

ARTICLE I
GENERAL PROVISIONS

CHAPTER 1.01. TITLE AND APPLICATION.

Section 1.01.01. Title.

This Ordinance may be known and may be cited and referred to as the “Kingsbury County Zoning Ordinance” to the same effect as if the full title were stated.

Section 1.01.02. Jurisdiction.

Pursuant to SDCL 11-2, 1967, as amended, the provisions of this Ordinance shall apply within the unincorporated areas of Kingsbury County, South Dakota, as established on the map entitled “The Official Zoning Map of Kingsbury County, South Dakota.”

Section 1.01.03. Purpose.

The Zoning Ordinance is adopted to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of Kingsbury County’s Comprehensive Land Use Plan, which in its entirety represents the foundation upon which this Ordinance is based.
2. To foster a harmonious, convenient, workable relationship among land uses.
3. To promote the stability of existing land uses that conform with the Comprehensive Land Use Plan and to protect them from inharmonious influences and harmful intrusions.
4. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the “county community” as a whole.
5. To prevent excessive population densities and overcrowding of the land with structures.
6. To protect and enhance real estate values.
7. To facilitate the adequate provision of transportation, water and sewerage, schools, parks, and other public requirements;
8. To regulate and restrict the height, number of stories, and bulk of building and other structures; the percentage of a lots that may be occupied; the size of yards, courts, and other open spaces; and the location and use of other purposes;
9. To regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of building, structures, and land.

10. To place the power and responsibility of the use of land in the hands of the property owner contingent upon the compatibility of surrounding uses and the Comprehensive Land Use Plan.

CHAPTER 1.02. ORDINANCE PROVISIONS.

Section 1.02.01. Provisions of Ordinance Declared to be Minimum Requirements.

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rule, ordinance, or Board of Adjustment decision, the most restrictive or that imposing the higher standards, shall govern.

Section 1.02.02. Purpose of Catch Heads.

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

Section 1.02.03. Violation and Penalty.

1. Violations of the ordinance shall be treated in the manner specified below.
 - a. Any person who starts work for which a permit (building, conditional use, variance, rezoning) is required by this Zoning Ordinance, without first securing such permit and paying the prescribed fee, shall be charged according to the provisions of this section. All administrative fees assessed there under shall be rounded to the nearest whole dollar.
 - i. Upon finding such violation, the Kingsbury County Zoning Officer shall notify the owner of property involved verbally or by sending a written notification of the requirement that a permit be obtained to the owner of the property involved by certified mail with return receipt requested. If application for said permit is filed within seven (7) working days from the verbal notification or date of receipt of the letter, an administrative fee shall be assessed in the amount of one hundred percent (100%) of the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. In no case shall this administrative fee be less than five dollars (\$5.00), including the postage costs.
 - ii. If application for said permit is filed after the deadline of seven (7) working days following the verbal notice or receipt of the notification of the requirement therefore, there shall be imposed an administrative fee in the amount of two (2) times the normal fee for the associated building permit, conditional use permit, variance, and/or rezoning plus the cost of the postage for mailing the aforementioned notice. The payment of the administrative fee shall not relieve such person from the provisions of paragraph (b) below.
 - iii. Any administrative fee or penalty imposed under the provisions of this Zoning Ordinance shall be in addition to any other fees or charges required under this Zoning Ordinance.

- b. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Board of County Commissioners pursuant thereto. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any provision of this Zoning Ordinance may be subject to a civil or criminal penalty. The penalty for violation of this Zoning Ordinance shall be five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days, or both, and in addition the violator shall pay all costs and expenses involved in the case. Each and every day that such violation continues after notification may constitute a separate offense. All fines for violation shall be paid to the County Auditor and shall be credited to the General Fund of the County.

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

- c. In the event, any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of these regulations, the appropriate authorities of Kingsbury County in addition to other remedies, may institute injunction, mandamus or other appropriate actions or proceedings in a court of competent jurisdiction to prevent, restrain, correct or abate such violation or threatened violation
- d. Any taxpayer of the County may institute mandamus proceedings in Circuit Court to compel specific performance by the proper official or officials of any duty required by these regulations.

Section 1.02.04. Separability Clause.

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

Section 1.02.05. Repeal of Conflicting Ordinances.

All ordinances or resolutions or part of ordinances or resolutions in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are ~~repealed entirely~~ **hereby declared repealed. To the extent it is necessary to give this Ordinance full force and effect.**

Section 1.02.06. Effective Date.

This Ordinance shall take effect and be in force from and after its passage and publication according to **South Dakota Codified** law.

CHAPTER 1.03. OFFICIAL ZONING MAP.

Section 1.03.01. Official Zoning Map.

1. The unincorporated area of the County is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance. The Official Zoning Map shall be identified by the signature of the Chairperson of the Board of County Commissioners attested by the County Auditor and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Chapter 1.03 of Ordinance Number 32, **as amended**, of Kingsbury County, State of South Dakota," together with the date of the adoption of this Ordinance. The Official Zoning Map shall be on file at the office of the County Auditor.
2. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the County Auditor, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

Section 1.03.02. Amendment of the Official Zoning Map.

1. If, in accordance with the provisions of this Ordinance changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the Board of County Commissioners, with an entry on the Official Zoning Map as follows: "On (date of adoption) by official action of the Board of County Commissioners, the following change(s) were made on the Official Zoning Map:" (brief description of nature of change), which entry shall be signed by the Chairman of the Board of County Commissioners and attested by the County Auditor.
2. No amendment of this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on the Official Zoning Map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except with conformity with the procedure set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

Section 1.03.03. Interpretation of District Boundaries.

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

1. A district name or letter symbol shown on the district map indicates that the regulations pertaining to the district designated by that name or symbol extend throughout the whole area in the unincorporated portions of the County bounded by the district boundary lines.
2. Boundaries indicated at approximately following the center lines of streets, highways, or alleys, shall be construed to follow such center lines;

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

Section 1.03.04. Changes and/or Replacement of Official Zoning Map.

In the event that the Official Zoning Map becomes damaged, destroyed, or lost, the Board of County Commissioners may by ordinance adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.

In the event that the Official Zoning Map becomes difficult to interpret because of the nature or number of ~~changes and additions~~ **amendments**, the Board of County Commissioners may, by resolution, adopt a **new revised** Official Zoning Map, which shall supersede the prior Official Zoning Map. The new Official Zoning Map shall ~~contain previous changes and additions to the previous Official Zoning Map~~ **incorporate all previously adopted amendments and changes** and may **include** ~~correction of~~ drafting or other errors or omissions **present** in the prior Official Zoning Map. **Such corrections shall be for clarification purposes only and shall not be construed to amend or alter the original Official Zoning Map or any duly adopted amendment thereto.**

The new Official Zoning Map shall be identified by the signature of the Chairperson attested by the County Auditor, and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of Kingsbury County, State of South Dakota."

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

Amendments to the Official Zoning Map shall require amendment of this regulation by ordinance, as provided for in Chapter 3.04, Section 3.04.03 of these regulations

Section 1.03.05 Disincorporation

All territory which hereafter becomes a part of the unincorporated area of the County by the disincorporation of any village, town or city, or for some other reason shall fall within the zoning jurisdiction of the County, shall automatically be classified in the "A" Agricultural District until within a reasonable time following disincorporation, or acquisition of zoning jurisdiction, the territory shall be appropriately classified by Ordinance.

ARTICLE II DEFINITIONS

For the purpose of this Ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural and the plural the singular; the word "building" shall include the word "structure", the word "shall" is mandatory and not discretionary; the word "may" is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual; the word lot includes the word plat or parcel; and the words used or occupied include the words intended, designed, or arranged to be used or occupied. Any word not herein defined shall be as defined in any recognized Standard English dictionary.

Abandoned Well. A non water producing well which still acts as a direct conduit for surface contaminants to enter the aquifer/ground water source but is in such disrepair that groundwater can no longer be obtained from it.

Accessory Buildings and Uses. A subordinate building or portion of the principal building, the use of which is incidental to and customary in connection with the principal building or the main use of the premises and which is located on the same lot with such principal building or use. An accessory use is a use which is incidental to the main use of the premises.

Accessory Dwelling Unit (ADU). Means a secondary, self-contained residential living unit located on the same property as a primary home. It has its own facilities for living independently, typically including: sleeping area; bathroom; kitchen or kitchenette; and a separate entrance

Adjacent Property. Any lot, parcel, or property bordering by means of adjoining, abutting, or intersecting a specified lot boundary, and those lots immediately across a public right-of-way from a specified lot (see Adjacent Property Illustration).

Adjacent Property Illustration



Adjoining Landowner. The owner of adjacent or contiguous property for which an action by the Zoning Official, Board of Adjustment, Planning Commission or County Commission is being considered. Property shall be considered as adjoining even though it may be separated from the property of the petitioner by a public road or highway or touches only a corner of the property (see **Adjacent Property Illustration**).

Adult. A person, one who has reached the age of eighteen (18).

Adult Amusement or Entertainment. Amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas' or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

Adult Bookstores. An establishment having, as a substantial portion of its stock in trade, books, magazines, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished by their emphasis on matter depicting, describing or relating to specified Sexual Activities or Specified Anatomical Areas as such terms are defined in this section, or an establishment with a segment or section devoted to the sale or display of such material. Adult bookstores may alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

Adult Entertainment Cabaret. Means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as defined in this section.

Adult Motion Picture Theater. An enclosed building, regardless of its seating capacity, which is used to present for public view on the premises, films, movies, previews, trailers or advertisements which are distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section.

Adult Photo Studio. An establishment which, on payment of a fee, provides photographic equipment and/or models for the purpose of photographing "specified anatomical areas", as herein defined.

Adult Use. The term "adult use" shall include adult entertainment cabaret, adult bookstores, adult motion picture theaters, and adult photo studios as defined in this section.

Aggrieved person. A person aggrieved is any person directly interested in the outcome of and aggrieved by a decision or action or failure to act pursuant to this Ordinance who:

- (1) Establishes that the person suffered an injury, an invasion of a legally protected interest that is both concrete and particularized, and actual or imminent, not conjectural or hypothetical;
- (2) Shows that a causal connection exists between the person's injury and the conduct of which the person complains. The causal connection is satisfied if the injury is fairly traceable to the challenged action, and not the result of the independent action of any third party not before the court;
- (3) Shows it is likely, and not merely speculative, that the injury will be redressed by a favorable decision, and;
- (4) Shows that the injury is unique or different from those injuries suffered by the public in general. [Ord # 67]

Agribusiness. A business operation embracing the handling, storage, processing and distribution of agricultural products including agrichemicals, farm machinery, equipment, supplies, wholesale and distribution, processing, marketing, retail sales and/or the manufacture of ag-related farm machinery, equipment, and supplies. Such uses shall comply with Chapter 5.43.

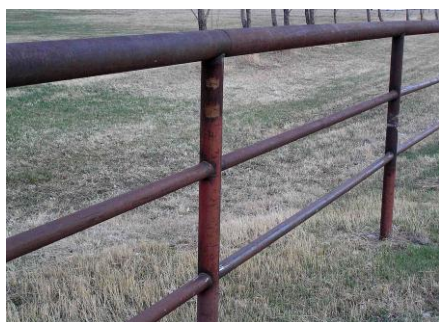
Agriculture. The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. This definition includes intensive agricultural activities such as concentrated animal feeding operations but not commercially based agribusiness activities.

Airport. A place where aircraft can land and takeoff, usually equipped with hangers, facilities for refueling and repair, and various accommodations for passengers, including heliports.

Alley. A narrow service way providing a secondary means of access to abutting property.

Alter or Alteration. Any change, addition or modification in construction or occupancy.

Animal and Farm Fence. Means a fence erected for the purpose of containing livestock, enclosing crops, water areas (excluding private swimming pools), woodlots, buildings, fields or laneways for the operation of agriculture. Common examples may include but are not limited to the images below:



Animal Feeding Operation Structure. An anaerobic lagoon, formed manure storage structure, egg wash water storage structure, earthen manure storage basin or confinement building.

Animal Husbandry. The dairying, raising of livestock, breeding or keeping of animals, fowl or birds as a business for gainful occupation.

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

Animal Manure Management Facilities. Any structure or facility utilized for the storage of manure associated with a concentrated animal feeding operation.

Animal Unit. (See Article V, Section 5.12).

Animal Manure, Incorporated. Animal manure applied to the land surface and mechanically mixed into the soil within twenty-four (24) hours.

Animal Manure, Injected. Animal manure injected or tilled into the soil at the time of application.

Animal Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.

Antenna Support Structure. Means any building or structure other than a tower which can be used for location of Telecommunications Facilities.

Antique Car. An antique car is a car that is twenty-five (25) years old or older.

Applicant/Permittee. An individual, a corporation, a group of individuals, partnership, joint venture, owners, or any other business entity who requests or seeks application approval under the terms of this ordinance.

Application. The process by which the applicant submits a request to use, develop, construct, build, or modify upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to Kingsbury County concerning such a request.

Automotive Tow Business. A business engaged in removing or delivering to public or private property a motor vehicle by towing, carrying, hauling, or pushing, including automotive service stations or an auto repair shop that has a tow truck and repairs vehicles on-site. Automotive Tow Business shall comply with Chapter 5.38.

Aquifer. A geologic formation, group of formations or part of a formation capable of storing and yielding groundwater to wells or springs.

Attached Garage. A garage which is attached by a common wall side by side, extending from the basement floor to the roof, or a detached garage which is within ten (10) feet of the dwelling.

Bar/Tavern. An establishment that is licensed to sell alcoholic beverages by the drink.

Basement. A basement has more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.

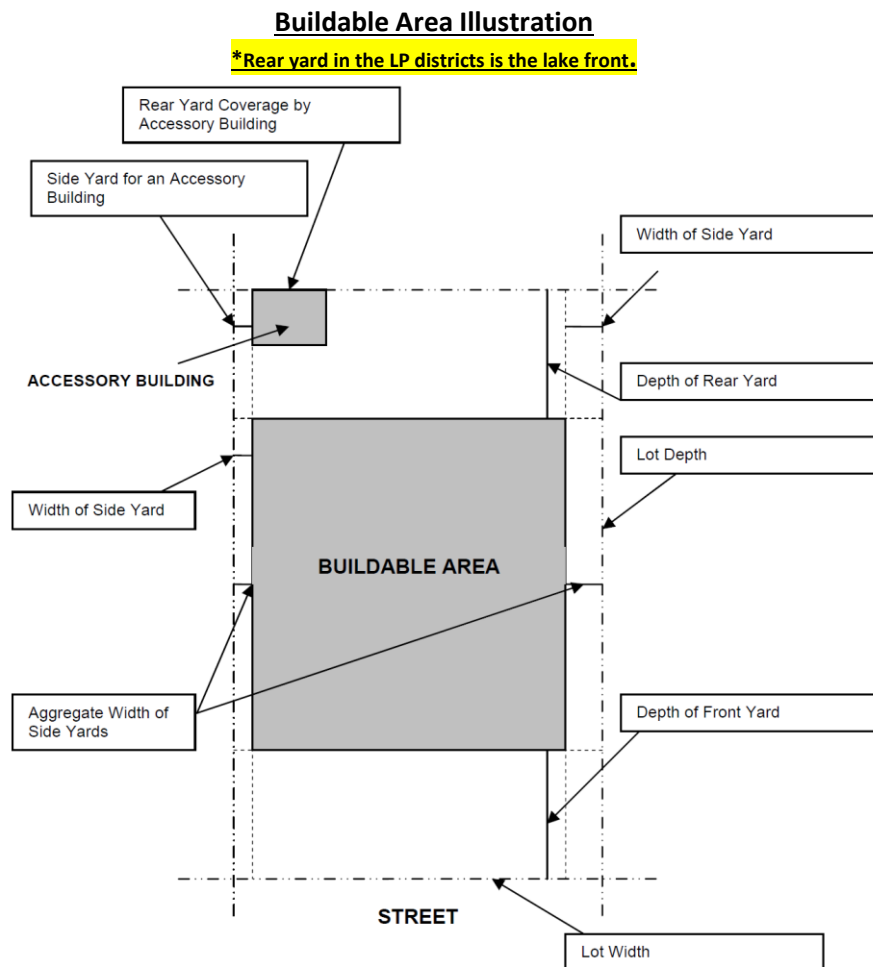
Bed and Breakfast (B & B's). A private single-family residence, which is used to provide, limited meals and temporary accommodations for a charge to the public. Such establishments should be located where there will be minimal impact on surrounding properties. Bed and Breakfast (B & B's) shall comply Chapter 5.31.

Best Management Practices. Measures contained in Soil Conservation Service South Dakota Technical Guide, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from non-point sources to water bodies.

Board of County Commissioners. The governing body of Kingsbury County.

Buffer: The use of land, topography, space, fences, or landscape planting to partially screen a use or activity from another property and thus reduce undesirable views or influences.

Buildable Area. The buildable area of a lot is the space remaining after the minimum setback requirements of this Ordinance have been complied with. The diagram below illustrates the buildable area of a hypothetical lot. This diagram is for reference only. Setbacks and other requirements vary from district to district. (See illustration below).



Building. The word building includes the word structure (permanent or temporary) and is a structure which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or similar openings and is designed for the support, shelter and protection of persons, animals, or property.

Campground. A commercial recreation facility open to the public for a fee, upon which two (2) or more campsites are located, established, maintained, advertised, or held out to the public, to be a place where camping units can be located and occupied as temporary living quarters.

Cannabis (or Marijuana): All parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. The term does not include the plant Cannabis sativa L. (hemp) and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis. [Ord #62]

Cannabis Cultivation Facility: This term is defined as a legally licensed entity that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a cannabis establishment. [Ord #62]

Cannabis Dispensary: This term is defined as a legally licensed entity that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials. [Ord #62]

Cannabis Establishment: A cannabis cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a cannabis dispensary. [Ord #62]

Cannabis Products: Any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures. [Ord #62]

Cannabis Product Manufacturing Facility: This term is defined as a legally licensed entity that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a cannabis dispensary. [Ord #62]

Cannabis Testing Facility: This term is defined as a legally licensed entity legally authorized to analyze the safety and potency of cannabis. [Ord #62]

Caretaker's Residence/Watchman's Quarters: A Dwelling unit which is occupied by one who is employed by a business located on the same premises or within the same structure as said dwelling unit.

Chain Link Fence: Chain link fencing does not mean chicken wire but a galvanized steel fence of a sufficient gauge (9 to 11 ½) similar to image below:



Change in Operation. Change in operation means a cumulative increase of more than three hundred (300) animal units, or change in animal species, after October 14, 1997, which are confined at an unpermitted concentrated animal feeding operation.

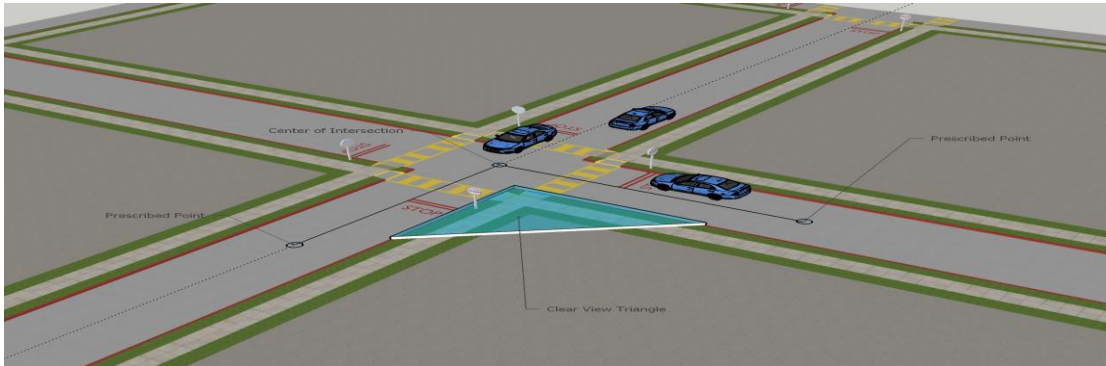
Chemigation. The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.

Church. A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

Class V Injection Well. A conduit through which potentially contaminated but generally non-hazardous fluids can move below land surface into or above an aquifer. The types of primary concern in Kingsbury County are 5W20-industrial process water and waste disposal wells and 5X28-automobile service station disposal wells. Typically, 5W20 types are commercial/ industrial facility septic tanks used to dispose of more than domestic wastewater. 5X28 types are dry wells for wastes from repair bay drains at facilities servicing internal combustion vehicles and equipment.

Clear View Triangle. A triangular-shaped portion of land established at street intersections and ingress/egress points in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection (see illustration below). A clear view triangle is formed by measuring the area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line at a prescribed distance.

Clear View Triangle Illustration



Club, Private. Building and facilities owned or operated by a corporation, association, person, or persons for a social, educational, or recreational purpose, but not primarily for profit and not primarily to render a service which is customarily carried on as a business. The structure is not available for public use or participation.

Commercial Public Enterprises: Including but not limited to the following; Music concerts; rodeos.; tractor pulls; and animal or vehicle races.

Commercial Vehicles. Any motor vehicle or semi-trailer, licensed by the state as a commercial vehicle, designed or used to carry freight, passengers for a fee, or merchandise in the furtherance of any commercial enterprise and having a gross weight of more than 10,000 pounds

Commission: The Planning Commission of Kingsbury County, South Dakota. "See also Planning Commission."

Common Ownership. A single, corporate, cooperative, joint tenancy, tenancy in common or other joint operation venture.

Comprehensive Plan. The adopted long-range plan intended to guide the growth and development of Kingsbury County.

Concentrated Animal Feeding Operation. A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any twelve (12)-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are considered a single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for land application of manure.

Conditional Use. A conditional use is any use that, owing to certain special characteristics attendant to its operation, may be permitted in a zoning district subject to requirements that are different from the requirements imposed for any use permitted by right in the zoning district. Conditional uses are subject to the evaluation and approval by the Board of Adjustment and are administrative in nature

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

Construction, Actual. Construction materials are being permanently placed, and the construction work is proceeding without undue delay. [Ord #67}

Contamination. The process of making impure, unclean, inferior or unfit for use by introduction of undesirable elements.

Contamination, Air. A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration, mining or milling operation that increases ambient air radiation levels by 50 mrem from the background levels at the perimeter of the mining and milling site or at the top of an exploration hole.

Contamination, Water. A concentration of any radioactive or toxic material which is a product, by-product, or otherwise associated with any exploration levels established by the Federal Safe Drinking Water Act and regulations promulgated thereunder.

Contingency Plans. Detailed plans for control, containment, recovery and clean-up of hazardous materials released during floods, fires, equipment failures, leaks and spills.

Contractor Shops and Yards. Those facilities to include structures and land areas where the indoor or outdoor storage of equipment and supplies used for various types of construction are stored. Examples of equipment and supplies include but are not limited to the following – road construction, building construction, gravel operations, and general contracting services.

Convenience Store. Any retail establishment offering for sale pre-packaged food products, household items, and other goods commonly associated with the same, at which a customer typically purchases only a few items during a short visit.

Data Processing Center. A building, dedicated space within a building, or group of structures used to house and maintain electronic hardware, computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, management, processing, or distribution of electronic data. Examples of such data include, but are not limited to, computationally-intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, etc. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations.

Day Care. Any operation which provides childcare services whether accessory to the caregiver's home or operated in a separate commercial structure.

Day Care Center. A commercial structure used for the purposes of providing childcare services. To be considered a Day Care Center under these regulations, must be licensed by the State of South Dakota.

