair of the County Board will rule on the request and publish the ruling to each member of the County Board, the State's Attorney, and the owner and/or operator. If the owner and/or operator's request to amend is granted the Chairman's ruling must specify a date by which the amendments must be filed. Failure of either party to file amendments in time will result in exclusion of any material not timely filed. After each party has had one opportunity for leave to amend, no further requests for leave to amend will be entertained. No undisclosed witness, exhibit, or statement will be considered at the hearing. Within ten days of the Chair's last deadline for amendment, the County Zoning Administrator will schedule the allegations for hearing before the County Board.

J. HEARING ON ALLEGATIONS.

The hearing will be held at an open meeting of the County Board and recorded on audio tape. The Chairman of the County Board will preside over the hearing. The County Board may move to retain a private attorney from County funds to act as Referee at the hearing instead of the Chairman. If an attorney is hired to referee, the Referee's rulings on the admission of evidence will not be final. The State's Attorney or his designee will represent the County Board. The Permittee may be represented by counsel or represent him or herself. The burden of proving the allegations is on the County Board. The standard of proof is a preponderance of the evidence. The Chairman (or the Referee) will control the admission of testimony and exhibits. The Chairman may limit the State's Attorney and the owner and/or operator to a reasonable amount of time, witnesses, and exhibits on the basis of relevance and accumulation. The Chairman may allow opening and closing statements. The Chairman may request guidance from the State's Attorney regarding procedure and admission of evidence.

K. FINDINGS.

Once presentation of evidence and closing statements (if any) are complete, the County Board will make a finding on each and every allegation regarding whether it was proven and why or why not. Findings must be based solely on evidence formally submitted to the board in the filings or at the hearing. The Board is free to judge weight and credibility of witnesses and evidence. For example, although hearsay may be admitted, the weight attributed to it is up to the Board. The findings will be noted in writing by the County Zoning Administrator. Once the findings have been made, noted, and published, the County Board will enter into the disposition phase.

L. DISPOSITIONAL ALTERNATIVES

If the County Board finds that one or more of the allegations was supported by a preponderance of the evidence, the Board shall select from among the following alternatives for disposition. The Board and the owner and/or operator may agree upon a dispositional alternative not enumerated below provided it is not in contravention of the law.

- (1) Terminate the limited use (special use) permit.
- (2) If the owner/operator has come into compliance with the Ordinance, the Board may refrain from terminating the permit
- (3) If the owner/operator has come into compliance with the terms of the Ordinance, the Board may refrain from terminating the permit and impose an administrative monetary sanction. If the owner/operator has not come into compliance with the terms of the permit but it appears that the owner/operator has the will and capability to do so, the Board may suspend the permit and operations for a specified time sufficient to cure the deficiency. If the Board suspends with further opportunity to cure, the Board may impose an administrative monetary sanction. In any case where the Board chooses to impose an administrative monetary sanction, the sanction is limited to \$10,000 in addition to the expenses appurtenant to curing. The Board may require payment of the sanction in one lump sum or devise a reasonable payment plan. Any monetary sanction imposed shall be set out in writing and payment thereof shall become a condition for retaining the limited use (special use) permit. Failure to pay the sanction on time is grounds for termination. Any monetary sanction must be reasonably related to the violation committed. Factors that may be considered in determining the reasonable relation of the penalty to the infraction include but are not limited to the severity of the infraction, the intent of the owner/operator, prior proven violations, damages, ability to remedy, cost of investigation and prosecution of the violation, general deterrence, and specific deterrence.