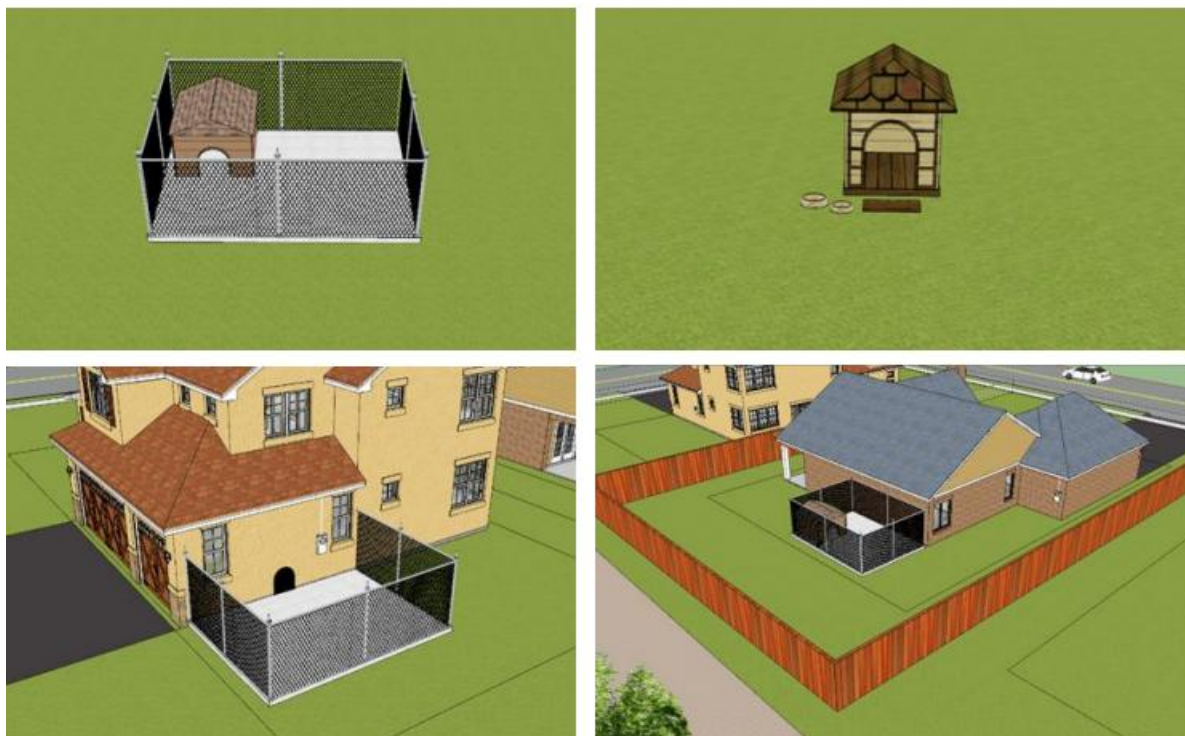
Decommissioning. To return the property to its pre-installation state or better as approved in the decommissioning plan.

Density. The number of families, individuals, dwelling units, or housing structures per unit of land.

Development. The carrying out of any surface or structure construction, reconstruction or alteration of land use or intensity of use.

District, Zoning. A section of the county and/or municipalities for which the regulations governing the construction and location of buildings and occupancy of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Dog Enclosure. An attached or detached outdoor structure intended for the exercising, containment, and/or sheltering of a dog or dogs. Not to include a fence constructed on the perimeter of the property. See example figures below.



Domestic Sanitary Sewage Treatment Facility. Shall mean the structures equipment and processes required to collect, carry away, treat and dispose of wastewater, industrial wastes, or sludge.

Dredging. Any of various practices utilizing machines equipped with scooping or suction devices that are used to deepen harbors, lakes, waterways or used in underwater mining.

Dwelling. Any building, including seasonal housing structures, or a portion thereof, which contains one (1) or more rooms, with sleeping quarters and is further designed and used exclusively for residential purposes. This definition does not include **recreational vehicles**, **a mobile homes** or manufactured homes.

Dwelling, Farm. Any dwelling owned or occupied by the farm owners, operators, tenants, or seasonal or year-around hired workers.

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

Dwelling, Non-Farm. Any occupied dwelling which is not a farm dwelling.

Dwelling, Single-Family. A building occupied exclusively by one (1) family.

Dwelling Unit. ~~One room, or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.~~ **One (1) or more rooms, containing sleeping quarters, in a dwelling occupied as separate living quarters by a single family.**

Electrical Substation. A premises which may or may not contain buildings, where the interconnection and usual transformation of electrical service takes place between systems. An electrical substation shall be secondary, supplementary, subordinate, and auxiliary to the main system.

Electric Utility. **Any person operating, maintaining, or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality.**

Eligible Building Site (Building Eligibility). A site which fulfills the requirements for the construction or placement of a building.

Engineer. Means any engineer licensed by the State of South Dakota.

Erosion. The process of the gradual wearing away of land masses.

Essential Public Services. Overhead or underground electrical, gas, petroleum products (i.e. gas, natural gas, oil), steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by **the** public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith.

Established Private Shallow Wells (in reference to Chapter 5.12.) A private well which is established and presently in use prior to the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

Established Residence (in reference to Chapter 5.12.) A non-seasonal dwelling established before the siting of a new concentrated animal feeding operation or the expansion of an existing animal feeding operation of which requires a conditional use permit.

Exception. **An exemption to a specified regulation within this Ordinance which, unless otherwise specified, may be authorized by the administrative official.**

Existing Farmstead. An existing farmstead shall include a livable house occupied by the owner or tenant within the last three (3) years and shall have been existing on the site for at least five (5) years and the site shall have been used in the past as a farmstead for normal farming operations. In addition The Board of Adjustment may consider defining an identifiable parcel as an existing farmstead if the proposed site meets the following criterion:

1. Evidence that the proposed site was once used for human habitation within the last fifty (50) years. This may be determined by existence of buildings/foundations or tax records.
2. Evidence that the proposed site was used as a farmstead supporting normal farming operations prior to September 4, 2007.
3. Information regarding the location of flood plain, access to roads and utilities, and other appropriate site information may be considered by the Board of Adjustment in determining the suitability of the parcel for development.

Exploration. The act of searching for or investigating a mineral deposit. It includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development of extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand-carried or otherwise transported over the surface or make magnetic, radioactive, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration.

Extended Home Occupation. A home occupation conducted outside of the residence in an accessory building. Extended home occupation shall comply with Chapter 5.10.

Facility. Something built, installed or established for a particular purpose.

Family. One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

Farm. An area with or without a dwelling which is used for the growing of the usual farm products, such as vegetables, fruit, trees and grain, and their storage on the area, as well as for the raising, feeding, or breeding thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep and swine all of the foregoing farm products and animals are raised for income. The term "farming" includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities.

Feedlot. Feedlot means pens or similar areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Feedlot is synonymous with other industry terms such as open lot pasture lot, dirt lot, or dry lot.

Fence. A structure used as a boundary, screen, separation, means of privacy, protection or confinement, and is constructed of wood, plastic, metal, wire mesh, masonry or other similar materials and is used as a barrier of some sort.

Filling. Filling in low-lying ground with soil.

Firearm. Means a gun that discharges shot, bullet or other projectile by means of an explosive, gas, compressed air, or other propellant.

Frontage. All the property on one (1) side of a street or road.

Game Lodge. A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

Garage, Private. An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, trailers, and boats, **but not commercial vehicles.**

Garage, Public. A building or portion thereof, other than a private or storage garage, designed or used for equipping, servicing, repairing, hiring, selling, storing, or parking motor-driven vehicles. The term repairing shall not include an automobile body repair shop nor the rebuilding, dismantling, or storage of wrecked or junked vehicles.

Garage, Storage. Any building or premises used for housing only motor-driven vehicles, other than trucks and commercial vehicles.

General Compatibility with Adjacent Properties. All uses listed as permitted or as conditional uses are generally compatible with other property in a specified zoning district. If such uses are not generally compatible, they should be prohibited within the specified district. Conditional uses may only be denied in accordance with definable criteria in order that an applicant may know under which circumstances a permit may be granted in this location. In Kingsbury County, general compatibility refers to the manner of operation of a use. The Board of Adjustment may consider compatibility when prescribing conditions for approval of a permit, but those conditions should be uniformly required of similar uses under similar circumstances throughout the county.

General Permit. South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations

Golf Course. A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters.

Government Grain Storage Sites. A grain storage facility owned and operated by a State or Federal governmental entity.

Governmental Agency. An organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other governmental unit.

Grade. The finished grade of premises improved by a building or structure is the average natural elevation or slope of the surface of the ground within fifty (50) feet of the building or structure.

Grading. The act or method of moving soil to reshape the surface of land or a road to a desired level or grade.

Grandfather"ed" Clause. A clause in a law that allows for the continuation of an activity that was legal prior to passage of the law but would otherwise be illegal under the new law.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or for personal enjoyment.

Grey Water. All domestic wastewater except toilet discharge water.

Ground Water. Subsurface water that fills available openings in rock or soil materials such that it may be considered water saturated.

Group Home. A supervised living or counseling arrangement in a family home context providing for the twenty-four (24) hour care of children or adults.

Haul Road. A public or private road, street, or highway used for the transportation of construction materials, agricultural products, equipment, aggregate, waste, goods, or other materials to or from a property in connection with a permitted or conditional use.

Hazardous Materials. A material which is defined in one or more of the following categories:

1. Ignitable: A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.
2. Carcinogenic: A gas, liquid or solid which is normally considered to be cancer causing or mutagenic. Examples: PCBs in some waste oils.
3. Explosive: A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.
4. Highly Toxic: A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.
5. Moderately Toxic: A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: Atrazine.
6. Corrosive: Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

Height of Building. The vertical distance from the established average sidewalk grade or street grade, or finished grade at the building line, whichever is the highest, to the highest point of the building.

High Water Mark. The elevation established by the South Dakota Water Management Board pursuant to SDCL 43-17. In those instances where the South Dakota Water Management Board has not established a high water mark the Board of Adjustment may consider the elevation line of permanent terrestrial vegetation to be used as the estimated high water mark (elevation) solely for the purpose of the administration of this ordinance. Regarding Lake Thompson the High Water Mark is the elevation of 1,694 NGVD 1929. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun. {Ord #48}

Home Occupation. An occupation engaged in by the occupants of a dwelling subject to Chapter 5.09.

Horticultural Services. Commercial services which are oriented to support the science or practical application of the cultivation of fruits, vegetables, flowers, and plants.

Household Unit. One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Impound Lot. A lot for the temporary storage of automobiles, trucks, buses, recreational vehicles, and similar vehicles. This use excludes vehicle repair, Junkyard/salvage Yard or dismantling. Impound lot shall comply with Chapter 5.37.

Incorporation. A soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil

Injection. The application of manure into the soil surface using equipment that discharges it beneath the surface.

Institutional Farm. A farm owned and operated by a county, municipal, State or Federal governmental entity and used to grow an agricultural commodity.

Intermodal Shipping/Storage Container. A six-sided metal unit constructed as a general cargo container used for the transport and storage of goods and materials. Intermodal shipping/storage containers do not include railroad cars, bus bodies, semi-trailers, and similar items designed to be permanently attached to a chassis. See image below.



Inventory (in reference to Chapter 5.12). The total number of animal units located on a concentrated animal feeding operation.

IT Load. IT load refers to the total electrical power consumed by IT equipment (such as servers, storage arrays, and network switches) within a data center, typically measured in kilowatts (kW) or megawatts (MW). It represents the power used specifically for computing operations, excluding cooling or facility infrastructure.

Junk Yard. The use of more than fifty (50) square feet of any land, building, or structure, whether for private or commercial purposes, or both, where waste, discarded or salvaged materials such as scrap metals, used building materials, used lumber, used glass, discarded vehicles, paper, rags, rubber, cordage, barrels, machinery, etc., or parts thereof, with or without the dismantling, processing, salvage, sale or other use or disposition of the same. (See Chapter 5.37).

Kennel. Any premise or portion thereon where more than five (5) dogs, cats, or other household pets are bred, raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Lagooning. The process of creating a shallow body of water, separated from a larger body of water.

Leaks and Spills. Any unplanned or improper discharge of a potential containment including any discharge of a hazardous material.

Letter of Assurances. A list of conditions signed by the applicant for a permit acknowledging agreement to follow the conditions of the permit.

Levee. A man-made structure usually an earthen embankment designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Light Manufacturing. Those manufacturing processes which are not obnoxious due to dust, odor, noise, vibration, pollution, smoke, heat or glare. These commercial and industrial uses are characterized by generally having all aspects of the process carried on within the building itself.

Living Quarters. Means the rooms or areas within a building that are used for sleeping, cooking and bathing/toiletry.

Lodging House. A building or place where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three (3) or more persons as opposed to hotels open to the public.

Lot. A lot is any lot, plot, or parcel of land under one ownership, or tract of land having specific boundaries, and which has been recorded in the Register of Deeds office. occupied or intended for occupancy by a use permitted in this Ordinance including. **Unless otherwise specified by this ordinance or allowed by the Board of Adjustment, a lot shall include only one (1) principal building together with its accessory buildings, open spaces and parking spaces required by this ordinance regulations and shall have its principal frontage upon a road or other approved access.**

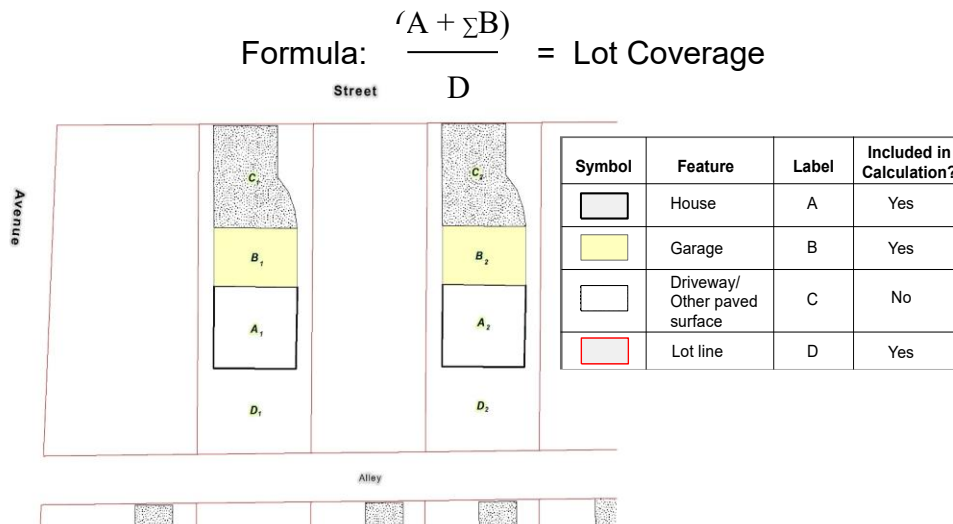
Lot Area. The lot area is the land in square feet, within the lot line.

Lot, Buildable.

1. A parcel of land occupied or intended for occupancy by a use permitted in this Ordinance including one (1) principal building together with its accessory buildings, the open spaces and parking spaces required by this ordinance.
2. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds at the time of the adoption of this Ordinance, or an irregular tract lot described by a deed recorded in the office of the Register of Deeds at the time of the passage of this Ordinance; provided that if a lot has less width or area as required by this Ordinance, the lot is not a buildable lot.

Lot, Corner. A lot abutting upon two (2) or more streets at their intersection.

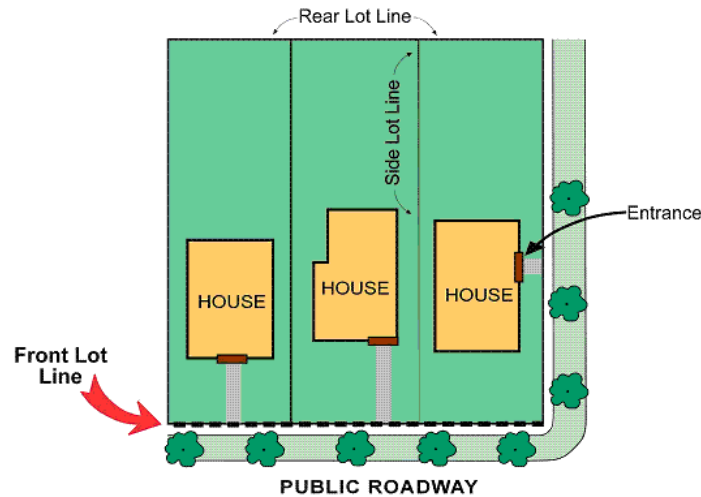
Lot Coverage. The percentage determined by dividing the area of a lot covered by the total (in square feet of. (A) the footprint of the primary structure; and (B) the footprint(s) of all accessory structures by the total lot area (D). (See formula and figure below).



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

Lot, Double Frontage. A lot having a frontage of two (2) streets as distinguished from a corner lot.

Lot Line. A line marking the legal limits of the property of a person. The term property line and lot line shall have the same meaning. There are three types of lot lines: Front, Side and Rear. See illustration below.



Lot of Record. A subdivision, the plat of which has been recorded in the office of the Register of Deeds, or a parcel of land the deed or agreement to convey to which was recorded in the office of the Register of Deeds prior to October 9, 2007.

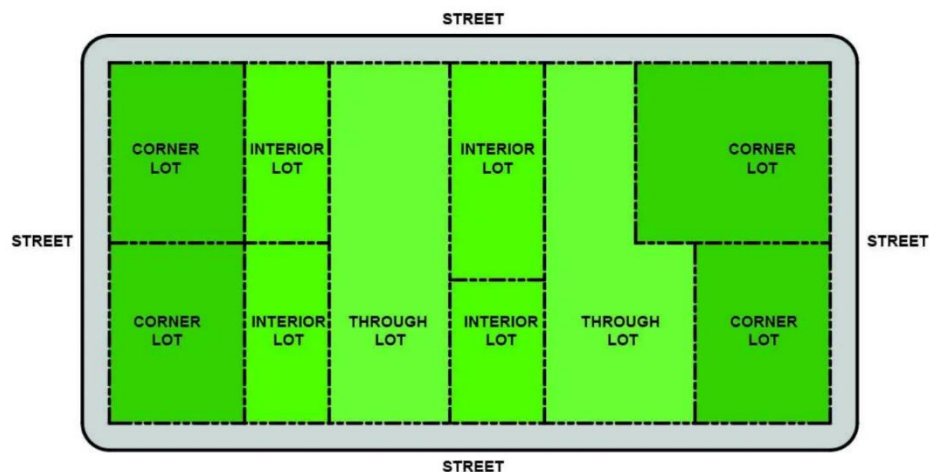
Lot Types. See figure below:

Corner lot. Defined as a lot located at the intersection of two or more streets often with two front yards and specific rules for determining which street is the front.

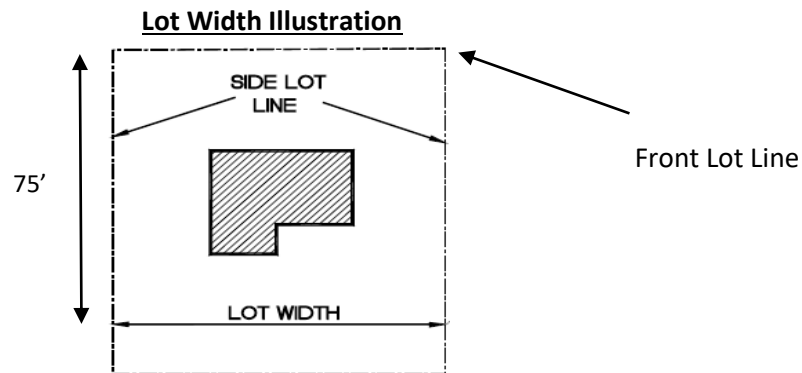
Interior Lot. A standard lot with only one side on a street, surrounded by other lots on its other three sides.

Reversed Frontage Lot. A lot where the main entrance and front yard face away from the main road (often an arterial or railroad), with the rear lot line facing the main street, sometimes for privacy or utility access.

Through Lot. Defined as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.



Lot Width. The width of a lot is the mean distance between straight side lot lines measured at a point fifty (50) feet back from the front line thereof, at the established front yard setback line. For example, in the Agricultural District the front yard setback is 75 feet. Therefore, the lot width is measured 75 feet from the Front Lot Line (see below). (see below).



Manufactured Home. See Chapter 5.16.

Manufactured Home Park. Any manufactured home court, camp, park, site, lot, parcel or tract of land intended for the purpose of supplying a location, or accommodations, for manufactured homes and upon which manufactured homes are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the manufactured home park and its facilities or not. "Manufactured Home Park" shall not include automobile or manufactured home sales lots on which unoccupied manufactured homes are parked for the purposes of inspection and sale.

Manufactured Housing Definitions:

1. **Anchoring System** – An approved system of straps, cables, turnbuckles, chains, ties, or other approved materials used to secure a manufactured or mobile home.
2. **ANSI/NFPA 501A Standards for Installation of (Manufactured) Mobile Homes** – Model national standards (including all authorized successor documents) for installation of manufactured and mobile homes, as adopted and copyrighted by the National Fire Protection Association and Manufactured Housing Institute.
3. **Expando Unit** – An expandable manufactured housing unit.
4. **Foundation Siding/Skirting** – A type of wainscoting constructed of fire and weather resistant material, such as aluminum, asbestos board, treated pressed wood or other approved materials, enclosing the entire undercarriage of the manufactured.
5. **Permanent Perimeter Enclosure** – A permanent structural system completely enclosing the space between the floor joists of the home and the ground.
6. **Permanent Foundation** – Any structural system for transporting loads from a structure to the earth at a depth below the established frost line without exceeding the same bearing capacity of the supporting soil.

7. Section – A unit of a manufactured home at least ten (10) body feet in width and thirty (30) feet in length.

8. Support System – A pad or combination of footings, piers, caps, plates, and shims, which, when installed, support the manufactured or mobile home.

Manure. Manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Manure, Injected. Animal manure injected or tilled into the soil at the time of application.

Manure, Liquid. A suspension of livestock manure in water in which the concentration of manure solids is low enough to maintain a free flowing fluid. Liquid manure also includes slurry which is a mixture of livestock manure, bedding and waste feed in water. Liquid manure and slurry is typically applied to fields by pumping through irrigation equipment or by hauling and spreading with a tank wagon. The solids content of liquid manure or slurry is less than ten (10) percent. A practical definition of liquid manure includes any livestock manure mixture that can be pumped through conventional liquid manure handling equipment.

Manure Storage Area. An area for the temporary containment of animal manure. Said area is separate from pens or buildings where animal manure is stored for more than one year.

Manure, Surface Applied. Animal manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal manure in irrigation waters.

Measurement. Unless otherwise specified, all distances shall be measured horizontally and shall be expressed to the nearest integral foot. If a fractional distance is one-half (1/2) foot or less, the preceding or lesser integral foot measurement shall control.

Milling. The processing or enhancing of a mineral.

Mineral. An inanimate constituent of the earth in a solid, liquid or gaseous state which, when extracted from the earth, is useable in its natural form as a metal, metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purpose of these regulations, this definition does not include surface or subsurface water, geothermal resources, or sand, gravel and quarry rock.

Mineral Extraction. The removal of a mineral from its natural occurrence on affected land. The term includes, but is not limited to, underground and surface mining.

Modular Home. See Chapter 5.16.

Motel/Hotel. A series of attached, semi-attached, or detached sleeping or living units, for the accommodation of transient guests and not customarily including individual cooking or kitchen facilities, said units having convenient access to off-street parking spaces for the exclusive use of guests or occupants.

Motorcycle Recreation Facility: A commercially operated facility or site developed and maintained for the recreational riding, training, practice, competition, or exhibition of motorcycles, off-highway motorcycles (OHMs), dirt bikes, dual-sport motorcycles, or similar two-wheeled motorized vehicles. Such facilities may include motocross tracks, trail systems, enduro or trials courses, riding parks, training areas, spectator areas, parking areas, maintenance buildings, concession facilities, restrooms, and other accessory structures or uses customarily incidental to the operation of the facility. This definition does not include the sale, repair, or storage of motorcycles as a principal use unless specifically permitted as an accessory use.

Motorcycle Recreation Facility, Commercial. A motorcycle recreation facility operated for compensation, membership fees, admission charges, organized events, or other commercial purposes.

Motorcycle Recreation Facility, Private. A motorcycle riding area established and used solely by the property owner, family members, or invited guests without compensation or public access.

MREM. One-thousandth of a REM.

Nonconforming Building or Structure or Use. Any building or use of land, land lawfully occupied by a use at the time of passage of this regulation or amendment thereto, which does not conform after the passage of this regulation or amendment.

Nonstandard Use. The category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this ordinance which fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this ordinance.

Nursery. A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

Object. Anything constructed, erected, or placed, the use of which does not require permanent location on the ground or attached to something having a permanent location on the ground.

Open Lot. Pens or similar confinement areas with dirt, or concrete (or paved or hard) surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas. Synonymous with pasture lot, dirt lot, dry lot.

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours.

Owner. Means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the County.

Parcel. A single tract of land, located within a single block, which at the time of filing for a Building/Use Permit, is designated by the owner or developer as a tract to be used, developed, or built upon as a unit, under single or unified ownership or control, and assigned to the particular use, building or structure, for which the Building/Use Permit are issued and including such area of land as may be required by the provisions of this Ordinance for such use, building or structure.

Parking Space. An area, enclosed or unenclosed, sufficient in size to store one (1) automobile, together with a driveway connecting the parking space with a street or alley.

Parks and Recreation Areas. Public, non-commercial recreation facilities open to the general public and requiring minimal structural development, including, but not limited to playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, public campgrounds swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, rest rooms, bath houses, and the maintenance of such land and facilities, but not including private, commercial campgrounds, commercial recreation and/or amusement centers.

Pasture. A field providing continuous forage to animals and where the concentration of animals is such that a vegetative cover is maintained during the growing season.

Permit. A permit required by these regulations unless stated otherwise.

Permitted Use. Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Person. In addition to an individual, includes the following terms: “firm”, “association”, “organization”, “partnership”, “trust” “company”, “corporation”, joint venture, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Personal Service. Establishments providing nonmedically related services, including beauty and barber shops; clothing rental; dry cleaning pick-up stores; laundromats (self-service laundries); psychic readers; shoe repair shops; tanning salons; tattoo parlors; body piercing studios; etc. These uses may also include accessory retail sales of products related to the services provided.

Photovoltaic System. An active solar energy system that converts solar energy directly into electricity.

Plat. The map, drawing or chart on which the subdivider’s plan of subdivision is legally recorded.

Potential Pollution Hazard. A concentrated animal feeding operation of ten (10) up to four hundred ninety-nine (499) animal units may be classified as a Class D concentrated animal feeding operation by the County Zoning Officer when a potential pollution hazard exists. Factors to be considered by the Zoning Officer in determining a potential pollution hazard include the following:

1. The concentrated animal feeding operation does not meet the minimum setback and separation distances of these regulations.
2. A potential water pollution hazard exists due to siting over a shallow aquifer or drainage which contributes to the waters of the State.

Primary Containment Facility. A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

Principal Building. The structure in which the principal use of the lot is conducted. For Example a dwelling on a residential lot.

Principal Use. The primary use to which the premises are devoted.

Private Club. A social and recreational facility that is usually private or semi-private

Private Shooting Preserves. An acreage of at least one hundred and sixty (160) acres and not exceeding one thousand two hundred and eighty (1,280) acres either privately owned or leased on which hatchery raised game is released for the purpose of hunting, for a fee, over an extended season.

Private Wind Energy Conversion System (PWECS). Any mechanism or device, not owned by a public or private utility company, designed for the purpose of converting wind energy into electrical or mechanical power to be used on the site where said power is generated.

Process Generated Wastewater. Water directly or indirectly used in the operation of an animal feeding operation. The term includes spillage or overflow from watering systems; water and manure collected while washing, cleaning or flushing pens, barns, manure pits or other areas; water and manure collected during direct contact swimming, washing or spray cooling of animals; and water used in dust control.

Process Wastewater. "Process wastewater" means any process generated wastewater and any precipitation (rain or snow) that comes into contact with the animals, manure, litter or bedding, feed, or other portions of the animal feeding operation. The term includes runoff from an open lot.

Quarter-Quarter Section. The Northeast, Northwest, Southwest, or Southeast quarter (1/4) of a quarter section delineated by the United States Public Land Survey or a government lot per such survey, if such lot contains a minimum of thirty-five (35) acres.

Range (Target/Shooting). Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. A Range Officer shall be present on site at any Range when the range is in use. The term range includes archery ranges.

Range Officer. Means the person designated to be responsible at a Range at any given time during any activity.

Recreational Vehicle. A motor home, travel trailer, truck camper, or camping trailer, with or without motor power, designed for human habitation for recreational or emergency occupancy. A recreational vehicle does not include boats, ice shacks or manufactured homes.

Religious Institution. Any building used for non-profit purposes by an established religious organization holding either tax exempt status under Section 501(c)(3) of the Internal Revenue Code or under the state property tax law, where such building is primarily intended to be used as a place of worship. The term includes but is not necessarily limited to. church, temple, synagogue, and mosque.

Religious Farming Community. A corporation formed primarily for religious purposes whose principle income is derived from agriculture and/or a farm which may or may not be held in collective ownership, in which multiple families reside on-site and use or conduct activities upon the property which are participated in, shared, or used in common by the members of the group residing thereon.

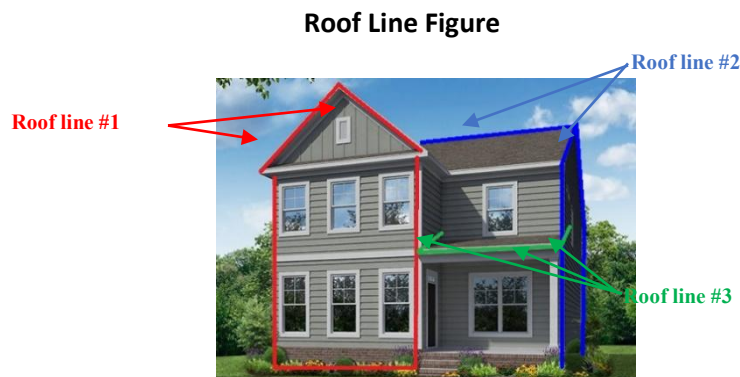
REM (Roentgen Equivalent Man). A measurement of the biological effects resulting from ionizing radiant energy where roentgen is the amount of radiation leading to the absorption of 88 ergs of energy per gram of air.

Repair. Reconstruction or renewal of any part of an existing building for the purpose of maintenance. The word “repair” or “repairs” shall not apply to any change of construction.

Resort. This category provides commercial hospitality lodgings in spacious settings that are principally intended for vacationing, relaxation and conference activities for visitors to the community.

Retail Sales and Trade. Establishments engaged in selling products, goods or merchandise to the general public for personal or household consumption; and establishments engaged in providing services or entertainment to the general public including eating and drinking establishments, hotels, motels, repair shops, indoor amusement, copying services, health, professional, educational, and social services, and other miscellaneous services.

Roof Line. Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette; and where a building has several roof eaves, this roof or parapet shall be the one belonging to that portion of the building on whose wall a sign is located. (See roof-line figure below)



Rubble Site. A site for the disposition of refuse as defined by the South Dakota Department of Environment and Natural Resources.

Runoff Control Basin. A structure which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to area which are unroofed or partial roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.

Sale or Auction Yard or Barn. A place or building where the normal activity is to sell or exchange livestock. Livestock normally in yard or barn for one (1) day during sale or auction.

Sanitary Landfill. A government-owned site for the disposal of garbage and other refuse material.

Screening. Earthforms, walls, fences, plant material or other structures or devices intended to partially obscure, conceal or protect from off-site view.

Seasonal Camp Trailers or Recreational Vehicles. A vehicle designed for temporary seasonal living quarters.

Secondary Containment Facility. A second tank, catchment pit, pipe or vessel that limits and contains a liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery systems are required.

Section Line. A dividing line between two (2) sections of land as identified delineated by the United States Public Land Survey or a government lot per such survey.

Service Station, Automobile. Any building or premise which provides for the retail sale of gasoline, oil, tires, batteries, and accessories for motor vehicles and for certain motor vehicle services, including washings, tire changing, repair service, battery service, radiator service, lubrication, brake service, wheel service, and testing or adjusting of automotive parts. Automobile repair work may be done at a service station provided that no rebuilding of engines, spray paint operations, or body or fender repair is permitted. Gasoline pumps and gasoline pump islands shall be located more than twelve (12) feet from the nearest property line.

Setback. The setback of a building is the minimum horizontal distance between street or property line and the front line of the building or any projection thereof, except cornices and unenclosed porches, and entrance vestibules and window bays projecting not more than three and one-half (3 ½) feet from the building and not more than fifty (50) square feet in area, and which do not extend above the first story of the building.

Setback Between Uses. Unless specifically mentioned within this ordinance, the setback or separation distance between uses is the minimum horizontal distance measured from the wall line of a neighboring principal building to the wall line of the proposed building/structure/use.

Shall. Shall means that the condition is an enforceable requirement of this regulation.

Shallow Aquifer. An aquifer zero (0) to fifty (50) feet in depth in which the permeable media (sand and gravel) starts near the land surface, immediately below the soil profile. A shallow aquifer is vulnerable to contamination because the permeable material making up the aquifer (a) extends to the land surface so percolation water can easily transport contaminants from land surface to the aquifer, or (b) extends to near the land surface and lacks a sufficiently thick layer of impermeable material on the land or near the land surface to limit percolation water from transporting contaminants from the land surface to the aquifer.

Shallow Well. A well which is located in a shallow aquifer.

Shelterbelt. For the purposes of this ordinance a shelterbelt shall include ten (10) or more trees planted in a line, with each trees separated by a distance of forty (40) feet or less. Ornamental and/or shade trees, generally used in front yards and spaced further than fifteen (15) feet apart and further do extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts. Shelterbelts shall comply with Chapter 5.08.

Shop-Style Dwellings. See Section 1245.

Shorelands. All land within one thousand (1,000) feet of a lake or pond and lands within three hundred (300) feet of a river or stream or to the landward side of the flood plain, whichever distance is greater.

Short-Term Rental (STR). A dwelling unit, or portion of a dwelling unit, rented for less than thirty (30) consecutive days.

Short-Term Rental STR, Owner-Occupied. A short-term rental where the property owner resides in the dwelling as their primary residence.

Short-Term Rental STR, Non-Owner-Occupied. A dwelling unit used solely as a short-term rental and not occupied by the owner as a primary residence.

Should. Means that the condition is a recommendation. If violations of this regulation occur, the County will evaluate whether the party implemented the recommendations contained in this regulation that may have helped the party to avoid the violation.

Sign. Any device or structure, permanent or temporary, which directs attention to business, commodity, service or entertainment but excluding any flag, badge or insignia of any government agency, or any civic, charitable, religious, patriotic or similar organizations.

Sign, Abandoned. A sign or sign structure which contains no sign copy, contains obliterated or obsolete sign copy, or is maintained in an unsafe or unsightly condition for a period of three (3) months shall be considered an abandoned sign.

Sign. Off-premises. Any sign identifying or advertising a business, person, activity, goods, products or services at a location other than where such sign has been erected.

Sign, On-premises. Any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign has been erected.

Sign Structure. Any structure which supports, has supported, or is capable of supporting a sign, including decorative cover.

Significant Contributor of Pollution. To determine if a concentrated animal feeding operation meets this definition, the following factors are considered: one or more of the following factors are considered and/or may be prescribed as conditions of granting a permit

1. Size of feeding operation and amount of manure reaching waters of the state.
2. Location of the feeding operation in relation to waters of the state.

3. Means of conveyance of manure and process wastewater into waters of the state; and
4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.

Sleeping Quarters. A room or an area contained within a dwelling unit utilized for the purpose of sleep.

Solar Collector. A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy. Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System (SES). A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage and distribution of solar energy. See Section 5.40.

Solution mining. The mining of an ore body with circulation of chemicals through injection and recovery wells. Solution Mining for minerals is prohibited.

Specified Anatomical Areas. Means (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and (2) Genitals of humans or animals in a discernible turgid state, even if completely or opaquely covered.

Specified Sexual Activities. Means (1) Human genitals in a state of sexual stimulation or arousal; (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation; (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast; and (4) Excretory functions as part of or in connection with any activities set forth in an Adult Bookstore or "Adult Entertainment Cabaret".

Stable. A building for the shelter and feeding of domestic animals, especially horses and cattle.

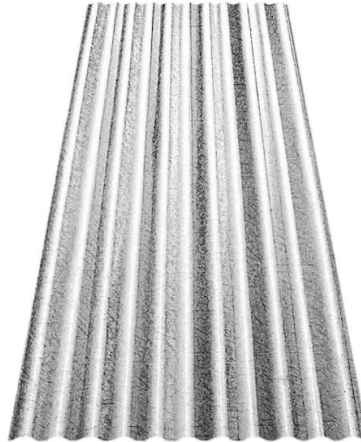
Stable, Commercial. A building for the shelter and feeding of domestic animals, especially horses and cattle where such domestic animals are raised, trained, boarded, harbored, or kept for remuneration. Veterinary clinics, animal hospitals and animal shelters are specifically excluded.

Stand, Roadside. A structure for the display and sale of products with no space for customers within the structure itself.

Stealth. Means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

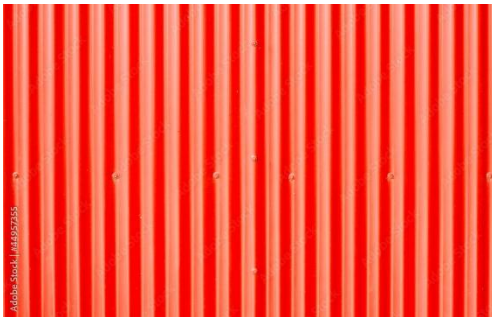
Steel Siding, Corrugated. A type of sheet iron or steel strengthened for use in construction by having a series of alternating grooves forced into it, not painted and usually galvanized for weather resistance. See figure below:

Steel Siding, Corrugated Figure



Steel Siding, Conventional Non-Corrugated: A system of colored metal panels with exposed fasteners, installed in sheet form as an exterior wall covering on residential or commercial buildings. This term excludes Corrugated Steel Siding and Board-and-Batten Steel Siding. This siding is customarily installed in a vertical orientation but may also be installed horizontally. See figures below:

Steel Siding, Conventional Non-corrugated Figures



Steel Siding (Board and Batten. A colored vertical steel siding system with an embossed wood-grain texture (non-flat finish), designed to replicate traditional board-and-batten construction. The siding features wide vertical panels (“boards”) with narrower raised strips (“battens”) installed over panel joints.

Steel Siding, (Board and Batten) Figures



Storage Facility, Private. A non-commercial building or group of buildings designed and used primarily for the storage of personal property

Storage Facility, Commercial. A building or group of buildings designed and used primarily for the storage of commercial or private goods, materials, vehicles, or personal property in individual units within a common structure or facility, typically rented or leased to separate users. The use may include accessory outdoor storage of vehicles, boats, trailers, or similar items.

Street, Highway or Road. All property acquired or dedicated to the public and accepted by the appropriate governmental agency for street, highway or road purposes.

Street, Arterial. A street designated as such on the Major Street Plan of the Comprehensive Plan of Kingsbury County, South Dakota.

Street, Collector. A street designated as such upon the Major Street Plan of the Comprehensive Plan of Kingsbury County, South Dakota.

Street, Local. Any street which is not an arterial street or collector street.

Street, Highway or Road Right-of-Way (ROW) Line. A dividing line between a lot or parcel of land and a contiguous street, highway or road.

Structurally Altered. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girders, or any complete rebuilding of a roof or the exterior walls.

Structure. Anything constructed or erected the use of which requires permanent location on the ground or attached to something having a permanent location on or below the ground. Among other things, structures include, but are not limited to, buildings, manufactured homes, walls, fences, billboards, and poster panels.

Structure, Temporary. Anything constructed or erected, or placed, the use of which requires temporary location on the ground or attached to something having a temporary location on or below the ground.

Substantial improvement. Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (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 damage occurred. For the purpose of this designation, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Subdivision. The division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building developments (whether immediate or future). This term includes resubdivision and, when appropriate to the context, is related to the process of subdividing or to the land subdivided.

Substantially Completed. This term refers to the amount of work required to be completed in association with a Building/Use Permit issued by the City. In order to be substantially complete, seventy-five (75) percent of the project for which a Building/Use Permit has been issued is required to be finished.

Telecommunications Facilities. Means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:

1. Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or
2. Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

Temporary Fireworks Sales Stand. A structure utilized for the licensed resale of fireworks during the time period allowed by South Dakota State Law.

Ten Year Time of Travel Distance. The distance that ground water will travel in ten years. This distance is a function of aquifer permeability and water table slope.

Tower. Means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

Townhouse. A townhouse is an attached single-family dwelling unit which is a part of and adjacent to other similarly owned single-family dwelling units that are connected to but separated from one another by a common party wall having no doors, windows, or other provisions for human passage or visibility. Differing from condominiums, townhouse ownership does include individual ownership of the land. There can also be common elements, such as a central courtyard, that would have shared use.

Trailer. Means any of the following:

- 1. Travel Trailer. A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses. The trailer shall be permanently identified "travel trailer" by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight (8) feet, and a body length not exceeding thirty (30) feet.**
- 2. Pick-up Coach. A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.**
- 3. Motorhome. A portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.**
- 4. Camper Trailer. A canvas, folding structure, mounted on wheels and designed for travel, recreation, and vacation use.**

Tree, Ornamental. A deciduous tree which is typically grown because of its shape, flowering characteristics, or other attractive features, and which grows to a mature height of about twenty-five (25) feet or less.

Tree, Shade. For the purposes of this Ordinance, a shade tree is a deciduous tree which is has a mature crown spread of fifteen (15) feet or greater, and having a trunk with at least five (5) feet of clear stem at maturity.

Truck Garden. A farm where vegetables are grown for market.

Turbine. The parts of the Wind Energy System including the blades, generator, and tail.

Twin Homes. A two-family dwelling which has a common wall and is platted into two (2) separate lots.

Utility (in reference to Wind Energy Systems). Any entity engaged in this state in **1) The generation, transmission or distribution of electric or oil/natural gas energy 2) The treatment, storage and distribution of potable water; 3) The collection, storage and treatment of domestic sanitary sewage;** including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipal utility.

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

Veterinary Clinic. Any premises to which animals are brought, or where they are temporarily kept, solely for the purpose of diagnosis or treatment of any illness or injury, which may or may not have outdoor runs.

Violation. The failure of a structure/use or other development to be fully compliant with this ordinance.

Waters of the State. Means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Water Surface Elevation. The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Watchman's Quarters. See Caretaker's Residence/Watchman's Quarters.

Well. An artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well. (SDCL 46-1-6)

Well, Abandoned. A well which is in either such a state disrepair that its original purpose cannot be reasonably achieved, or which has not been used for water production in the past two (2) years.

Well, Established. A water producing well that is either registered with the State of South Dakota or has well logs on file with the South Dakota Department of Agriculture and Natural Resources or has been used for human consumption for more than one week within one (1) year prior to the application date for a proposed concentrated animal feeding operation.

Well, Shallow. A well which is located in a shallow aquifer.

Wetlands. Any area where ground water is at or near the surface a substantial part of the year; the boundary of which shall be defined as that area where the emergent aquatic vegetation ceases and the surrounding upland vegetation begins.

Wholesale Merchandising/Trade. Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Wind Energy System (WES). A commonly owned and/or managed integrated system that converts wind movement into electricity. All of the following are encompassed in this definition of system:

1. Tower or multiple towers,
2. Generator(s),
3. Blades,
4. Power collection systems, and
5. Electric interconnection systems.

6. Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and

Windward Row. Of or on the side exposed to prevailing winds. Regarding shelterbelts, on the north and west side of a public right-of-way, the windward row of the shelterbelt is northernmost or westernmost row of trees. On the south and west side of a public right-of-way, the windward row of the shelterbelt is southernmost and easternmost row of trees.

WUE Water Usage Effectiveness. WUE stands for Water Usage Effectiveness in data centers. It is calculated as the annual gallons of water used divided by the total annual kilowatt hours (kWh) used by IT equipment.

Yard. An open space on the same lot with a building or group of buildings, which **unoccupied and unobstructed** open space lies between the building or group of buildings and the nearest lot line. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and bearing wall of the **main**-building shall be used. (See Front, Side, and Rear Yard Illustration Below)

Yard, Front. A yard extending across the front of a lot between the sideyard lines, and being the minimum horizontal distance between the road right-of-way line and the main bearing wall of the **main** building or any projections thereof other than the projections of the usual steps, unenclosed balconies or open porch. **There shall be a front yard on each street which a lot abuts regardless of zoning district.** (See Front, Side, and Rear Yard Illustration Below)

Yard, Rear. ~~A yard across the whole width of a lot, extending from the rear line of the building to the rear line of the lot.~~ **Any yard extending across the rear of a lot measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or bearing wall or any projections other than steps, unenclosed porches, or unenclosed balconies. On corner lots the rear yard may be to the rear of either street, provided that the minimum rear yard depth requirement shall be calculated on the longest average lot dimension. On interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.** (See Front, Side, and Rear Yard Illustration Below)

Yard, Required. **That portion of a side, front, or rear yard nearest the designated lot line and having the width or depth required in the district in which it is located.**

ARTICLE III
DISTRICT REGULATIONS

CHAPTER 3.01. APPLICATION OF DISTRICT REGULATIONS.

Section 3.01.01. Application of District Regulations.

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

1. No structure, permanent or temporary, or any part thereof shall be erected, converted, enlarged, reconstructed or structurally altered nor shall any building or use of land be used, except for a purpose listed as a permitted use or conditional use in the district in which the building or land is located.
2. No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area and parking regulations of the district in which the building is located.
4. The minimum yards and other open spaces, including lot area, required by this Ordinance for each and every building at the time of passage of this Ordinance or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this Ordinance.
5. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

CHAPTER 3.02. NONCONFORMING USES.

Section 3.02.01. Purpose and Intent. The purpose of this article is to provide for the regulation of nonconforming uses, buildings, and structures, and to specify those circumstances under which they shall be permitted to continue. Further, it is intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.

Section 3.02.02. Continuation of Nonconforming Uses. Subject to the provisions of this article, the lawful use of a premise existing immediately prior to the effective date of this ordinance may be continued although such use does not conform to the provisions hereof.

Section 3.02.03. Use Becoming Nonconforming by Change in Law or Boundaries. Whenever the use of premises becomes a nonconforming use through a change in zoning ordinance or district boundaries, such use may be continued, although the use does not conform to the provisions thereof.

Section 3.02.04. Extension or Enlargement. A nonconforming use shall not be enlarged, extended, converted, reconstructed, or structurally altered unless such use is changed to a use permitted in the district in which the premise is located.

Section 3.02.05. Restoration After Damage. When the use of a building is nonconforming as defined by this ordinance and such a building is damaged by a fire, explosion, act of God, or the public enemy to the extent of more than sixty (60) percent of its fair market cash value, it shall not be restored except in conformity with the provisions of the district in which the building is located. Such repair or reconstruction of such building shall be begun within six (6) months after such casualty and completed within a reasonable time thereafter. The loss in value shall be computed as the difference between the actual cash value of the structure immediately before and after the casualty. Cash value shall be the same as that used for insurance purposes as approved by the State of South Dakota Insurance Code.

Section 3.02.06. Repairs and Maintenance. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repairs or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the nonconformity of the structure shall not be increased.

Section 3.02.07. Unsafe Nonconforming Use. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe, or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Section 3.02.08. Discontinuance of Nonconforming Use. No nonconforming use, building, structure or premises, if once changed to conform to the requirements of this ordinance for the district in which it is located, shall ever be changed back so as to be nonconforming. In the event that a nonconforming use is discontinued for more than one (1) year, any subsequent use shall thereafter be in conformity with the regulations of the district in which it is located **and SDCL 11-2-17.7.**

Section 3.02.09. Effect on Use Which is Illegal Under Prior Law. Nothing in this ordinance shall be interpreted as authorization for, or approval of, the continuance of the use of a premises in violation of zoning regulations in effect immediately prior to the effective date of this ordinance.

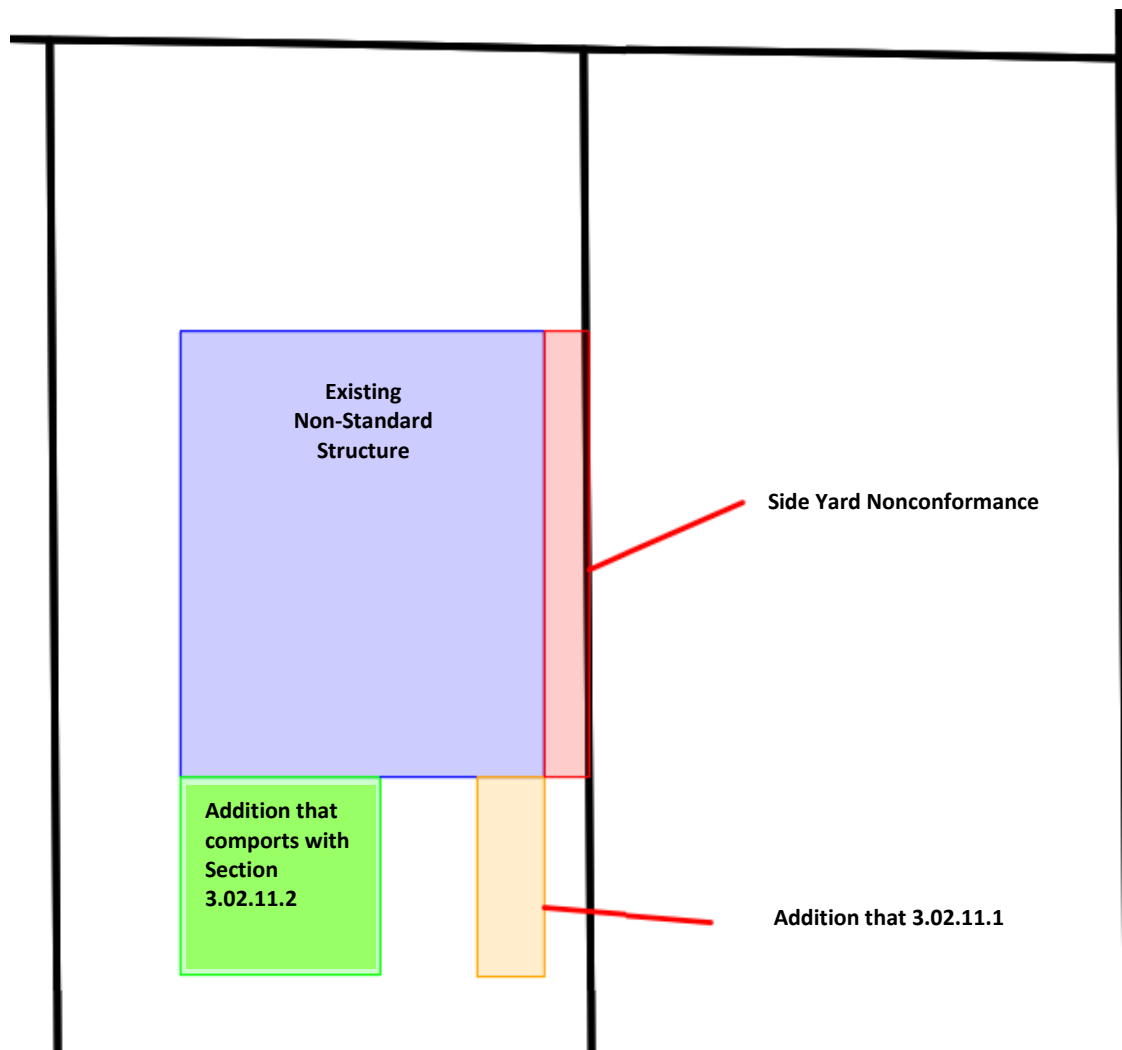
Section 3.02.10. Powers of the Planning Commission/Board of Adjustment. Nothing contained in this Section shall be so construed as to abridge or curtail the powers of the County Planning Commission or Board of Adjustment as set forth elsewhere in this Ordinance.

Section 3.02.11. Continuation of Nonstandard Uses. Nonstandard uses existing immediately prior to the effective date of this ordinance may be continued, although such uses do not conform to the provisions hereof. Nonstandard buildings or structures may be enlarged or extended, converted, reconstructed, or structurally altered as follows:

- 1. Enlargements, extensions, conversions, or structural alterations may be made as required by law or ordinance.**
- 2. Structural alteration of buildings or structures may otherwise be made if such changes do not encroach into an existing front yard, side yard, or rear yard which is less than the minimum required yards for the district in which they are located.**

3. ~~Enlargement, extension, conversion of buildings or structures may otherwise be made if such changes comply with the minimum required yards, lot area, height, landscaping, parking, and density for the district in which they are located.~~
1. The Zoning Official may allow the structural alteration, addition (enlargement or extension) of a non-standard structure provided such alteration(s) or addition(s) will be erected no closer to the lot line than the existing building's current non-conforming setback. See Figure 3.02.11.1 below.
 2. The Zoning Official may allow the structural alteration, addition (enlargement or extension) of a non-standard structure provided such alteration(s) or addition(s) conforms to all other ordinance requirements (i.e., lot area, height, landscaping, parking, and density for the district in which they are located. See Figure 3.02.11.1 below.

Figure 3.02.11.1
Example of Addition to a Non-Standard Structure



Section 3.02.12. Nonconforming Lots of Record.

1. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.
2. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this Ordinance.

CHAPTER 3.03. ZONING DISTRICTS.

Section 3.03.01. Districts.

1. For the purpose of this Ordinance, the unincorporated areas of the County may be divided into any of the following zoning districts: A-Agricultural; CI-Commercial/Industrial; CN-Conservation; LP-Lake Park; PR-Planned Residential; and TD-Town District. In addition to zoning districts, the FP-Flood Plain and AP-Aquifer Protection zoning overlay districts impose special regulations on the property that may fall within these districts without abrogating the requirements imposed by the underlying land use district regulations. [Ord #67]
2. The requirements as set forth below for each of the use districts listed as part of this Ordinance shall govern the development within the said districts as outlined on the map entitled "Official Zoning Map, Kingsbury County, South Dakota."
3. "A" AGRICULTURAL LAND DISTRICT – The Agricultural Land District is established to preserve open space and maintain and promote farming and related activities within an environment which is generally free of other land use activities. The Agricultural Land District is further characterized, as land areas not yet ready for further development. residential development, other than single-family farming units, will be discouraged to minimize conflicts with farming activities and reduce the demand for expanded public services and facilities.
4. "AP" AQUIFER PROTECTION OVERLAY DISTRICT - The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow aquifers of Kingsbury County.
5. "CI" COMMERCIAL/INDUSTRIAL DISTRICT - The Commercial District is intended to provide areas for commercial and industrial activities, which require highway access, and further are oriented

primarily to, and supportive of, farming and other activities which are determined to be appropriate in the rural area. Industrial uses which produce smoke, noise, dust, odor, and/or heavy traffic and large outdoor storage areas shall require special review and consideration.

6. "CN" CONSERVATION DISTRICT - The Conservation District is to provide for the retaining of natural vegetation of a particular area, to preserve the natural environment and resources from destructive land uses, and to protect wildlife habitat. Such areas may include, but are not limited to, flood plains of rivers, streams, and lakes, abandoned quarries, certain wetlands and natural prairies, and historical sites.
7. "FP" FLOOD PLAIN OVERLAY DISTRICT - The Flood Plain Overlay District is established to protect the natural environment and resources from destructive land uses and to protect lives and property along and adjacent to streams and rivers. [Ord #67]
8. "LP" LAKE-PARK DISTRICT - Lake Park District is to provide for ~~orderly low concentration~~ residential ~~(up to ten (10) persons per acre)~~ and recreational development, together with certain public facilities, customary home occupations, and certain commercial establishments, normally associated with lake shore development.
9. "PR" PLANNED RESIDENTIAL DISTRICT - The Planned Residential District is to provide for residential subdivisions which, through their design and development, will limit the amount of agricultural land that is taken out of production, will not require additional public expenditures for roads or other improvements and services, and which will minimize the conflict between farm and non-farm uses.
10. "TD" TOWN DISTRICT - The Town District is established to provide for orderly low density residential development, together with certain public facilities, and commercial/industrial uses which are not detrimental to ~~the Town of Erwin or~~ in the unincorporated towns of Kingsbury County.

Section 3.03.02. Prohibited Uses. [Ord #62]

All uses and structures not specifically listed as a permitted use, special permitted use, or as a conditional use in a particular zoning district shall be prohibited in said district

ARTICLE IV DISTRICT REQUIREMENTS

The requirements as set forth below for each of the use districts listed as part of this ordinance in Article III shall govern the development within the said districts as outlined on the Official Zoning Map for the unincorporated areas of Kingsbury County.

CHAPTER 4.01. "A" AGRICULTURAL LAND DISTRICT

Section 4.01.01. Permitted Uses:

1. Field crops and grasslands.
2. **Public** Fisheries services **and Public wildlife production areas.**
3. **Game propagation areas** **Essential public services.**
4. Government grain storage sites.
5. **Orchards and tree farms** **Type B manufactured home connected to an existing farmstead.**
6. Public parks and recreation areas.
7. Truck gardening.
8. Botanical gardens (nurseries and greenhouses); without on-site retail sales.
9. **Farm and Non farm dwelling but not within one half mile of a concentrated animal feeding operation unless waiver is registered on deed of farm dwelling or non farm dwelling property** **Site built single-family dwellings, Type A & Type B manufactured homes and modular homes.**
10. Stables.
11. Grain bins.
12. **Home occupations.** **Class D concentrated animal feeding operation provided that they meet the requirements of Chapter 5.12**
13. Agricultural activities and farm related buildings., **including Class C and Class E concentrated animal feeding operation**
14. **On-premise signs.** **Shop-style dwelling provided they meet requirements of Chapter 5.41.**
15. **Accessory uses and buildings.** **Limited commercial storage facility provided they meet the requirements of Chapters 5.09 and 5.45.**
16. **Temporary roadside stands for sales of agricultural products grown or produced on the premises** **Short-Term Rental provided they meet the requirements of Chapter 5.46.**

17. Private Wind Energy Conversion System (PWECS). provided they meet the requirements of Chapter 5.30.

Section 4.01.02. Accessory Uses:

The following accessory uses and structures shall be permitted in the "A" Agricultural District:

1. **Accessory buildings and uses customarily incidental to permitted uses, special permitted uses or conditional uses provided they meet requirements of Chapter 5.17;**
2. **Temporary roadside stands for sales of agricultural products grown or produced on the premises, provided that there have been no past documented/verified complaints or violations regarding previous sales.**
3. **On-premise signs provided they meet requirements of Chapter 5.18.**
4. **Home occupation provided they meet requirements of Chapter 5.09.**
5. **Intermodal shipping containers as an accessory use in accordance with Section 5.17.**

Section 4.01.03. Special Permitted Uses.

1. **Reserved.**

Section 4.01.023. Conditional Uses:

1. Airports and airstrips **provided they meet requirements of Section 4.01.04.8.**
2. Churches and Cemeteries.
3. Commercial public entertainment enterprises not normally accommodated in commercial areas including, but not limited to, the following: music concerts, rodeos, tractor pulls, and animal and vehicle races.
4. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of Chapter 5.11.
5. ~~Private clubs.~~ **Solar Energy Systems provided they meet requirements of Chapter 5.40.**
6. **Sanitary landfills,** rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste provided they meet the requirements of Chapter 5.35.
7. Domestic sanitary sewer treatment plant/facility; provided they meet the requirements of Chapter 5.36.
8. Class A, B, and Class ~~D~~ **C** concentrated animal feeding operations; ~~(See Article V, Section 5.12)~~ **provided they meet the requirements of Chapter 5.12.**

9. Extended home occupation provided that they meet the requirements of Chapter 5.10.
10. Commercial Stables.
11. Junkyards/salvage yards, provided that they meet the requirements of Chapter 5.37.
12. **Above-ground** Public utility and public service structure including **transmission lines**, substations, gas regulator stations, **pipelines**, **community** equipment buildings, pumping stations, and reservoirs.
13. Land application of petroleum-contaminated soils.
14. Institution farms, including religious farming communities.
15. Bed and breakfast provided they meet requirements of Chapter 5.31.
16. Wireless Telecommunications Towers and Facilities provided they meet requirements of Chapter 5.24.
17. ~~Type B manufactured home not connected to an existing farmstead.~~ **Agribusiness activities provided they meet the requirements of Chapter 5.43.**
18. Game Lodge.
19. Group Homes.
20. Wind Energy System (WES) provided they meet requirements of Chapter 5.32.
21. **Public Commercial** or private motorcycle recreation facilities.
22. Target/Shooting Range provided they meet requirements of Chapter 5.27.
23. Veterinarians offices and animal hospitals.
24. Golf course, golf driving range, clubhouse.
25. Seasonal retail stands – including produce and fireworks - utilizing a **temporary or** permanent structure.
26. Livestock sales barns.
27. **Sanitary landfills**, Rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste **provided they meet requirements of Chapter 5.35.**
28. Orchards and tree farms with retail sales.
29. Botanical gardens (nurseries and greenhouses) with retail sales.

30. Schools.
31. Animal husbandry service.
32. Government grain storage sites.
33. Horticulture Services.
34. Institutional farms.
35. Automotive Tow Business/Impound Lot provided they meet requirements of Chapter 5.38.
36. Agricultural product processing facilities, including but not limited to ethanol plants and corn/soybean processing.
37. Transportation/application of manure outside of Kingsbury County in accordance with the requirements of Chapter 5.39. [Ord #51]
38. Private Campgrounds provided they meet the requirements of Chapter 5.34. [Ord #65]
39. Accessory Agricultural Housing. [Ord #67]
- 40. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.**
- 41. Data Processing Facilities provided they meet the requirements of Chapter 5.42.**
- 42. Commercial storage facility provided they meet the requirements of Chapters 5.10 and 5.45.**
- 43. Short-Term Rental that have not previously complied with the requirements of Chapter 5.46.**
- 44. Type B modular homes provided they meet the requirements of Chapter 5.16.02.2.**

Section 4.01.034. Area Regulations.

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

1. Minimum Lot Size: All eligible building lots for permitted uses shall be a minimum of two (2) acres, except as provided in **87**.a of this Section.
2. Minimum Lot Width: The minimum lot width for eligible building lots for permitted uses shall be one hundred sixty-five (165) feet.
3. Front Yard: The minimum depth of the front yard setback shall be one hundred (100) feet and in no case shall an accessory building be located or extend into the front yard. In the case of a corner lot, front yards shall be provided on both streets.

4. Side Yard: The minimum depth of a side yard setback shall be twenty-five (25) feet.
5. Rear Yard: The minimum depth of a rear yard shall be twenty-five (25) feet.
6. Uses allowed by a Conditional Use Permit shall have minimum lot area and yard setback regulations determined by the Board of Adjustment.
7. The Board of Adjustment may allow a smaller minimum lot requirement for the "A" Agricultural District under the following conditions:
 - a. Where a permit for an additional single-family **farm** dwelling **(Accessory Dwelling Unit)** is requested on an existing farmstead, provided:
 - i. The dwelling is located on the same legal description as the existing farmstead.
 - ii. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
 - iii. The dwelling is to be occupied by employees or relatives of the farm owner (existing farming operation).
 - iv. The additional single-family **farm** dwelling shall be removed **or located on a separate, legally conforming lot created through an approved subdivision** in the event the structure becomes a non-farm dwelling **if the dwelling is not occupied by employees or relatives of the farm owner engaged in the farming operation).**
 - b. Where a permit for an additional single family dwelling (Accessory Dwelling Unit) is requested on a parcel which is not an existing farmstead, provided:**
 - i. The minimum lot size for the principal residence and Accessory Dwelling Unit is three (3) acres.**
 - ii. The dwelling is located on the same legal description as the principal dwelling.**
 - iii. The maximum number of dwelling units will not exceed two (2).**
 - iv. The dwelling is to be occupied by relatives of the resident of the principal dwelling.**
 - v. The additional single-family dwelling shall be removed or located on a separate, legally conforming lot created through an approved subdivision if the dwelling is not occupied by relatives of the resident of the principal dwelling).**
8. Height Regulations: **All buildings must meet FAA standards within one (1) mile of airports. Further, No principal building structures shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures when located outside any Horizontal Surface Zone or Conical Surface Zone as identified on the Official Zoning Map:**
 - a. Agricultural buildings.

- b. Chimneys, smokestacks, cooling towers.
- c. Radio and TV towers.
- d. Water tanks.
- e. Wind Energy System (WES).
- f. Private Wind Energy Conversion Systems.
- g. Wireless Telecommunications Towers and Facilities.
- h. Others, as determined by the Board of Adjustment, providing that they are not used for human occupancy.
- i. **Any structure listed in this section located within a Horizontal Surface Zone or Conical Surface Zone as identified as identified on the Official Zoning Map provided building permit application includes documentation of approval of Federal Aviation Regulation (FAR) Part 77.**

9. Agriculture Covenant/Concentrated Animal Feeding Operation Waiver:

- a. All new residential development (farm and non-farm) shall be required to file an "Agricultural Easement" with the Register of Deeds before the issuance of a building permit. (See Chapter 5.26). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.
- b. Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file **a waiver an acknowledgment of an existing concentrated animal feeding operation** with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. ~~The waiver is to be filed with the Register of Deeds~~ (See Chapter 5.28). Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

10. Access

- a. The location of driveways accessing individual parcels shall be separated from adjacent driveways on the same side of the road by the following separation distances:
 - i. Roads identified on the Major Street plan as:
 - a. Local road: 100 foot separation distance
 - b. Collector road: 300 foot separation distance
 - c. Arterial road: 500 foot separation distance
- b. For all proposed uses and structures adjacent to a State highway, an access permit from the State of South Dakota Department of Transportation shall be required prior to the filing of a plat or the issuance of a building/use permit

CHAPTER 4.02. CI - COMMERCIAL / INDUSTRIAL DISTRICT

Section 4.02.01. Permitted Uses:

1. Field crops and grasslands.
2. ~~On-premise signs.~~ **(Essential public services.**
3. Orchards and tree farms.
4. Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales.
5. ~~Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use contained in Chapter 4.02.~~ **(Reserved)**
6. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 provided that there have been no past violations regarding previous sales.
7. Cannabis Dispensary (subject to Chapter 5.39). [Ord #62]
8. Cannabis Cultivation Facility (subject to Chapter 5.39). [Ord #62]

Section 4.02.02. Accessory Uses:

The following accessory uses and structures shall be permitted in the "CI" Commercial/Industrial District:

1. **Accessory buildings and uses customarily incidental to permitted uses, special permitted uses or conditional uses provided they meet requirements of Chapter 5.17.**
2. **On-premise signs provided they meet requirements of Chapter 5.18.**
3. **Intermodal shipping containers as an accessory use in accordance with Section 5.17.**

Section 4.02.023. Conditional Uses:

1. Implement sales and service.
2. Truck terminals and freight warehouses.
3. Seed sales and grain storage, fertilizer and chemical storage and sales.
4. Highway and street maintenance shops, operated by a government institution.
5. Welding and machine shops.
6. Gas, oil, liquid propane, and liquid hydrogen stations, including bulk stations.

7. Public and private utilities.
8. Livestock sales.
9. Contractors' shops and yards including offices when in conjunction with a shop or yard.
10. Wholesale distributing companies.
11. Restaurants.
12. Motel/hotels;
13. Recreation vehicle sales and park.
14. Bar/Tavern.
15. Commercial stables.
16. Kennel with or without animal grooming.
17. Veterinary clinics.
18. Wireless telecommunication towers and facilities provided they meet requirements of Chapter 5.24.
19. Convenience store/service station.
20. Seasonal retail stands utilizing a permanent structure.
21. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales.
22. Off-premise signs.
23. Light manufacturing.
24. Commercial animal husbandry service.
25. Adult Uses provided they meet requirements of Chapter 5.29.
26. Agricultural product processing facilities including but not be limited to ethanol plants and corn/soybean processing.
27. Private wind energy system (PWES) provided they meet requirements of Chapter 5.30.
28. Retail sales and trade
29. Automotive tow business/Impound lot provided they meet requirements of 5.38.

30. Temporary structures used for the sale of fireworks during times of the year specified in SDCL 34-37 where there have been **no** past violations regarding previous sales.
31. Temporary structures used for sales of agricultural products where **there** have been past violations regarding previous sales.

45. Data Processing Facilities provided they meet the requirements of Chapter 5.42;

46. Commercial Storage Facilities.

Section 4.02.03. Area Regulations

1. Lot Area. Lot area shall be determined by need, setback, side yards, rear yards, parking requirements, freight handling requirements, building site and future expansion; however, in no case shall a lot have less than two (2) acres, not to include the public road right-of-way. An applicant for conditional use permit shall provide a proposed site plan which can be reviewed by the Board of Adjustment. For commercial and industrial uses, buildings shall occupy no more than seventy-five percent (75%) of the lot.
2. Front Yard. There shall be a front yard on each street which a lot abuts, and which yard shall be not less than one hundred (100) feet in depth.
3. Side Yards. On lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. All other side yards shall be a minimum of fifty (50) feet.
4. Rear Yards. No building shall be constructed within fifty (50) feet of the rear lot line. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.
5. Height Regulations. No building shall exceed four (4) stories or fifty (50) feet in height. Exceptions include the following structures:
 - a. Chimneys, smokestacks, cooling towers;
 - b. Radio and TV towers;
 - c. Water tanks;
 - d. Wireless Telecommunications Towers and Facilities;
 - e. Wind Energy Systems (WES)
 - f. Private Wind Energy Systems (PWES)
 - g. Others, providing that they are not used for human occupancy.

6. Access. ~~It is recommended that~~ All property in the "CI" District ~~shall~~ have ~~direct~~ access to an asphalt-paved or concrete State or County Highway. **Exception. Property in the "CI" District may have access to a Township or County gravel road upon approval of the applicable Township or County Highway Superintendent.**
7. Storage. All outdoor storage within five hundred (500) feet of a residential dwelling must be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stock pile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

Section 4.02.04. Performance Standards.

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
2. Air Pollution. State emission standards shall be met by all possible sources of air pollution. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Commissioners
8. Physical Appearance. All operations shall be carried on within an enclosed building except that new or operable equipment may be displayed or stored in the open and waste materials stored in enclosed containers not readily visible from the street.

CHAPTER 4.03. PR PLANNED RESIDENTIAL DISTRICT

Section 4.03.01. Planned Development Standards and Requirements

1. The use of land in the Planned Residential District shall be limited to non-farm single-family dwelling units and their supporting services.
2. The Planned Residential District shall not be permitted on a parcel of land less than twenty (20) acres in area.
3. All roads, common facilities, and open spaces within the Planned Residential District shall be maintained by a homeowner's association.
4. Planned Residential Districts within one (1) mile of an incorporated community will be submitted to the community governing body for review and comment.
5. Where a proposed Planned Residential District is within one (1) mile of an incorporated area, the Kingsbury County Planning Commission may request the developer to construct proposed improvements to specifications approved by the community's governing body.
6. Strip or linear development proposals along a road or highway will not qualify as a Planned Residential District.
7. The overall density of a Planned Residential District shall not be less than one (1) housing unit per three (3) acres of land.
8. Minimum lot size shall not be less than that required by the South Dakota Department of Water & Natural Resources regulations on Private Sewage Disposal Systems (Chapter 34:04:01).
9. Access to public dedicated streets and roads shall be limited. Dwelling units shall not have direct access to public road right-of-ways. Dwelling unit access shall be provided through the interior street/road system. Further all interior streets constructed within the Planned Residential District may be required to be either gravel, concrete, or bituminous-asphalt with the design to be approved by the County Highway Superintendent.
10. Planned Residential Districts must have access to a hard-surfaced road. Access to a concrete or bituminous-asphalt roads is preferred. In order for the Planned Residential District to have access to a gravel road, approval of the governmental entity maintaining said gravel road (Township or County) is required.
11. Planned Residential Districts are not allowed over the shallow aquifer or wellhead protection areas. EXCEPTION: A Planned Residential District may be allowed over a shallow aquifer if the proposed Planned Residential District utilizes a Board of Adjustment approved central sanitary sewer collection system, which may consist of holding tanks, trunk lines, lift stations, and treatment facilities.

12. Easements per 4.01.03.9 of this ordinance shall be required to be placed on any lot in a Planned Residential District in order to protect agricultural operations or practices in the adjoining areas. Exception: This requirement does not apply to future residential development (farm and non-farm) on lots of record with residential dwellings existing on August 21, 2007. Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.

Section 4.03.02. Procedure for Planned Development

The following shall be observed when a planned development proposal is submitted for consideration:

1. An applicant for consideration under the terms of this district, who must be owner, lessee, or the holder of a written purchase option of the tract of land under consideration, shall submit three (3) copies of a preliminary development plan to the Planning Commission for study at least seven (7) days prior to the Planning Commission meeting at which it is to be considered. The preliminary development plan shall include the following information:
 - a. Location map showing the relationship of the proposed district to existing roads and property lines.
 - b. Proposed land uses, building locations, and housing unit densities.
 - c. Proposed circulation pattern indicating the status of street ownership.
 - d. Proposed open space uses.
 - e. Proposed grading and drainage pattern.
 - f. Proposed method of water supply and sewage disposal.
 - g. Relation of the proposed development to the surrounding area and comprehensive plan.
2. Copies of the proposed water and sewer system will be submitted to the South Dakota Department of Water & Natural Resources for study and comment.
3. A list and schedule of improvements to be completed by the developer must be submitted.
4. In reviewing the plan, the Planning Commission shall need to determine that:
 - a. Resulting development will not be inconsistent with the comprehensive plan objectives or zoning provisions of the area.
 - b. The plan can be completed within a reasonable period of time.
 - c. The streets are adequate to support the anticipated traffic and the development will not overload the roads outside the planned area.
 - d. Proposed utility and drainage facilities are adequate for the population densities proposed.

5. If, in the opinion of the Planning Commission, the foregoing provisions are satisfied, the proposal shall be processed according to this section. If the Planning Commission finds to the contrary, they may recommend the application be denied or return the plan to the applicant for revision.
6. In addition to the requirements of this section, the Planning Commission may attach conditions it finds are necessary to carry out the purpose of this ordinance.
7. Before approving a planned development, the Planning Commission must have copies of proposed deed restrictions, agreements for maintenance by the homeowners' association of common facilities and open spaces, guarantees (surety bonds, etc.) by the developer for the completion of the development in accordance with the approved plan, and an agreement binding successors who may take over completion of the development to conditions of the plan approval.
8. The Planning Commission shall follow the procedure for considering an amendment to the Official Zoning Map before approving a Planned Residential District.
9. Permits for construction in a planned development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Commission for processing as an amendment to this ordinance.

CHAPTER 4.04. LAKE PARK DISTRICT

Purpose: to provide for orderly low concentration development up to ten (10) persons per acre together with certain public facilities and customary parks and commercial uses normally associated with lakeshore development.

Section 4.04.01. Permitted uses:

1. Site-built single-family dwelling.
2. Public and private parks.
3. Horticulture uses.
4. Agricultural or horticulture uses excluding concentrated animal feeding operations.
5. Modular home.
6. Type A manufactured home **provided that provisions of Chapter 5.16 are met.**
7. ~~Attached garages and unattached private garages with sidewalls less than sixteen (16) feet and conform to the design of the house. [ord #53]~~ **(Reserved)**
8. Essential public services.
9. ~~Accessory structures such as piers and docks and uses to include but not limited to boathouses and sheds further than fifty (50') feet from the high water mark, or from a point as determined by the board of adjustment.~~ **Short-Term Rental provided they meet the requirements of Chapter 5.46.**

Section 4.04.02. Accessory Uses:

The following accessory uses and structures shall be permitted in the "LP" Lake Park:

1. **Accessory buildings and uses customarily incidental to permitted uses, special permitted uses or conditional uses provided they meet requirements of Chapter 5.17;**
2. **On-premise signs provided they meet requirements of Chapter 5.18.**
3. **Home occupation provided they meet requirements of Chapter 5.09.**
4. ~~Accessory structures such as piers and docks and uses to include but not limited to boathouses and sheds further than fifty (50') feet from the high water mark, or from a point as determined by the board of adjustment.~~

Section 4.04.03. Special Permitted Uses.

1. **Steel siding on principal and accessory uses provided they meet requirements of Chapter 5.17;**

2. Unattached garages exceeding maximum sidewall height and/or maximum area dimensions provided they meet requirements of Chapter 5.17.

3. Shop-style dwelling provided they meet requirements of Chapter 5.41.

Section 4.04.02. Conditional uses:

1. Private parks and campgrounds.
2. Twin homes.
3. Boathouses within fifty (50) feet of the high water mark or from a point as determined by the board of adjustment.
4. Multiple family dwellings, including condominiums.
5. ~~Unattached garages with sidewalls greater than sixteen (16) feet or do not conform to the design of the house. [Ord #53]~~
5. Type B manufactured home **provided that provisions of Chapter 5.16 are met.**
6. Commercial storage ~~garages~~ **facilities.**
7. ~~Home occupation.~~ **(Reserved)**
8. Extended home occupation **provided that they meet the requirements of Chapter 5.10.**
9. Bait shop;
10. Grocery store;
11. Bar, tavern, or lounge;
12. Convenience store;
13. Recreational sales;
14. Rental services;
15. Outdoor music event.
16. Golf course, driving range, clubhouse and related accessory uses;
17. **Short-Term Rental that have not previously complied with the requirements of Chapter 5.46;**
18. **Type B modular homes provided they meet the requirements of Chapter 5.16.02.2.**

Section 4.04.03. Area regulations

Table 4.04.03

	Minimum Lot Density (Sq. Ft./ Dwelling Unit)	Minimum Lot Area	Minimum Lot Width (4)	Minimum Lot Depth	Minimum Side Yard	Minimum Front Yard (2) (1)	Minimum Rear Yard (Lake Front) (2) (3)	Maximum Height
Central Sewer/Rural Water								
Single Family Dwelling Use	9,600	9,600	75'		5'	30'	25'	35'
Multiple Family Dwelling Use	2,500	10,000	75'		10'	30'	25'	45'
Commercial Use	N/A	20,000	125'		10'	30'	25'	45'
Rural Water/Septic Tank or Holding Tank								
Single family dwelling	9,600	20,000	50'	150'	9'	50'	75' 25'	30'
Multiple family dwelling	2500	40,000	100'	200'	10'	50'	75' 25'	45'
Commercial Use	N/A	20,000	50'	150'	9'	50'	25'	30'
Rural Water/Septic Tank or Holding Tank								
Single Family Dwelling Use	43,560	43,560	100'		25'	30'	25'	30'
Multiple family dwelling/Commercial Use	Not Allowed							

(1) Each lot in the LP district shall have a road frontage of not less than fifty (50) feet in width (100' for multiple family dwellings). Each lot in the LP district shall have a shoreline frontage width of not less than seventy five (75) feet.

(2)(1) Side of lot facing road right-of-way or access easement.

a. Permitted uses shall have a front yard (road front) of no less than thirty (30) feet when adjacent to a public road. However, the front setback may be specified to equal the average of existing setbacks on lots located on the same side of the public street in the same block as the lot proposed to be built on. But in no case shall the setback line be less than twelve (12) feet from the public street right-of-way. Permitted uses shall have a front yard (road front) of no less than ten (10) feet when adjacent to a private road or platted public alley.

b. Structures on all corner lots shall observe two (2) front yards. However, a building may be erected or reconstructed or altered in such a way as long as a portion thereof may not be closer to the street line than the average improved building front on that street in that block, but in no case shall the front yard (road front) set-back line be less than twelve (12) feet from the road front lot line.

c. Accessory buildings may be built in a required front yard (road front) but such accessory building shall not occupy more than thirty percent (30%) of a required front yard (road front) and shall not be nearer than two (2) feet to any side or rear lot line, except that when a garage is entered from an alley it shall not be located closer than ten (10) feet to the alley line. If a garage is located closer than ten (10) feet to the main building the garage shall be regarded as part of the main building for the purpose of determining side and rear yards and the distance back from the front property line.

(3)(2) Measured from the high water mark or from a point as determined by the board of adjustment.

(4)(3) For lakes or ponds: ~~no~~ All structures, except boathouses, piers and docks, shall observe a minimum rear yard setback of twenty-five (25) feet, which may be reduced by the Board, be placed at an elevation such that provided that the lowest floor, including basement, is at an elevation not less than three (3) feet above the highest known water level. Piers may be used to provide access to a structure where necessary to meet the three (3) foot elevation requirement. Exception: No structure at Lake Thompson, except boathouses, piers and docks, shall be placed at an elevation such that the lowest floor, including basement, is less than an elevation of 1,695' NGVD 1929. [ord #48 and ord #53]

(5)(4) Lots must meet minimum state requirements for private sewage disposal systems. At a minimum, requirements include water-tight septic tanks connected to a drain field, drain field to be not closer than eighty (80) feet to the shoreline of lake or streams and no drain area deeper than five (5) feet.

(6) Moved in buildings shall meet the requirements of chapter 5.06.

(7)(5) Sealed holding tanks for dwellings are required for all lots of record containing less than twenty thousand (20,000) square feet and not connected to a central sewer system. Existing septic tanks and drainfields (as of January 1, 2007) on lots with an area of less than twenty thousand (20,000) square feet are considered nonconforming uses and shall not be allowed to be replaced after the adoption of this ordinance.

(8) There shall be no more than one (1) principal residential building on any parcel of land.

(9) Where two (2) parcels of land are purchased and joined together by one (1) common boundary, the setbacks established above shall pertain to the perimeter of the combined lots.

Section 4.04.04. Shoreline alterations, filling, grading, dredging, and lagooning.

1. Shoreline stabilization, filling, grading, dredging, and lagooning projects in the "LP" district shall be governed by section 5.07 of this ordinance.

Section 4.04.05. Sewage systems.

1. The developer of any plat shall provide for a South Dakota department of environment and natural resources approved sewage systems and provide provisions that are binding on the developer before such plat is approved. At a minimum, the installation and utilization of individual on-site wastewater systems shall meet state regulations, chapter 74:53:01.
2. The developer of any plat shall be liable for the execution of the provisions required above to protect waters of the state from pollution and shall be liable for any pollution that occurs for failure to execute such provisions.

Section 4.04.06. Easement/waivers.

1. Easements/waivers per 4.01.03.9 of this ordinance shall be required to be placed on any lot in a planned residential district in order to protect agricultural operations or practices in the adjoining areas. Exception: this requirement does not apply to future residential development (farm and non-farm) on lots of record with residential dwellings existing on august 21, 2007.

CHAPTER 4.05. "CN" CONSERVATION DISTRICT

Section 4.05.01. Permitted uses:

1. Wildlife production areas.
2. Game refuges.
3. Historic sites and/or monuments.
4. Designated natural prairies.
5. Public hunting and fishing access areas.

Section 4.05.02. Special designation for "CN" wetlands:

All wetlands that are totally or partly owned by the state or federal governments as wildlife production or public shooting areas shall be designated as "CN" conservation districts. Also included in these "CN" wetland areas will be the area adjacent to the wetland and all land extending three hundred (300) feet upland.

Section 4.05.03. Conditional uses permitted if deemed not detrimental to the district:

1. Transportation and utility easements and rights-of-way.
2. Golf courses, summer camps
3. Public parks, biking/walking trails, and/or playgrounds.
4. Horticulture uses and livestock grazing.
5. Essential public services.

Section 4.05.04. Shoreline alterations, filling, grading, dredging, and lagooning.

1. Shoreline stabilization, filling, grading, dredging, and lagooning projects in the "cn" district shall be governed by section 5.07 of this ordinance.

CHAPTER 4.06. TD" TOWN DISTRICT.

Section 4.06.01. Permitted Uses.

1. ~~Single-family residential usage, including~~ Type A manufactured homes permitted; Type B manufactured homes, provided that provisions of ~~Section~~ **Chapter** 5.16 are met.
2. Public parks.
3. Agriculture and horticulture uses, excluding feedlots **or concentrated animal feeding operations.**
4. **Site built single-family dwellings;**
5. **Modular homes;**
6. **Churches;**
7. **Multi-family housing;**
8. **Essential public services;**

Section 4.06.02. Accessory Uses:

The following accessory uses and structures shall be permitted in the "TD" Town District:

1. **Accessory buildings and uses customarily incidental to permitted uses, special permitted uses or conditional uses provided they meet requirements of Chapter 5.17;**
2. **On-premise signs provided they meet requirements of Chapter 5.18.**
3. **Home occupation provided they meet requirements of Chapter 5.09.**

Section 4.06.03. Special Permitted Uses.

1. **Steel siding on principal and accessory uses provided they meet requirements of Chapter 5.17;**
2. **Unattached garages exceeding maximum sidewall height and/or maximum area dimensions provided they meet requirements of Chapter 5.17.**
3. **Shop-style dwelling provided they meet requirements of Chapter 5.41.**

Section 4.06.024. Conditional Uses.

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. **Extended** Home occupation **provided that they meet the requirements of Chapter 5.10.**
7. Manufactured home park.
8. ~~The Board of Adjustment may permit other uses which in its opinion are not detrimental to other uses. These may include manufacturing and processing uses.~~ **Type B modular homes provided they meet the requirements of Chapter 5.16.02.2.**

Section 4.06.03. Area Regulations

1. Residential Uses/Lots - Structures on all corner lots shall observe two (2) front yards. The depth of the front yard on each street which the lot abuts, shall be as follows.
 - a. Minimum Yard Requirements:

Front -- Twenty-five (25) feet
Side -- Fifteen (15) feet
Rear -- Twenty-five (25) feet
 - b. Minimum Lot Size:

Public Water Supply/Septic Tank -- 20,000 Sq. Ft.
Well/Septic Tank ----- 43,560 Sq. Ft.
Public Water Supply/Public Sewer - 9,600 Sq. Ft.
2. Commercial Uses/Lots - Lot size shall be determined by off-street parking needs; availability of water and sewage disposal facilities; adjacent land uses; need for screening; and type of business. Front, side, and rear yards shall be determined by the Board of Adjustment.
3. Industrial Uses/Lots - Lot size shall be determined by off-street parking needs; impact of adjoining land use and need for screening or buffering from residential areas; availability of water and sewage disposal facilities; type of manufacturing or storage facilities; type of manufacturing or storage facilities. Front, side, and rear yards shall be determined by the Board of Adjustment.

CHAPTER 4.07. AQUIFER PROTECTION OVERLAY DISTRICT

Section 4.07.01 Purpose and Intent:

1. The Kingsbury County Planning Commission and Board of County Commissioners recognize (1) that residents of Kingsbury County rely on groundwater for a safe drinking water supply, and (2) that certain land uses in Kingsbury County can contaminate groundwater, particularly in shallow aquifers.
2. The purpose of the Aquifer Protection Overlay District is to protect public health and safety by minimizing contamination of the shallow aquifers of Kingsbury County.
3. It is the intent to accomplish aquifer protection, as much as possible, by public education and securing public cooperation. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations. Any use existing at the time this ordinance is adopted is grandfathered.

Section 4.07.02. Delineation and Regulation of Aquifer Protection Overlay Zones

1. Boundaries for the aquifer protection zones for the Aquifer Protection Overlay District are shown on the Official Zoning map based upon data prepared by the East Dakota Water Development District, Brookings, South Dakota. Said map is hereby adopted by reference as part of this ordinance as if the map was fully described herein. In addition to the Official Zoning Map, the South Dakota Department of Environment and Natural Resources, Division of Financial and Technical Assistance, Geological Survey created a map entitled First Occurrence of Aquifer Materials Map 24" dated April 5, 2007. This map will be used to further identify aquifer boundaries. In the event of a conflict between such maps as to the area covered by the aquifer at a given location, then the map showing the larger aquifer area shall be followed.
2. The Aquifer Protection Overlay District is divided into two (2) zones. The critical impact zone, Zone A, was mapped by the East Dakota Water Development District with South Dakota Geological Survey technical assistance using techniques outlined in the U.S. Environmental Protection Agency publication "Guidelines for Delineation of Wellhead Protection Areas," June 1987. The shallow aquifer boundary for Zone B was mapped by the South Dakota Geological Survey.

Section 4.07.03. Zone A – Aquifer Critical Impact Zones

Zone A, the wellhead protection area, is the mapped zone of contribution around all public water supply wells or wellfields in shallow aquifers and includes land upgradient from the well or wellfield to the ten (10) year time of travel boundary.

Section 4.07.03.01 Permitted Uses in Zone A:

The following uses are permitted provided they meet appropriate performance standards outlined for aquifer protection overlay zones:

1. Agriculture.
2. Horticulture.

3. Parks, greenways or publicly owned recreational areas.
4. Necessary public utilities/facilities designed so as to prevent contamination of groundwater.
5. All "Permitted Uses" listed in the underlying district(s) which do not pose a potential risk to groundwater resources and are not a prohibited use.

Section 4.07.03.02 Conditional Uses in Zone A:

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

1. Expansion modification, alteration, or relocation of existing uses to the extent they remain or become non-conforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.
2. All uses permitted by conditional use in the underlying district which do not pose a potential risk to groundwater resources and are not a prohibited use and provided they can meet Performance Standards outlined for Aquifer Protection Overlay Zones.
3. New public water supply wells located within two thousand five hundred (2,500) feet of a concentrated animal feeding operation or feedlot.
4. Expansion of existing Concentrated Animal Feeding Operations (Existing as of October 14, 1997) not to exceed a cumulative total of three hundred (300) animal units. Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria. The applicant shall receive said General Permit. The County shall require soil borings to determine impermeable material between land surface and aquifer

Section 4.07.03.03 Prohibited Uses in Zone A:

The following uses are expressly prohibited in Zone A:

1. New concentrated animal feeding operations of Class A, Class B, Class C, and Class D, after October 14, 1997.
2. Manure storage areas except above ground tanks.
3. Disposal of solid waste except spreading of manure. (see Section 4.07.04 Performance Standards for Aquifer Protection Overlay Zones);
4. Outside unenclosed storage of road salt.
5. Disposal of snow containing de-icing chemicals.
6. Processing and storage of PCB contaminated oil.

7. Car washes.
8. Auto service, repair or painting facilities and junk or salvage yards.
9. Disposal of radioactive waste.
10. Graveyards or animal burial sites.
11. Detonation sites.
12. Open burning except ditches, fields and non-hazardous yard and household wastes such as paper, wood and leaves.
13. Land spreading of petroleum contaminated soil.
14. Land spreading or dumping of waste oil.
15. Industrial process water and waste disposal wells—5W20 type Class V injection wells.
16. Automobile service station disposal wells—5X28 type Class V injection wells.
17. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on groundwater quality.
18. PR Planned Residential District.
19. Earthen storage basins and lagoons.
20. Stockpiling of solid waste.

Section 4.07.04. Zone B – Aquifer Secondary Impact Zones

Zone B is the remainder of the mapped shallow aquifer in the county not included in Zone A. Zone B also includes lands adjacent to Zone A not underlain by the shallow aquifer but with sufficient slope that contaminated surface water could flow directly onto Zone A.

Zone B is being protected because (1) the aquifer is a valuable natural resource for future development, (2) the aquifer provides drinking water supply for individual domestic users, (3) contamination is not justified just because this area is not currently used for public water supply, and (4) contaminants from this area could eventually enter Zone A.

Section 4.07.04.01. Permitted Uses in Zone B:

1. All “Permitted Uses” listed in the underlying zoning districts which do not pose a potential risk to groundwater resources provided they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones and are not an expressly prohibited use.

Section 4.07.04.02. Conditional Uses in Zone B:

1. The following uses are permitted only under the terms of a Conditional Use Permit and must conform to provisions of the underlying zoning district and meet Performance Standards outlined for Aquifer Protection Overlay Zones.
2. Expansion, modification, alteration, or relocation of existing permitted or conditional uses to the extent they remain or become nonconforming and to the extent allowed by the underlying district. The Board of Adjustment shall not grant approval unless it finds the proposed expansion does not pose greater potential for groundwater contamination than the existing use.
3. Earthen storage basins and lagoons.
4. Stockpiling of solid waste.
5. New Class D and expansion of existing Class A, B, C, and D Concentrated Animal Feeding Operations (Existing as of October 14, 1997) not to exceed a cumulative total of three hundred (300) animal units. Said expansion or alteration must be constructed according to the Department of Environment and Natural Resources State General Permit criteria and shall apply for said General Permit. The County shall require soil borings to determine impermeable material between land surface and the aquifer.
6. All uses permitted by conditional use in the underlying district which do not pose a potential risk to groundwater resources and are not a prohibited use may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

Section 4.07.04.03. Prohibited Uses in Zone B:

The following uses are expressly prohibited in Zone B:

1. Land spreading of petroleum contaminated soil.
2. Land spreading or dumping of waste oil.
3. Industrial process water and waste disposal wells—5W20 type Class V injection wells.
4. Automobile service station disposal wells—5X28 type Class V injection wells.
5. New Concentrated Animal Feeding Operations of Class A, Class B, and Class C, or expansions of existing Class D concentrated animal feeding operations which cannot meet performance standards.

Section 4.07.05. Performance Standards for Aquifer Protection Overlay Zones:

The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

1. New or replacement septic tanks and associated drain fields for containment and disposal of human wastes must conform with regulations established by the Department of Environment and Natural Resources.
2. Commercial or industrial liquid waste ponds containing any solid or liquid material or waste will not be permitted without a secondary containment system except for community wastewater lagoons.
3. Manure storage areas are permitted in Zone B but must be, at a minimum, constructed in conformance with standards established by the South Dakota Department of Environment and Natural Resources General Permit
4. Petroleum products stored at one (1) locality in a tank or series of tanks must be elevated; such tanks must have a secondary containment system where it is deemed necessary by the Board of Adjustment.
5. When pastured animals are concentrated along a water course for winter feeding and the number of animal units exceeds five hundred (500), measures shall be employed to prevent runoff of manure.
6. New Class D concentrated animal feeding operations must have a Nutrient Management Plan and Manure Management Plan.
7. Owners/operators of active or abandoned concentrated animal feeding operations shall handle and dispose of manure in accordance with standards established by the South Dakota Department of Environment General Permit
8. Discharge of industrial process water is prohibited without Board of Adjustment approval.
9. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.
10. Any facility required to file material safety data sheets as part of SARA Title III must prepare and have on file in the County Zoning Office an acceptable contingency plan for preventing hazardous chemicals from contaminating the shallow aquifer. Agricultural operations are exempt unless they have more than ten (10) employees.
11. Any commercial or industrial facility involving collection, handling, manufacture, use, storage, transfer or disposal of hazardous materials, in excess of one thousand (1,000) pounds or one hundred (100) gallons, must be constructed to prevent hazardous materials from contaminating the shallow aquifer should equipment failure, floods, fire or other natural catastrophes occur. Stored petroleum products are exempt from this performance standard. Facilities must meet the following minimum specifications:

- a. For flood control, all underground facilities shall include a monitoring system and a secondary standpipe above the one hundred (100) year frequency flood level. All above ground facilities shall include an impervious dike, above the 100 year flood level and capable of containing one hundred twenty percent (120%) of the largest storage volume, with an overflow recovery catchment area (sump).
 - b. For fire control, all facilities shall include a fire retardant system and provision for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, other buried objects and other hazardous liquids, chemicals or open flames in the immediate vicinity.
 - c. For equipment failures, a secondary containment system must be installed to intercept any leak or discharge from the primary containment. A leak detection system and overfill protection system must also be installed. Underground tanks or buried pipes for handling hazardous materials must have double walls and accessible sumps.
13. The County Zoning Office and Department of Environment and Natural Resources shall be informed within twenty-four (24) hours of any leak, spill or release of materials that might potentially contaminate groundwater.
 14. Since it is known that improperly abandoned wells can become a direct conduit for contamination of groundwater by surface water, all abandoned wells should be plugged in conformance with South Dakota Well Construction Standards, Chapter 74:02:04:67-70.

Section 4.07.06. Grant of Permit, Alteration of Use

Before a permit is granted, the County Zoning Officer must examine an application and determine that the proposed use, activity or development meets the provisions of this ordinance.

When securing a use permit, the owner/developer agrees to comply with performance standards in relationship to the applied for permit.

Whenever any person has an existing use, activity or development and thereafter desires alteration or expansion of the authorized use, such persons shall apply for a permit except for the normal upkeep, replacement and repair of existing facilities.

Section 4.07.07. Exceptions

1. Storage of liquids, chemicals and fertilizers used by an individual or corporation in their agricultural operations during planting and crop cultivation are exempt from the requirements of this ordinance January 1 to October 1. However, Best Management Practices are encouraged.
2. Tanks used for chemigation are allowed in Zones A and B and are exempt from secondary containment regulations but secondary containment is encouraged.

3. Storage of liquid or dry fertilizer in amounts equal to or less than one thousand (1,000) pounds or one hundred (100) gallons, stored indoors by each farm operator is exempt from the requirements of this ordinance.

Section 4.07.08. Elimination of County Liability

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

Section 4.07.09. Underlying Zones

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

CHAPTER 4.99 FLOOD PLAIN OVERLAY DISTRICT. [Ord #68]

Section 4.99.01. Statutory Authorization, Findings of Fact, Purpose and Methods of Reducing Flood Losses.

1. Statutory Authorization

The Legislature of the State of South Dakota has in SDCL Chapter 11-4 delegated the responsibility to local governmental units to adopt land use regulations designed to promote the public health, safety, and general welfare of its citizenry through flood plain and land use regulation. Therefore, the Board of County Commissioners of Kingsbury County, South Dakota, ordains as follows:

Kingsbury County elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program (NFIP) is a voluntary program administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security, and Kingsbury County's community officials have elected to join the program, participate and enforce these flood damage prevention regulations to areas not identified as Special Flood Hazard Areas (SFHAs) by FEMA on the community's effective Flood Insurance Rate Map (FIRM), if the community has documentation to support that there is an inherent risk of flooding in such areas.

2. Findings of Fact

- a. The flood hazard areas of Kingsbury 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, all of which adversely affect the public health, safety, and general welfare of the inhabitants of the Kingsbury County.
- b. These potential flood losses are caused by:
 - i) The cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities;
 - ii) The occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage; and
 - iii) Uses deemed unsuitable for floodplain areas or that do not account for the increased flood risk.

3. Statement of Purpose. It is the purpose of this Ordinance to promote the public health safety, and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed:

- a. To protect human life and health.
- b. To minimize expenditure of public expenditures flood control projects.

- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
 - d. To minimize prolonged business interruptions caused by flooding.
 - e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
 - f. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
 - g. To ensure that potential buyers are notified that property is in an area of special flood hazard.
4. Methods of Reducing Flood Losses. In order to accomplish its purpose, this Ordinance includes methods and provisions for:
- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in times of flooding, or cause excessive increases in flood heights or velocities;
 - b. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters.
 - d. Controlling filling, grading, dredging, and other development which may increase flood damage.
 - e. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

Section 4.99.02. Definitions.

In addition to the Definitions in Article II of this ordinance, unless specifically defined below, words or phrases used in Chapter 4.99 shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application. The definitions contained in Section 4.99.02 shall supersede the definitions in Article II of this ordinance only in the interpretation of Chapter 4.99 of this ordinance. In all other cases where these definitions conflict with the definitions in Article II, the definitions in Article II shall apply.

100-Year Flood means a flood having a recurrence interval that has a 1-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms “100-hundred-year flood” and “1-percent-annual-chance flood” are synonymous. The term does not imply that the flood will necessarily happen once every 100 hundred years. Mandatory flood insurance requirements may apply.

100-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 1-percent-annual-chance flood.

500-Year Flood means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once every 500 years and mandatory flood insurance requirement generally does not apply.

500-Year Floodplain means the area of land susceptible to being inundated due to the occurrence of a 0.2-percent-annual-chance flood.

Accessory Structure is a structure that is on the same parcel of property as a principal structure. Its use is incidental to the use of the principal structure the ownership of the accessory structure is the same owner as of the principal structure. An accessory structure is a non-residential structure of low value that is used solely for the parking of vehicles and storage of tools, materials, or equipment. No human habitation is allowed within an accessory structure.

Addition is any improvement that expands the enclosed footprint or increases the square footage of an existing structure. This includes lateral additions added to the side, front, or rear of a structure; vertical additions added on top of a structure; and enclosures added underneath a structure.

Alluvial Fan Flooding means flooding occurring on the surface of an alluvial fan or similar landform that originates at the apex. It is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant Structure—see *Accessory Structure*.

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood, based on future-conditions hydrology.

Area of Shallow Flooding means a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood-Related Erosion Hazard is the land within a community that is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area, in preparation for publication of the FIRM, Zone E may be further refined.

Area of Special Flood Hazard is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

Base Flood means the flood having a 1-percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) is the water surface elevation of the 1-percent-annual-chance flood event. It is the height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas. It is also the elevation shown on the FIRM and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1-percent chance of equaling or exceeding that level in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides. A walkout basement that does not require a step up to grade is not considered a basement.

Best Available Data is existing flood hazard information adopted by a community and reflected on an effective FIRM, FBFM, and/or within an FIS report; or draft or preliminary flood hazard information supplied by FEMA or from another source. Other sources may include, but are not limited to, state, other federal agencies, or local studies, the more restrictive of which would be reasonably used by the community.

Breakaway Wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system. Any walls below the lowest floor in a building in a V or VE Zone should give way under wind and water loads without causing collapse, displacement, or other damage to the elevated portion of the building or the supporting pilings or columns. Breakaway walls apply only to V or VE Zones.

Building—see *Structure*.

Channelization means the artificial creation, enlargement, realignment, or alteration of a stream channel's slope, shape, or alignment. Streambank restoration may be deemed as channelization.

Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, and/or the SFHA. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be recognized by FEMA.

Conditional Letter of Map Revision Based on Fill (CLOMR-F) is FEMA's comment on a proposed structure or property. The letter does not revise an effective map; it indicates whether the project, if built as proposed, would be removed from the floodplain.

Crawlspace means an under-floor space that has its interior floor area (finished or not) no more than 4 feet from the bottom floor joist to the next higher floor elevation, designed with proper openings that equalize hydrostatic pressures of flood water, and is not used for habitation.

Critical Facility means a facility or building where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, schools, storage of critical records, assisted living and similar facilities.

Deed Restriction refers to a clause in a deed that limits the future use of the property in some respect. Deed restrictions may impose a vast variety of limitations and conditions. For example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or from being used at all.

Detached Garage is a building that is used solely for storage of materials or vehicle parking for up to four housing occupants. If a detached garage is designed or used for habitation or conducting business, or has multiple stories, then the building is not considered a detached garage under the NFIP.

Development means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, demolition, excavation or drilling operations, or storage either temporary or permanent of equipment or materials.

Elevated Building is a non-basement building built, in the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (post and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of a building in Zone A1-30, AE, A, A99, AR, AO, AH, B, C, X and D, an “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Enclosure refers to an enclosed walled-in area below the lowest floor of an elevated building. Enclosures below the BFE may only be used for building access, vehicle parking, and storage.

Erosion means the process of the gradual wearing away of land masses by wind, water, or other natural agents.

Existing Construction refers to structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. It may also be referred to as *Existing Structures*.

Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing Structures—see *Existing Construction*.

Expansion to an Existing Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Fill refers to the placement of materials, such as dirt, sand, or rock to elevate a structure, property, or portion of a property above the natural elevation of the site, regardless of where the material was obtained from. The common practice of removing unsuitable material and replacing with engineered material is not considered fill if the elevations are returned to the existing conditions. Any fill placed or used prior to the area being mapped as a flood hazard area is not deemed as fill.

Flood or Flooding means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. Mudslides (i.e., mudflows) that are proximately caused by flooding as defined in this ordinance and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this ordinance.

Flood Insurance Manual is the document FEMA produces twice a year and is used to write flood insurance policies underwritten by the NFIP. The document contains definitions, policy rates, coverage and limitations, application, and insurance policy forms.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Administrator has delineated both the SFHAs, and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) or Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Floodplain Development Permit is a community issued permit or document that is used for any development that occurs within an SFHA identified by FEMA or the community. It is used to address the proposed development to ensure compliance with the community's ordinance.

Floodplain or Flood-Prone Area means any land area susceptible to being inundated by water from any source whether or not identified by FEMA (see definition of *Flooding*).

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, mitigation plans, and floodplain management regulations.

Floodplain Management Regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for flood damage prevention and reduction.

Flood Opening refers to an opening in the wall of an enclosed structure that allows floodwaters to automatically enter and exit the enclosure. Refer to FEMA Technical Bulletin 1.

Flood Protection System means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to an SFHA and to reduce the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees, or dikes. These specialized, flood modifying works are those constructed in conformance with sound engineering standards. FEMA only accredits levees, both private and public, that have been certified by a professional engineer or firm in which the certification shows that the levee have met and continue to meet the minimum regulatory standards cited in Title 44, Chapter 1, Section 65.10 of the Code of Federal Regulations (44 CFR 65.10).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Floodproofing can either be accomplished in the form of dry floodproofing in which the structure is watertight below the levels that need flood protection, or wet floodproofing in permanent or contingent measures applied to a structure that prevent or provide resistance to damage from flooding, while allowing floodwaters to enter the structure or area.

Floodway—see *Regulatory Floodway*.

Floodway encroachment lines mean the lines marking the limits of floodways on federal, state, and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally Dependent Use means a development that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and repair facilities. It does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. In AO Zones, the highest adjacent grade is utilized by comparing the lowest floor elevation to that of the highest adjacent grade and the depth of the AO Zone.

Historic Structure means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic reservation programs that have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior, or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Amendment (LOMA) means an official amendment, by letter, to an effective FIRM. A LOMA establishes a property's location in relation to the SFHA. It is usually issued because a property or structure has been inadvertently mapped as being in the floodplain when the property or structure is actually on natural high ground above the BFE.

Letter of Map Revision (LOMR) means FEMA's modification or revision to an entire or portion of the effective FIRM, or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective BFEs, or the SFHA.

Letter of Map Revision Based on Fill (LOMR-F) means FEMA's amendment, by letter, to an effective FIRM where fill was brought in or used to elevate a property, portion of property or structure above the BFE.

Levee means a man-made structure usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System means a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Adjacent Grade (LAG) means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. For an existing structure, it means the lowest point where the structure and ground touch, including but not limited to attached garages, decks, stairs, and basement windows.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 60.3.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle"; however, a manufactured home may be used for both residential and non-residential use.

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the FHBM or the FIRM for a community issued by FEMA.

Mean Sea Level means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a community's FIRM are referenced.

Mixed Use Structures are structures with both a business and a residential component, but where the area used for business is less than 50 percent of the total floor area of the structure.

New Construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

No-Rise Certifications are formal certifications signed and stamped by a professional engineer licensed to practice in the state, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that a proposed development will not result in any increase (0.00 feet) in flood levels within the community during the occurrence of a base flood event.

Physical Map Revision (PMR) is FEMA's action whereby one or more map panels are physically revised and republished.

Recreational Vehicle means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily, not for use as a permanent dwelling but, as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, creek, etcetera, which can be intermittent or perennial.

Section 1316 refers to the section of the National Flood Insurance Act of 1968, as amended, which provides for the denial of flood insurance coverage for any property that the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. Section 1316 is issued for a property, not a property owner, and remains with the property even after a change of ownership.

Special Flood Hazard Area—see *Area of Special Flood Hazard*.

Start of Construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes in Chapter 4.99, a walled and roofed building, culvert, bridge, dam, or a gas or liquid storage tank that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes and Chapter 4.99, means:

1. A building with two or more outside rigid walls and a fully secured roof, which is affixed to a permanent site;
2. A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
3. A travel trailer without wheels built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance purposes, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed.

The term does not, however, include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
2. Any alteration of a “historic structure”, if the alteration will not preclude the structure's continued designation as a “historic structure.”

Variance means a grant of relief by a community from the terms of a flood plain management regulation. Reference: 4.99.05. VARIANCE PROCEDURES

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies, such as the 1-percent-annual-chance flood event, in the flood plains of coastal or riverine areas.

Watercourse means the channel and banks of an identifiable water in a creek, brook, stream, river, ditch, or other similar feature.

Section 4.99.03. General Provisions.

1. Lands to Which This Ordinance Applies.

This Ordinance shall apply to all areas of special flood hazard identified by FEMA within the jurisdiction of Kingsbury County.

2. Compliance.

No structure or land shall hereafter be constructed, located, extended, or altered without full compliance with the terms of this Ordinance and other applicable regulations.

3. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Kingsbury County," dated May 22, 2024 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Ordinance.

4. Abrogation and Greater Restrictions.

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

5. Interpretation - In the interpretation of this Ordinance, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the governing body; and
- c. Deemed neither to limit nor repeal any other powers granted under State statute.

6. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by human-made or natural causes.

This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

7. Penalties for Noncompliance.

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the NFIP regulation, to qualify for the sale of federally subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions." In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or codes."

Section 4.99.04. Administration.

1. Designation of the Floodplain Administrator.

The Administrative Official of this Ordinance, see Section 3.02.01, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of the NFIP Regulations and 44 CFR pertaining to floodplain management.

2. Duties and Responsibilities of the Floodplain Administrator.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- a. Uphold the goals of the community and the NFIP to reduce risk when possible and increase the community's resistance to future disasters.
- b. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation of the lowest floor (including basement or crawlspace) of all new or substantially improved structures and any floodproofing certificates, including the data supporting such certificates.
- c. Maintain and hold open for public inspection maps that identify and locate the boundaries of the SFHAs to which this ordinance applies, including, but not limited to, the FIRM.
- d. Review development proposals to determine whether a proposed building site, including sites designed for the placement of manufactured homes, will be reasonably safe from flooding.
- e. Review, approve, or deny all applications for development permits required by adoption of this ordinance.
- f. Ensure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 and the Endangered Species Act of 1973) from which prior approval is required.
- g. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- h. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the South Dakota Office of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
- i. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.

- j. When BFE data has not been provided by FEMA, the Floodplain Administrator shall obtain, review, and reasonably utilize any BFE data and floodway data available from a federal, state, or other source including data provided by the applicant, in order to administer the provisions of this ordinance.
 - k. When a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30, AE, and AH on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1.00 foot at any point within the community.
 - l. Under the provisions of 44 CFR Chapter 1, Section 65.12 of the NFIP Regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM, which increases the water surface elevation of the base flood by more than 1.00 foot, provided that the community first meets the requirements of Section 65.12 for a conditional FIRM revision through FEMA's CLOMR process.
 - m. If the project is determined or reasonably believed to cause an adverse effect on the BFE(s), boundaries of the floodplain or any insurable structures, technical justification for the proposed development shall be submitted and the community may require a CLOMR or LOMR to be submitted prior to the permit approval or as a requirement of the permit.
3. Requirement to Submit New Technical Data.
- a. The property owner or developer shall notify FEMA by submittal of a LOMR within 6 months of project completion when an applicant had obtained a CLOMR from FEMA or when development altered a watercourse, modified floodplain boundaries, or modified BFE.
 - b. The property owner or developer shall be responsible for preparing technical data to support the CLOMR or LOMR application and paying any processing or application fees to FEMA. The property owner or developer is responsible for submitting the CLOMR and LOMR to FEMA and shall provide all necessary data to FEMA if requested during the review process to ensure the CLOMR or LOMR is issued.
 - c. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this ordinance and all applicable state federal, and local laws.
4. Permit Procedures.
- a. Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to:
 - i) Duplicated plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations.

- ii) Duplicated plans drawn to scale showing the location, dimensions, and elevation of existing and proposed structures, including the placement of manufactured homes.
- iii) Location of the foregoing in relation to SFHAs.
- iv) Elevation (in relation to mean sea level), of the lowest floor (including basement and crawlspace) of all new and substantially improved structures, if applicable;
- v) Elevation (in relation to mean sea level), to which any nonresidential structure (if applicable) shall be floodproofed.
- vi) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure (if applicable) shall meet the floodproofing criteria of this ordinance and the NFIP Regulations.
- vii) Description of the extent to which any watercourse or natural drainage will be altered or relocated because of proposed development, if applicable.
- viii) At the community's discretion, the community may charge a fee for issuance of floodplain development permits.
- ix) Copies of all floodplain development permits, and the associated documents shall become property of the community and a permanent record.
 - a. Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
 - i) The danger to life and property due to flooding or erosion damage.
 - ii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - iii) The danger that materials may be swept onto other lands to the injury of others.
 - iv) The compatibility of the proposed use with existing and anticipated development.
 - v) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - vi) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems.
 - vii) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
 - viii) The necessity to the facility of a waterfront location, where applicable.
 - ix) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

- x) The relationship of the proposed use to the comprehensive plan for that area.

Section 4.99.05. Variance Procedures.

1. The Board of Adjustment as established by the community shall hear and render judgment on requests for variances from the requirements of this Ordinance.
2. The Board of Adjustment shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in 4.99.05.10 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
7. Upon consideration of the factors noted above and the intent of this Ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (3.11.01 (3)).
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 - i) showing a good and sufficient cause;

- ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.
 - c. Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
11. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- a. the criteria outlined in 4.99.05 are met, and
 - b. the structure or other development is protected by methods that minimize flood; and
 - c. damages during the base flood and create no additional threats to public safety. (Ord. 682, 2001; Ord. 759, 2009)

Section 4.99.06. General Standards for Flood Hazard Reduction.

1. General Standards.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

- a. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- c. All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- d. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

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

2. Substantial Improvement.

Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, if the cumulative cost of the entire project equals or exceeds 50 percent of the market value of the structure only (not of the structure and land value combined) before the improvement or repair is started then the work shall be considered as substantial improvement. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. For Substantial Damage, refer to 4.99.06.3 SUBSTANTIAL DAMAGE. The term does not, however, include either:

- a. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- b. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

3. Substantial Damage

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure only before the damage occurred. This term also applies to structures which have incurred any damage that equals or exceeds 50 percent of the structure's market value regardless of the actual repair work performed. When a structure or building has been determined as substantially damaged, any work or repair on said structure or building will be considered as substantial improvement and will be required to meet the development requirements set forth within this ordinance for substantial improvement.

4. Substantial Improvement and Substantial Damage Determination

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the applicable community officials and staff, shall:

- a. Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure only, not of land and building, before the start of construction of the proposed work. In the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- b. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
- c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in Section 4.99.06.2 SUBSTANTIAL IMPROVEMENT.
- d. Utilize FEMA's Substantial Improvement/Substantial Desk Reference when making any determination on Substantial Improvement and/or Substantial Damage.
- e. The substantial improvement regulations apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost of the improvement should consider all costs of all phases of the work before issuance of the first permit.
- f. Notify the applicant that if it is determined that the work constitutes substantial improvement or repair of substantial damage, that compliance with the floodplain management ordinance is required.

Section 4.99.07. Specific Standards for Flood Hazard Reduction.

In all SFHAs and areas of suspected flood risk areas, the following provisions are required:

1. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to the BFE. A registered professional engineer, architect, or land surveyor shall submit certified elevations to the Floodplain Administrator that the standards of this ordinance are satisfied.

2. Nonresidential Construction

New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement) elevated to the base flood level, or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification that includes the specific

elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. If the use or occupancy of the building changes in the future to residential, then the dry floodproofing of the structure cannot be used when determining compliance of the structure to the residential construction of this ordinance, Section 4.99.07.1 RESIDENTIAL CONSTRUCTION. As such, the building will not be grandfathered into compliance and will be required to be brought into compliance with the residential construction requirements of this ordinance.

3. Enclosures

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are to be used solely for parking of vehicles, building access, or storage in an area other than a basement, and are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than 1 foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- d. The development and construction of the structure must conform with the provision in FEMA/Federal Insurance Administration (FIA)-Technical Bulletins 1 and 2. Certification and documentation from a professional, licensed engineer or architect is required if the structure's lowest floor is built below the BFE.

4. Crawlspace

New construction and substantial improvements built on a crawlspace or sub-grade (below grade) crawlspace may be permitted if the development is designed and meets or exceeds the standards found in FEMA's Technical Bulletins 1, 2, and 11, which include but are not limited to the following:

- a. The structure must be affixed to a permanent foundation, designed, and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than 5 feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer.
- b. The crawlspace is an enclosed area below the BFE and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than 1 foot above the lowest adjacent grade (LAG).

- c. The crawlspace enclosure must have proper openings that allow equalization of hydrostatic pressure by allowing automatic entry and exit of floodwaters. To achieve this, a minimum of 1 square inch of flood opening is required per 1 square foot of the enclosed area subject to flooding.
- d. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, piers, or other materials that extend below the BFE. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- e. Any building utility systems within the crawlspace must be elevated above the BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- f. The interior grade of a crawlspace below the BFE must not be more than 2 feet below the LAG.
- g. The height of the below-grade crawlspace, measured from the lowest interior grade of the crawlspace floor to the bottom of the floor joist of the next higher floor cannot exceed 4 feet at any point.
- h. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event.
- i. Buildings with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation at or above the LAG.

5. Manufactured Homes

- a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites outside of a manufactured home park or subdivision;) in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated as high as the BFE, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- c. In A-1-30, AH, AO and AE Zones, require that manufactured homes to be placed or substantially improved in an existing manufactured home park to be elevated so that the lowest floor is at least as high as the BFE; or the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.

6. Recreational Vehicles

Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use;
 - i) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- b. Or meet the permit requirements of 4.99.04.4, PERMIT PROCEDURES, and the elevation and anchoring requirements for "manufactured homes" of this section.

Section 4.99.08. Standards for Subdivision Proposals.

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with the provisions of this ordinance.
2. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
3. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of this ordinance.
4. BFE data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or 5 acres, or whichever is lesser.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall minimize flood damage.

ARTICLE V GENERAL REQUIREMENTS

Pursuant to the purpose of this ordinance are certain general requirements that are not provided for under Article IV District Requirements. These requirements are set forth under this article.

CHAPTER 5.01. SCREENING. Where any CI commercial/industrial Zoning District use is adjacent to any residential development, that use (building, parking or storage) shall be appropriately screened from the residential development by a fence or planting, approved by the Board of Adjustment, except where such fence or planting may be in conflict with Vision Clearance - Section 5.02 below.

CHAPTER 5.02. VISION CLEARANCE ON CORNER LOTS. On any corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the triangular area formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is one hundred (100) feet distance from the point of intersection (Clear View Triangle). Exception: In the Lake Park District, Town District, and Planned Residential District, the Clear View Triangle shall be formed by the intersection road right-of-way lines and a straight line connecting points on said road right-of-way line each of which is fifty (50) feet distance from the point of intersection.

CHAPTER 5.03. REFUSE. In all zoning districts, refuse (rubbish, garbage, trash, waste or debris) shall be kept within a complete enclosed building or specially designed closed container made for such purpose. Owners of vacant lots shall be responsible for keeping their property free of trash. Normal farming operations excluded.

CHAPTER 5.04. UNLICENSED VEHICLES. Vehicles not in use and without current license may not be kept in any uncovered area other than a designated junk, salvage yard, or designated collection site. EXCEPTION: 1. Vehicles used in normal farming operations and 2. Antique cars being refurbished shall not be required to be kept in a covered area or in above designated areas.

CHAPTER 5.05. FENCES

Section 5.05.01. Purpose.

The regulation of fences is intended to protect the public safety and welfare, provide privacy, buffer noise, and allow adequate air, light and vision.

Section 5.05.02. Permit required.

1. Except for customary farm and animal fencing in the Agricultural District, all fences, and walls shall require a building permit. Customary farm and animal fencing is exempt from the requirements of this Chapter.

Section 5.05.03. Location/Construction Requirements.

1. Notwithstanding other provisions of this Ordinance fences, walls, and hedges may be permitted in any required yard. Except fences, walls, and hedges which are more than thirty (30) percent solid shall meet the requirements of Chapter 5.02. Further, the aforementioned fence, wall, or hedge shall not be constructed within twenty-five (25) feet of a public right-of-way or private road. Fences, walls and hedges shall be set back a minimum of twenty (20) feet from high water mark ~~or from a point as determined by the Board of Adjustment.~~
2. Fences, with a maximum height of not more than eighty inches (80) inches, may be erected on any part of a lot other than in the required front yard which shall be limited to a height of forty-eight (48) inches.
3. The County does not provide surveying services. The property owner is responsible for locating property lines.
4. Fences may be built no closer than one (1) foot up to the property line, not to include the public right-of-way. Fences constructed within an identified easement face the potential of removal in the event of necessary work to be conducted within the easement. Replacement of the removed fence is the responsibility of the owner of said fence.
5. The “finished side” of the fence shall face neighboring properties or the road.
6. Approved fencing materials include stone, brick, wood, vinyl, and chain link. No barbed wire fences shall be allowed in conjunction with residential uses in the Town, Lake Park and Planned Residential Districts.
7. Hedges or other plantings which create a fence effect are subject to the same regulations as fences.
8. Fences can be built on the property line when the fence is shared between property owners.

CHAPTER 5.06. MOVED IN BUILDINGS.

1. Any building to be moved requires a building permit. The Zoning Officer may attach conditions to the issuance of the moved in building permit. No permit shall be issued until the following requirements are met.
 - a. The fee for said permit as prescribed in Section 6.01.05, shall have been paid.
 - b. That the work is to be completed within twelve (12) months after the permit has been issued by the Zoning Officer.
 - c. Must have signatures, by petition, of sixty-six percent (66%) **of adjoining** landowners ~~within two hundred (200) feet,~~ excluding streets and public right-of-ways). EXCEPTION: A new residence to be used for first occupancy, constructed off the property and moved to location, shall not require adjoining landowners' approval.

- d. The applicant may also be required to file with the County Auditor a sufficient bond conditioned so that the applicant will indemnify the County and any public utility for any damage done to any property, street, alley or public grounds. No building shall be moved other than during the period from daylight to sundown. Before any permit is granted under this section, the applicant must furnish proof that all taxes legally assessed against the property have been paid. If a building or structure is to be moved onto any lot within the county, the Zoning Officer shall have the power to deny the granting of a moving permit on the grounds that the intended use of the structure or location thereof is contrary to the provisions of this chapter.

CHAPTER 5.07. SHORELINE ALTERATIONS, FILLING, GRADING, LAGOONING AND DREDGING.

1. **These regulations shall apply to the NR and LP-1 Districts.** These regulations are deemed necessary along the shores of natural waters to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland.

- a. Removal of Shore Cover

Tree and shrub cutting in a strip paralleling the shoreline and extending thirty-five (35) feet inland from all points along the high water mark, or as determined by the Board of Adjustment, shall be limited in accordance with the following provisions:

- i. Cutting shall leave sufficient cover to screen cars, dwellings, accessory structures, except boathouses, as seen from the water, to preserve natural beauty and to control erosion.
- ii. Natural shrubbery shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.
- iii. The removal of natural shrubbery and its replacement shall require the granting of a permit by the County Zoning Officer. Application for such permit shall be accompanied by a plan showing the work to be accomplished. The granting of such permit shall be conditional upon a contract requiring the petitioner to give to the zoning officer, within one (1) year after the date of grant, satisfactory evidence of compliance with such plan or pay for the cost of such compliance by the County.

- b. Filling, Grading, Lagooning and Dredging

- i. Filling, grading, lagooning or dredging which would result in substantial detriment to natural waters by reason of erosion, sedimentation, or impairment of fish and aquatic life is prohibited.
- ii. A permit shall be required: For any filling or grading of any area which is within three hundred (300) feet horizontal distance of a natural body of water and which has surface drainage toward the water and in which there is:
 - a) Filling of more than five hundred (500) square feet of any wetland which is contiguous to the water;

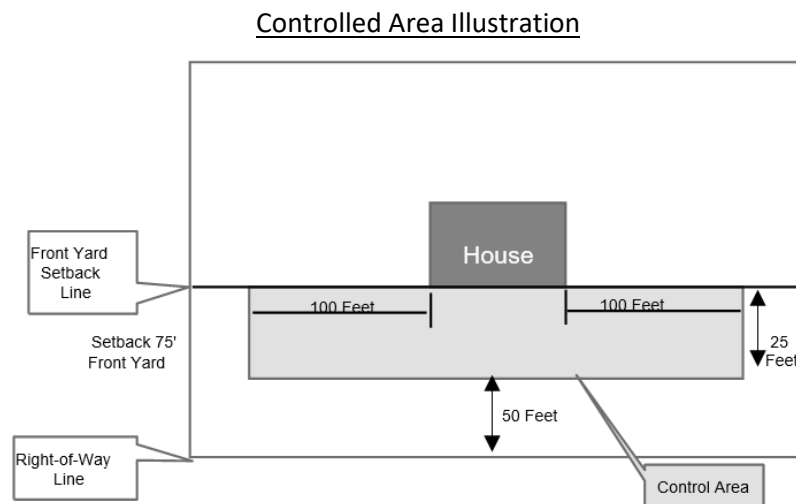
- b) Filling or grading on all slopes of twenty percent (20%) or more. (This does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.)
 - c) Where more than ten thousand (10,000) square feet of the bank of a natural body of water is exposed by grading.
 - d) A permit shall be required before constructing, dredging or commencing work on an artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within three hundred (300) feet of the high water mark, or from a point as determined by the Board of Adjustment, of a natural body of water or where the purpose is the ultimate connection with such body of water. This requirement does not apply to soil conservation practices such as terraces, runoff diversions and grassed waterways which are used for sediment retardation.
- iii. A permit is not required for soil conservation practices, approved by the Natural Resources Conservation Service (NRCS), such as terraces, run-off diversions and grassed waterways which are used for sediment retardation.
 - iv. Issuance of the permit may, at the request of the County Zoning Officer, include review from the Corps of Engineers, US Fish and Wildlife and/or any other applicable Federal, State or Local agencies.

v. Building permits shall be required for all retaining walls or structures.

CHAPTER 5.08. SHELTERBELT SETBACK REQUIREMENTS

1. A shelterbelt, consisting of one (1) or more rows shall not be established with the windward row within one hundred fifty (150) feet of a public right-of-way and the non-windward row within fifty (50) feet of a public right-of-way. Exception: A shelterbelt may be planted, with the non-windward row placed between twenty-five (25) and fifty (50) feet from the public right-of-way if said shelterbelt consists of a minimum of six (6) rows of trees and has been approved by the unit of government which maintains the road parallel to said shelterbelt. Further, the windward row of trees shall consist of shrubbery or tree species, as determined by the State Urban Forester, which aid in the containment of snow. Shelterbelts at right angles to roads shall provide a minimum turnaround of fifty (50) feet measured from the road right-of-way. Shelterbelts shall not be established within one hundred fifty (150) feet of adjoining property lines without written permission of adjoining property owners. Trees used for landscaping the area immediately adjacent to farmsteads and residences are exempt from this regulation, but not from 5.08.2.

2. Shade Trees, ornamental trees or shrubs generally used in front yards for landscaping and spaced further than fifteen (15) feet apart and further do not extend lineally for a distance of over one hundred fifty (150) feet, are not considered shelterbelts and are allowed in a controlled area (see Controlled Area Illustration below). The controlled area is defined as the area within one hundred (100) feet of homes or farm buildings, but no closer to the right-of-way than twenty-five (25) feet and in compliance with Section 5.01. Except for the following, plantings within the controlled area are exempt from this regulation. Four (4) or more trees planted in a row are not allowed within the controlled area. Deciduous trees which are spotted or staggered within the controlled area can be no closer than twenty (20) feet. Conifer trees which are spotted or staggered within the controlled area can be no closer than twenty-five (25) feet. The distance between trees shall be determined by measuring distance between tree trunks.
3. The shelterbelts setback requirements (paragraph 1) also apply to volunteer trees that the landowner allows to grow.
4. A recommendation from the County Highway Superintendent, Township and/or State Department of Transportation is required prior to the issuance of any variance of the shelterbelt setback from any respective County, Township or State/Federal public right-of-way.



CHAPTER 5.09. HOME OCCUPATIONS. Home occupations shall be subject to the following requirements:

1. No person other than members of the family residing on the premises shall be engaged in such occupation.
2. Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the residential character thereof.
3. The total area used for such purposes shall not exceed the equivalent of one-fourth (1/4) the floor area, in square feet, of the first floor of the user's dwelling unit, if any, otherwise of the main floor of such dwelling unit; but in any instance a maximum of three hundred (300) square feet shall be allowed.

4. There shall be no advertising, display or other indications of a home occupation on the premises except as follows: (1) non-lighted and non-reflecting name plate not more than sixteen (16) square feet in area, which name plate may designate the home occupation carried on within.
5. There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
6. A home occupation, including studios or rooms for instruction, shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation of not less than two (2) parking spaces plus the parking spaces required for the dwelling unit. Such parking shall be provided on the same lot as the home occupation.
7. Off premise signage for home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
8. No home occupation shall be conducted in any accessory building.
9. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity.

CHAPTER 5.10. EXTENDED HOME OCCUPATION. There are significant differences between home occupations and extended home occupations. While each use is based on supplementing income, the location and type of business in which each is practiced has unique characteristics. Specifically a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building.

1. For the purpose of this section, provided all requirements are met, the following shall be considered farm home occupations:
 - a. Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, welding repair conducted in a safe manner; Veterinarian's office; Seed Sales; **commercial storage facilities**; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.
2. Performance Standards **All extended home occupations must meet the following performance standards:**
 - a. A home occupation may not be changed to another home occupation except by the issuance of a separate conditional use permit.
 - b. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
 - c. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed sixteen (16) square feet in area, non-illuminated.

- d. Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
- e. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.
- f. There shall be no outdoor storage of materials, vehicles, etc. related to the extended home occupation unless the aforementioned storage is placed behind a fence approved by the Board of Adjustment.
- g. Extended home occupations should be agriculturally related and be conducted in an accessory building.
- h. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- i. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

CHAPTER 5.11. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT AND CONCRETE AND ASPHALT MIXING PLANTS REQUIREMENTS.

Section 5.11.01 Application

- 1. In addition to the application and required fee for a Conditional Use Permit, the applicant shall submit a site plan indicating the following information:
 - a. A description of the mineral or minerals which are the subject of the mining or milling.
 - b. A detailed site Map(s) showing
 - i. The general area within which the mining or milling operation will be conducted.
 - ii. Present topography, soil types, and depth to groundwater.
 - iii. Location of existing water drainage, existing buildings, existing shelterbelts.
 - iv. Identification of roads leading to the site.
 - v. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - vi. Proposed monitoring wells.

Section 5.11.02 State and Federal Requirements.

1. All applicants for sand, gravel or quarry operations; mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants shall demonstrate prior to the commencement of operation that the site meets the requirements of the State Department of Environment and Natural Resources.
2. The applicant shall identify specific phases when monitoring and inspection of the mining and milling activities shall be conducted by County, State, or Federal personnel or their representatives to assure compliance with all applicable rules and regulations. If the conditional use permit is granted, the permit shall identify such inspection and it shall be the responsibility of the applicant to notify said agency when monitoring or inspection is required. The applicant shall bear the burden of the cost of the monitoring and inspection program as determined by the Board of Adjustment.

Section 5.11.03 Setbacks

1. Sand, gravel or quarry operation; Mineral exploration and extraction operations; rock crushers; and concrete/ asphalt mixing plants will not be allowed within one thousand (1,000) feet of **the wall line** of a residence. The setback will be measured from the mineral exploration and extraction operations; rock crushers; and/or concrete and asphalt mixing plant's property line to the nearest residence. The exception to this standard would apply to residences owned and lived in by the operator of the mineral exploration and extraction operations; rock crushers, and/or concrete/asphalt mixing plants.
2. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back at least one hundred (100) feet from any public right-of-way.
3. Sand, gravel or quarry operation; Mineral exploration and extraction; rock crushers; and/or concrete and asphalt mixing plants shall be set back a minimum of twenty-five (25) feet from all property lines (excluding public right-of-way). EXCEPTION: The Board of Adjustment may allow excavation of minerals, sand, or gravel provided the following conditions are met:
 - a. Any excavation performed less than twenty-five (25) feet from any rear or side property line may be allowed with a maximum slope of three (3) feet horizontal for each one (1) foot vertical.
 - b. No excavation is allowed within five (5) feet of any rear or side property line.
 - c. The applicant shall obtain the written consent of all property owners owning property adjacent to the property line for which the exception is requested.

Section 5.11.04 General Provisions:

1. Haul Roads.

A requirement for receiving a permit for extractive/mining operations shall include a haul-road agreement between the applicant and appropriate governmental entity (Federal, State, County, Township, or Municipality).

2. Noise Pollution.

The applicant may be required to provide information regarding how potential noise, pollution would be minimized.

3. The applicant shall further provide:

- a. A description of the major environmental impacts upon air quality, water quality and quantity, and land use modification presented by the proposed mining or milling.
- b. A description of the proposed plan to address the identified environmental impacts to include all measures to be taken to prevent soil erosion, water contamination, air contamination, disruption of the area's ecological balance and any other related hazard to public health and safety.

4. The applicant shall provide for a plan for land reclamation of the land after mining is completed. Measures to be taken for surface reclamation shall take into account the impact on adjacent land uses and natural resources, and the proposed future use of the lands mined and adjacent lands.

- a. A reclamation schedule.
- b. Methods of plugging drill holes.
- c. Methods of severing and returning topsoil and subsoil.
- d. Methods of grading, backfilling and contouring of exploration sites, access roads, and mining sites.
- e. Methods of waste management and disposal, including liquid and solid wastes.
- f. Method of revegetation.

5. ~~The applicant may be required to post a surety performance bond in an amount to be determined by the County Commission to assure that sufficient funds will be available to carry out required reclamation and, if necessary, decontamination of affected ground and surface waters. The amount shall be set by the County Commission based on an estimate of the cost of reclamation and decontamination. The bond shall be released five (5) years after mining and milling has ceased unless the Commissioners find, for good cause shown, that the water quality of the affected area has not been restored or the reclamation plan has not been completed. The amount of the surety bond may be reduced by the Commissioners if a bond is held by the State of South Dakota for the same purpose, by the same amount of the latter bond.~~ **(Reserved)**

6.5. Utilities/Easements. No excavation shall occur within recorded easements. The Board of Adjustment may specify a maximum slope at which excavation may occur in relation to any utility pole or recorded easement

66. A conditional use permit shall be issued only after all conditions specified herein have been met. Evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
87. Solution mining, in situ mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

CHAPTER 5.12. CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) REGULATIONS

Section 5.12.01. Intent.

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

Section 5.12.02. Animal Units Equivalent to Animal Species:

Kingsbury County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of concentrated animal feeding operation by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 5.12.1 details the classes of concentrated animal feeding operations and the specific animal unit equivalency ratio. Note that the figures in Table 5.12.1 relate to inventory rather than annual production.

Table 5.12.1
Number of Animals to Define Classes of Concentrated Animal Feeding Operations

Animal Species	Class A CAFO (Over 2,000 Animal Units)	Class B CAFO (1,000-1,999 Animal Units)	Class C CAFO (500 to 999 Units - Zone A & B Shallow Aquifer) ³	Class D CAFO (10 to 499 Units - Water Pollution Hazard)	Class E D CAFO (10 to 499 Units - No Water Pollution Hazard)	Animal Unit Equivalency Ratio
	Animal numbers equal to or more than:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to:	
Cattle other than mature dairy cows or veal calves ^{1,2}	2,000	1,000 to 1,999	500 to 999 50 to 499	10 to 499	10 to 499 50 to 999	1.0
Mature Dairy Cattle (milked or dry)	1,400	700 to 1,399	350 to 699 35 to 349	7 to 349	7 to 349 35 to 699	1.43
Swine (weighing over 55 lbs)	5,000	2,500 to 4,999	1,250 to 2,499 125 to 1,249	25 to 1,249	25 to 1,249 125 to 2,499	0.4
Swine (weighing less than 55 lbs)	20,000	10,000 to 19,999	5,000 to 9,999 500 to 4,999	100 to 4,999	100 to 4,999 500 to 9,999	0.1
Horses	1,000	500 to 999	250 to 499 25 to 249	10 to 249	10 to 249 25 to 499	2.0
Sheep or lambs	20,000	10,000 to 19,999	5,000 to 9,999 500 to 4,999	100 to 4,999	100 to 4,999 500 to 9,999	0.1
Turkeys	110,000	55,000 to 109,999	27,778 to 54,999 2,775 to 27,749	555 to 27,777	555 to 27,777 2,775 to 55,499	0.018
Chickens, other than laying hens using other than liquid manure handling system	250,000	125,000 to 249,999	62,500 to 124,999 6,250 to 62,499	1,250 to 62,499	1,250 to 62,499 6,250 to 124,999	.008
Laying hens using other than liquid manure handling system	164,000	82,000 to 163,999	41,166 to 81,999 4,100 to 40,999	833 to 41,165	833 to 41,165 4,100 to 81,999	.0122
Laying Hens & Broilers using liquid manure handling system	60,000	30,000 to 59,999	15,000 to 29,999 1,500 to 14,999	300 to 14,999	300 to 14,999 1,500 to 29,999	.0333
Ducks Using liquid manure Handling system	10,000	5,000 to 9,999	2,500 to 4,999 250 to 2,499	50 to 2,499	50 to 2,499 250 to 4,999	0.2
Ducks using other than liquid manure handling system)	60,000	30,000 to 59,999	15,151 to 29,999 1,500 to 14,999	303 to 15,150	303 to 15,150 1,500 to 29,999	.033
Geese	60,000	30,000 to 59,999	15,151 to 29,999 1,500 to 14,999	303 to 15,150	303 to 15,150 1,500 to 29,999	.033

1. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.
2. **Animals are counted individually once they are separated from the mother**
3. **Only in accordance with Chapter 4.07 Aquifer Protection Overlay District.**

Section 5.12.03. Classes of Concentrated Animal Feeding Operations:

For the purpose of these regulations, concentrated animal feeding operations are divided into the following classes:

<u>CLASS OF CAFO</u>	<u>NUMBER OF ANIMAL UNITS</u>
Class A	2,000 or more
Class B	1,000 to 1,999
Class C	500 to 949 (Situating over Zone A or B Shallow Aquifer)
Class D	150 to 499 (Potential water pollution hazard)
Class E	10 to 499 (No water pollution hazard)

Section 5.12.04. Concentrated Animal Feeding Operation Permit Requirements

~~Two (2) or more concentrated animal feeding operations under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more concentrated animal feeding operations treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.~~

Owners of Class A, Class B, **Class C**, and Class D concentrated animal feeding operations are required to complete **where applicable, a building permit, special permitted use permit and/or** a conditional use permit application ~~under the following circumstances~~ **whenever any of the following occur:**

1. A new concentrated animal feeding operation is proposed where one does not exist.
2. An expansion of a concentrated animal feeding operation is proposed that exceeds the number of animal units allowed by an existing county-issued permit.
3. An expansion in the number of animal units of a concentrated animal feeding operation, without a county-issued permit, that existed prior to October 14, 1997, which would result in the creation of either a Class A, B, or **D C** concentrated animal feeding operation
4. If a Class A, **or B, or C** concentrated animal feeding operation, which has a previously issued county permit, changes ownership, the new owner has sixty (60) days in which to apply for a transfer of ownership in order to keep the current permit valid. The new owner will be required to abide by the permit requirements and letter of assurances that were issued under the permit application. If no transfer is completed within sixty (60) days, the new owner will be required to submit a new application for approval.
5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received and/or documented by the County Zoning Officer or South Dakota Department of Environment and Natural Resources and after inspection reveals that the concentrated animal feeding operation is in violation of County or State regulations.

7. ~~Not with standing 5.12.04.7 (below)~~ a change in ownership of a Class A or Class B concentrated animal feeding operation which does not have a previously issued county-permit.
8. A change in ownership of any concentrated animal feeding operation with a history of pollution documented by the County Zoning Office or State of South Dakota.

Section 5.12.05. Concentrated Animal Feeding Operation Control Requirements:

1. No Significant Contribution of Pollution

In general, no concentrated animal feeding operation shall be constructed, located, or operated so as to create a significant contribution of pollution **as determined by the South Dakota Department of Agriculture and Natural Resources.**

2. State General Permit

Classes A and B concentrated animal feeding shall obtain a State General Permit. A County permit for a concentrated animal feeding operation may be approved conditioned on receiving a State General permit. **The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**

It shall be at the discretion of the Board of Adjustment to require ~~a State General Permit~~ **an applicant to submit plans** for ~~a Class C and Class D~~ **Class C and Class D** Concentrated Animal Feeding Operations **to be reviewed to determine general compliance with standards adopted for a State General Permit.** ~~Class C and Class D concentrated animal feeding operations will be required to obtain a State General Permit if the following occur:~~

- ~~a. If an earthen storage basin or lagoon is used for manure storage, excluding existing operations that are improving waste handling facilities according to South Dakota Department of Environment and Natural Resources General Permit or Natural Resource Conservation Service standards.~~
- ~~b. The Board of Adjustment decides conditions require a State General Permit.~~

3. Nutrient Management Plan

- a. ~~New and expansion of Classes A, and B, and Class C, and Class D concentrated animal feeding operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe land application of manure and protection of surface and ground water. The South Dakota Department of Environment and Natural Resources must approve the plan prior to the issuance of the County Conditional Use Permit and land application of any manure. Due to crop rotation, site changes, and other operational changes, the producer shall update the plan annually to reflect the current operation and crops grown on the application sites. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.~~

The Nutrient Management Plan is a conservation system for concentrated animal feeding operation. It describes practices and management activities on how to best utilize animal manure as a fertilizer resource while protecting surface and groundwater. The plan deals specifically with managing the amount, source, placement, and timing of the application of manure nutrients to the land. The use of other nutrient sources (i.e. commercial fertilizer) also must be taken into account when planning manure applications. All nutrient management plans developed for concentrated animal feeding operations developed must meet all applicable SDDENR General Permit and Kingsbury County Zoning Standards.

- b. **Nutrient management plan(s) for Class A and Class B concentrated animal feeding operations shall be reviewed and approved by the South Dakota Department of Agriculture & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.**
- c. The applicant must maintain records to show compliance with the nutrient management plan.
- d. The plan must comply with County Manure Application Setbacks, Section 5.12.05.7.
- f. **Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure. All lease agreements for manure application must be kept up-to-date and if agreements are not renewed new land must be found to replace acres. Documentation of land spreading agreements showing the location for manure application shall be available upon request by the County.** Animal manure is encouraged to be applied within five (5) miles of the concentrated animal feeding operation. There are no restrictions on the distance liquid manure may be pumped. Applicants intending to pump liquid manure are required to obtain permission to cross public rights-of-way. All liquid manure in storage facilities shall be injected or incorporated within twenty-four (24) hours unless approved by the County Board of Adjustment. Emergency cases will be reviewed on a case-by-case basis

4. Manure Management and Operation Plan

New **and expansion of** Classes A, B, C, and Class D **(with more than 500 or 800? animal units)** concentrated animal feeding Operations **shall submit** **are required to have** a Manure Management and Operation Plan.

The manure management and operation plan for Class A and Class B concentrated animal feeding operations reviewed and approved by the South Dakota Department of Agriculture & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved manure management and operation plan.

Manure Management and Operation Plans for Class C and Class D (with more than 500 or 800? animal units) shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable SDDANR and Kingsbury County Zoning Standards

- a. **A Manure Management and Operation** Plan must include:
 - i. The location and specifics of proposed **animal** manure management facilities.

- ii. The operation procedures and maintenance of manure facilities.
 - iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Animal Manure management facilities will require inspection by an engineer. ~~and as-built plans to be submitted to the County Zoning Officer.~~
 - iv. Animal Manure shall not be stored longer than two (2) years unless approved by Board of Adjustment.
 - v. Animal Manure management containment structures shall provide for a minimum design volume of three hundred sixty-five (365) days of storage for 1,000 animal units or more and two hundred seventy (270) days of storage for less than one thousand 1,000 animal units.
 - vi. The Applicant shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed per South Dakota Department of Environment and Natural Resources standards. **These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields. Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.**
 - vii. **The applicant will provide information regarding how manure from the concentrated animal feeding operation site will be transported to fields identified in the nutrient management plan. This may require the need for a haul road agreement and/or the applicable agreement for pipes to occupy the right-of-way or private property. Unless otherwise agreed to between the Road Authority and the applicant, the applicant to abide by minimum requirements of the adopted findings of facts for the applicable size of operation.**
- b. As a condition of the permit, the Board of Adjustment may require the producer to participate in environmental training programs.
 - c. No liquid manure shall be applied by means of center pivot or gun irrigation.
 - i. EXCEPTION #1: In the event of an emergency liquid manure containment structure breach or threat of a liquid manure containment structure breach, the County Commissioners may grant an emergency permit to discharge liquid from manure settling pond/storage facilities via a center pivot or gun irrigation subject to the following:
 - a) The liquid to be applied is tested for nutrient content.
 - b) A soil sample from the land for which the liquid is to be applied is on file with the Kingsbury County Auditor.
 - c) Application of the liquid is in compliance with the approved nutrient management plan.

- ii. EXCEPTION #2: In the event of an emergency runoff control basin breach or threat of a runoff control basin breach, the discharge of liquid from a runoff control basin via a center pivot or gun irrigation may occur subject to the following:
 - a) Application of the liquid is in compliance with the approved nutrient management plan.
 - b) A soil sample from the land for which the liquid is to be applied is on file with the Kingsbury County Auditor.
 - c) The producer obtains a water sample from the runoff control basin that tests for ammonium nitrogen, total nitrogen, potassium and phosphorus and further supplies a copy of the results to the Kingsbury County Auditor.
 - d) The producer notifies the Kingsbury County Auditor of the area where the surface application will occur.
 - e) The producer should avoid application on weekends, holidays and evenings during the warm season when neighbors may be involved in outdoor activities.

5. Management Plan for Fly and Odor Control:

New ~~and expansion of~~ Classes A, B, ~~and Class~~ C, ~~and Class D~~ concentrated animal feeding operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors and/or flies. A management plan is required for submission of a permit. The Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The following procedures to control flies and odors shall be considered in a management control plan.

- a. Operational plans for manure collection, storage treatment and use must be kept updated and implemented.
- b. Methods to be utilized to dispose of dead animals should be included in the management plan.
- c. ~~Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.~~ **The location of existing and proposed tree/shrub plantings.**

d. The County recommends the following Best Management Practices in the development of a fly and odor management plan:

- ~~d.i.~~ **Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.**
- ~~e.ii.~~ **Store solid manure in containment areas having good drainage to minimize odor production.**
- ~~f.iii.~~ **Remove manure from open pens as frequently as possible to minimize odor production.**
- ~~g.~~ **The County may require use of covers on open storage systems for liquid manure systems to reduce odor production.**
- ~~h.iv.~~ **Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.**

~~i.v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.~~

~~j. The County may require the storage of solid manure in containment areas to minimize odor production.~~

~~k. The County may require the use of bio-filters on enclosed concentrated animal feeding operation barns/structures to reduce odor production.~~

e. To assist in mitigating odors, the County may require any or all of the following

i. Use of covers on open storage systems for liquid manure systems to reduce odor production.

ii. The storage of solid manure in containment areas to minimize odor production.

iii. The use of bio-filters or other proven odor mitigation technologies on enclosed concentrated animal feeding operation barns/structures to reduce odor production. The design and installation of said bio-filters shall be reviewed by specialists at South Dakota State University or others designated by the Board of Adjustment.

6. Required Minimum Setbacks and Separation Distance for New Classes A, B, C, ~~and D, and E~~ Concentrated Animal Feeding Operations and those existing, ~~non-permitted~~, Concentrated Animal Feeding Operations without a County-issued permit expanding into a Class A, B, C, or D, Concentrated Animal Feeding Operations after ~~(date of adoption of new ordinance)~~ June 1, 2026. See Table 5.12.2.

5.12.2
Minimum Setbacks

	MINIMUMS					
	CLASS A	CLASS A	CLASS A	CLASS B	CLASS C	CLASS D & E
	(10,000 or More a.u.)	(5,000 to 9,999 a.u.)	(2,000 to 4,999 a.u.)	(1,000-1,999 a.u.)	(10 – 499 a.u. over shallow aquifer)	(10 – 999 a.u.)
Established Residences, Churches, and Commercial, Industrial, Lake Park, Planned Residential, and Town Zoning Districts ^{1,2}	One mile (5,280 feet) or as prescribed in 5.12.05.7	3/4 mile (3,960 feet) or as prescribed in 5.12.05.7	One-half mile (2,640 feet) or as prescribed in 5.12.05.7	One-half mile (2,640 feet) or as prescribed in 5.12.05.7	One-quarter mile (1,320 feet) or as prescribed in 5.12.05.7	One-quarter mile (1,320 feet) or as prescribed in 5.12.05.7
Buildings within incorporated Municipal Areas ²	Two miles (10,560 feet) or as prescribed in 5.12.05.7	Two miles (10,560 feet) or as prescribed in 5.12.05.7	Two miles (10,560 feet) or as prescribed in 5.12.05.7	One and one half mile (7,920 feet) or as prescribed in 5.12.05.7	One-half mile (2,640 feet) One mile (5,280 feet) or as prescribed in 5.12.05.7	One-half mile (2,640 feet) or as prescribed in 5.12.05.7*
Aquifer Protection						
Zone A	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Zone B	Prohibited	Prohibited	Prohibited	Prohibited	Conditional Use Permit	Conditional Use Permit
Established Private Shallow Wells ^{3,4}	2,640 feet	2,640 feet	2,640 feet	1,320 feet	500 feet	500 feet
Lakes, Rivers and Streams Classified as Fisheries	500 feet	500 feet	500 feet	200 feet	200 feet	200 feet
Federal, State, County & Township Road ROW	300 feet	300 feet	300 feet	300 feet	200 feet	200 feet
Designated 100 Year Floodplain	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.

- 1 Established residences do not include any residence established after October 14, 1997 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.
 - 2 The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application
 - 3 Setback does not apply to the wells of the CAFO operator.
 - 4 Established private water wells refer to wells used as a source of potable water for human consumption for at least one (1) week within one (1) year prior to application date for the proposed CAFO.
- * ½ mile for CAFO 10 to 500 animal units, 1 mile for CAFO 500 to 999 animal units

7. Additional Setback and Separation Distance Requirements for Classes A, B, C, ~~and D, and E~~ Concentrated Animal Feeding Operations.

Each application for a new or expanded concentrated animal feeding operation will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum required setbacks and separation distance on a site-specific review based on one (1) or more of the following considerations:

a. Considerations to Decrease Setbacks and/or Separation Distances

- i. The Board of Adjustment may reduce minimum setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:
 - a) Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used.
 - b) An existing Concentrated Animal Feeding Operation proposes to expand but does not meet suggested setback or separation distances, the Board of Adjustment may reduce suggested setbacks and separation distances after review of past management practices and proposed improvements to manure handling facilities.
 - c) Due to the type of manure handling and management of the CAFO little or no impact on adjacent property is expected. The use of Bio-filters, neoprene lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of recommended setbacks and separation distances. The South Dakota Odor Footprint Tool may be utilized to determine the need to decrease setback and/or separation requirements.
 - d) Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected. The South Dakota Odor Footprint Tool may be utilized to determine the need to decrease setback and/or separation requirements.
 - e) By limiting the proposed expansion to specific number of animal units little or no adverse impacts are expected. The South Dakota Odor Footprint Tool may be utilized to determine the need to decrease setback and/or separation requirements.

b. Considerations to Increase Setbacks/Separation Distances

- i. The Board of Adjustment may increase minimum setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:
 - a. Existing Concentration - A Concentrated Animal Feeding Operation of two thousand (2,000) or more animal units is proposed to be located in an area where a concentration of 5,000 animal units currently exists within one (1) mile of the proposed site.

In the event the Board determines that a concentration of animal units already exists and an increase in animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint Tool to determine the need to increase setback and/or separation requirements. The Board may further:

- 1) Apply the established minimum setback subject to 5.12.05.7.b
 - 2) Increase the established minimum setback based upon 5.12.05.7.b
 - 3) Amend and approve the request for less than 5,000 animal units based upon 5.12.05.7.b.
 - 4) Deny the request
- b. Due to topography and prevailing wind direction, and/or concentration of animal units, additional setback and separation distance is appropriate to safeguard air or water quality. The South Dakota Odor Footprint Tool may be utilized to determine the need to increase setback and/or separation requirements.
- c. Siting of new concentrated animal feeding operation in excess of five thousand (5,000) animal units.

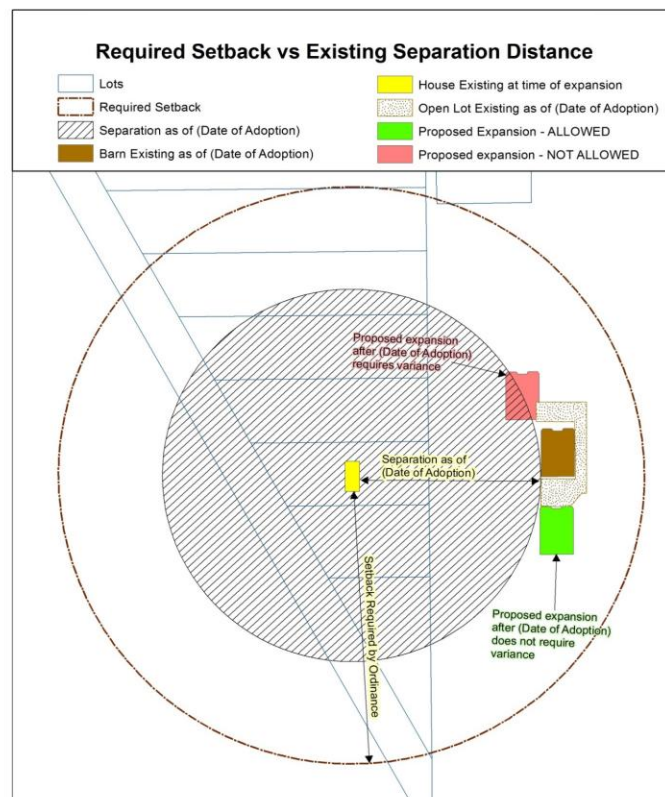
In the event the Board determines that the siting of a CAFO with more than 5,000 animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint Tool to determine the need to increase setback and/or separation requirements. The Board may further:

- 1) Apply the established minimum setback subject to 5.12.05.7.b
 - 2) Increase the established minimum setback based upon 5.12.05.7b
 - 3) Amend and approve the request for less than 5,000 animal units based upon 5.12.05.7b
 - 4) Deny the request
- d. Review of past management practices and proposed improvements to manure handling facilities.
8. Exemptions to Setback and/or Separation Distance Requirements. **A concentrated animal feeding operation that satisfies any of the criteria below shall be exempt from the applicable separation or setback distance with no variance required by the Board of Adjustment.**

- a. All Concentrated Animal Feeding Operations (CAFO) in operation prior to October 14, 1997, which do not comply with the minimum setback requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from setback/separation distance requirements:
 - i. Example 1: A Class ~~E~~ **D** expands to a Class A, **or** B, ~~or C~~ CAFO.
 - ii. ~~Example 2: A Class D CAFO expands to a Class A, B or C CAFO.~~
 - iii. ~~Example 3: A Class C CAFO expands to a Class A or B CAFO.~~
 - iv. **Example 4 2:** A Class B CAFO expands to a Class A CAFO.
 - v. Example **5 3:** A Class A CAFO expands by 15% of the number of animal units
- b. ~~(Reserved)~~ **A Concentrated Animal Feeding Operation which is expanded or constructed less than the required setback from a right-of-way (ROW) provided approval of the applicable road authority is submitted to the Zoning Official prior to issuance of any applicable building permits or stocking of the Concentrated Animal Feeding Operation if no building permits are required. County Highway Department (County right-of-way), Township Board of Supervisors (Township right-of-way), or State Department of Transportation (state right-of-way) are authorized to provide approval on behalf of the respective road authority. Other entities may provide approval on behalf of the listed entities if documentation of their authority to grant such approval is submitted.**
- c. A concentrated animal feeding operation which is expanded or constructed, if the title holder of the land benefiting from the distance separation requirement executes a written waiver with the title holder of the land where the CAFO is located, under such terms and conditions which the parties may negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds in the county. The title holder of the land benefiting from the distance separation requirement land is the individual or individuals, business entity, governmental entity, bona-fide religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- d. A concentrated animal feeding operation which is constructed or expanded closer than the required setback/separation distance from the corporate limits of a city, if the incorporated community approves a written waiver. The written waiver becomes effective only after its recorded with the Register of Deeds.
- e. A concentrated animal feeding operation which existed prior to the creation of a residence, educational institution, commercial enterprise, bona-fide religious institution, incorporated community, if the residence, educational institution, commercial enterprise or bona-fide institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the animal feeding operation was established. The date that the concentrated animal feeding operation was established is the date on which concentrated animal feeding operation commenced operating. A change in ownership or expansion shall not change the date of operation.

- f. The setback from a private shallow well as prescribed in 5.12.05.6 shall not apply to the wells belonging to the owner/operator/permit holder of the concentrated animal feeding operation(s). As long as said private shallow well is protected by either:
 - i. Extending the well casing at least two (2) feet above the highest known flood elevation.
 - ii. Installing a sanitary seal or cover on the casing.
 - iii. Curbing the casing at ground level by surrounding it with a watertight seal that is at least four (4) inches thick and that extends at least two (2) feet in all directions; or
 - iv. Being located on higher ground, above expected flood levels and known sources of pollution (manure containment structures).
- g. It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.
- h. **Any Concentrated Animal Feeding Operation in operation as of June 1, 2026 which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 5.12.8.**

Figure 5.12.8



9. Manure Application Setbacks

- a. Table 5.12.3 provides the following manure application setbacks that apply to all classes of concentrated animal feeding operations.

Table 5.12.3
COUNTY MANURE APPLICATION SETBACKS

CATEGORY	SURFACE APPLIED	INCORPORATED OR INJECTED
Lakes, Rivers and Streams Classified as Fisheries	300 feet*	100 feet (lake) * 50 feet (river & stream)
Streams and Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way	10 feet from right-of-way
Area of 10 or More Residences	300 feet (surface)	300 feet
Public Wells	1,000 feet	1,000 feet
Established Private Shallow Wells **	250 feet	250 feet
A Residence Other Than the Operator	300 feet (surface)	300 feet
Natural or Manmade Surface Drainage	200 feet	50 feet

* Or as prescribed within the South Dakota General Permit for Manure Application on Saturated, Snow Covered, or Frozen Soil .

** Private shallow wells meeting the definition of an abandoned well shall not be considered in determining the above minimum manure application setback distances.

10. Standards for Conditional Use Permits

- a. The Board of Adjustment may request information relating to concentrated animal feeding operations not contained in these regulations.
- b. The Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- c. Conditional Use Permits for concentrated Animal Feeding Operations shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.
- d. When considering an application, the Board of Adjustment will take into consideration current and past violations relating to concentrated animal feeding operations that the applicant has or had an interest in.

- e. **Conditional Use** Permit applicants will be required to file a letter of assurances as required by **Zoning Officer or** the Board of Adjustment. The letter of assurances will be prepared by the **applicant Zoning Officer** and signed by both the applicant and the Chair of the Board of Adjustment. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.

11. Financial Responsibility

- a. Financial responsibility of a minimum of one hundred thousand dollars (\$100,000) is required for a Class A concentrated animal feeding operation with **less than** two thousand (2,000) **to two thousand nine hundred ninety-nine (2,999)** animal units. Class A concentrated animal feeding operations shall provide financial responsibility of fifty thousand dollars (\$50,000) for each one thousand (1,000) animal units over two thousand (2,000). Class B concentrated animal feeding operations shall have a minimum financial responsibility of fifty thousand dollars (\$50,000) for a concentrated animal feeding operation with one thousand (1,000) to one thousand four hundred ninety-nine (1,499) animal units and a minimum financial responsibility of seventy-five thousand dollars (\$75,000) for a Class B concentrated animal feeding operation with one thousand five hundred (1,500) to one thousand nine hundred ninety-nine (1,999) animal units. The financial responsibility may be provided by any one or combination of the following:
- i. Bond.
 - ii. Cash security.
 - iii. Letter of credit from financial institution or primary lender.
 - iv. Insurance.

12. Information Required for Class A, B, C, D, or E Concentrated Animal Feeding Operation **The following information may be requested and reviewed by the Board of Adjustment prior to the issuance or as a condition to the issuance of a conditional use permit for any class of CAFO.**

- a. Owner's name, address and telephone number.
- b. Legal descriptions of site.
- c. Number and type of animals.
- d. **Documentation of a South Dakota Department of Environment and Natural Resources approved Preliminary** Nutrient management plan, if required.

- e. ~~Documentation of a South Dakota Department of Environment and Natural Resources approved~~ **Preliminary** Manure management and operation plan, if required.
- f. **Preliminary** Management plan for fly and odor control.
- g. Information on ability to meet designated setback requirements.
- h. Documentation of approved General permit from South Dakota Department of Environment and Natural Resources if available for animal species, if required.
- i. ~~(Reserved)~~ **As a condition of approval of any Concentrated Animal Feeding Operation over 1,000 animal units or as determined by the Board of Adjustment, the documentation of an approved general Permit from the South Dakota Department of Agriculture & Natural Resources for animal species is required. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. ~~Notification~~ **Documentation of notice** of whomever maintains the access road (township, county and state).
- l. ~~Notification~~ **Documentation of notice** of public water supply officials.
- m. Any other information as contained in the application and requested by the County Zoning Officer.

CHAPTER 5.13. MINIMUM WATER AND SEWER REQUIREMENTS.

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

1. All subsurface absorption systems shall be at least one hundred (100) feet from any water supply well, eighty (80) feet from any lake, stream, or water course, and twenty-five (25) feet from property lines.
2. The bottom of the drain area or tile field should be at least four (4) feet above the maximum high ground water level and five (5) feet above rock or impervious soil strata and not more than five (5) feet below ground surface.
3. All structures used for human habitation or commercial or industrial use must be connected to a sewage disposal system which meets South Dakota Department of Environment and Natural Resources Administrative Rules and be approved by the Zoning Officer. If a public sewer is available, all such structures must be connected to said public sewer.

CHAPTER 5.14. ANIMAL UNITS ON SMALL ACREAGES.

On parcels of land of ten (10) acres or less in the Lake Park District, a maximum of one (1) animal unit per acre will be allowed. Designated concentrated animal feeding operations excluded.

CHAPTER 5.15. MANUFACTURED HOME PARKS.

It shall be unlawful for any person to place or maintain a manufactured home park in the unincorporated area of Kingsbury County unless said court is located on property zoned Lake Park and connected to an approved public water and sewer system.

CHAPTER 5.16. MANUFACTURED HOME REGULATIONS.

Section 5.16.01 Type A and Type B Manufactured Homes

1. A manufactured home is an industrialized building unit constructed on a chassis for towing to the point of use and designed to be used for continuous year round occupancy as a single dwelling. For the purpose of this Ordinance, manufactured homes will be regulated by types. Two (2) types of homes are defined under these regulations.
 - a. Type A manufactured home shall be a dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Code in addition to the following requirements:
 - i. Have more than one thousand one hundred (1,100) square feet of occupied space in a double-section or larger multi-section unit.
 - ii. Be anchored to a permanent foundation (permanent perimeter enclosure) and permanent footing.
 - iii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.
 - iv. Have a gabled roof with a pitch of at least 2/12 feet.
 - v. Have siding material of a type customarily used on site-constructed residences.
 - vi. Have roofing material of a type customarily used on site-constructed residences.
 - vii. The running gear and hitch have been removed.
 - b. Type B manufactured home shall be a dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Code in addition to the following requirements::

- i. Have more than 700 square feet of occupied space in a single, double, expando or multi-section unit. Minimum width for a Type B ~~mobile~~ **manufactured** home is fourteen (14) feet.
- ii. Utilize a perimeter enclosure of metal, vinyl, wood or styrofoam in accordance with manufacturer's specifications.
- iii. The age of the manufactured house may not exceed fifteen (15) years from the date of manufacture.
- i. Be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the ~~Defense Civil Preparedness Agency TR-75, issued June 1972, by the U.S. Department of Defense or by the NFPA 225 Model Manufactured Home Installation Standards.~~ **Federal Manufactured Housing Construction and Safety Standards Code.**
- iv. Have siding material of a type customarily used on site-constructed residences.
- v. Have roofing material of a type customarily used on site-constructed residences.
- vi. Be placed onto a support system, in accordance with approved installation standards, as specified in subsection (2), Installation Standards.

2. Installation Standards.

a. Support System.

- i. All HUD-Code manufactured homes of the Type A classification shall be installed with load bearing foundations in conformance with the manufacturer's installation specifications.
- ii. Type B manufactured homes not placed on a permanent foundation shall be installed on a support system in conformance with the manufacturer's installation specifications or with the support systems regulations in the ~~NFPA 225 Model Manufactured Home Installation Standards.~~ **Federal Manufactured Housing Construction and Safety Standards Code.**

b. Foundation/Skirting

- i. Those manufactured homes designated in this Ordinance (Type A), as requiring a permanent foundation and permanent perimeter enclosure must have footings and crawl space or basement walls.
 - a. A crawl space must be constructed of concrete or masonry block grouted solid with one (1) number four or (1/2") horizontal rebar, continuous tied to number four or (1/2") rebar verticals placed in the footing four feet (4') on center.
 - b. The foundation shall be (a) an approved wood basement constructed of 2 x 6 frame work and treated with water resistant materials; or (b) a foundation shall be constructed with eight inches poured concrete or concrete block.

- c. The footing to be a minimum of eight (8) inches thick by sixteen (16) inches wide poured concrete with top of footing to be sixteen (16) inches below grade and the bottom of the footing to be below the frost line.
 - d. The space between the floor joints of the home shall be completely enclosed with the permanent perimeter enclosure (except for required openings).
 - ii. All manufactured homes without a permanent perimeter enclosure (Type B) shall have an approved foundation/siding/skirting enclosing the entire perimeter of the home.
3. Replacement of Nonconforming Homes.

Thereafter, upon application to the Zoning Officer and subsequent approval thereof, a Type A or Type B manufactured home, located upon any lot or lots of record at the time of the adoption of this ordinance, deemed a legal nonconforming use, may be replaced by a manufactured home, provided the replacement is of an equal or higher type. Equal or higher type means a Type B manufactured home could be replaced with a Type A or B manufactured home; a Type A manufactured home could be replaced with another Type A manufactured home.

4. **Variance** Exception from Maximum Age Requirement

Type A and B manufactured homes may receive a **variance special permitted use permit** from the maximum age requirement. The **Board of Adjustment Zoning Officer** may grant a **variance special permitted use permit** if the manufactured home meets the following requirements:

- a. The applicant shall provide a photograph of the manufactured home's exterior and interior.
- b. That it shall have been shown to the satisfaction of the Zoning Officer that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Kingsbury County.
- c. That the applicant shall obtain the written consent of sixty-six (66) percent of **adjoining** property owners ~~owning property immediately adjacent~~ (excluding streets and alleys) to the proposed building site and the consent of fifty (50) percent of the property owners within two hundred (200) feet (excluding streets and alleys) of said proposed location has been received.

Section 5.16.02 Modular Homes

- 1. Modular homes shall meet the following regulations.
 - a. Modular homes shall meet or exceed Uniform Building Codes.
 - b. Modular homes will include all off-site constructed homes, which may be transported to the site in one or more sections.
 - c. Modular homes shall have more than one thousand (1,000) square feet in ranch style and eight hundred fifty (850) square feet split and be placed on a permanent foundation.

- d. Modular homes shall not have attached running gear and a trailer hitch.
- e. Modular homes shall have a minimum of a 4/12-roof pitch.
- f. **Modular homes shall** Have siding material of a type customarily used on site-constructed residences.
- g. **Modular homes shall** Have roofing material of a type customarily used on site-constructed residences.

2. Type B Modular homes (Tiny Home) shall meet the following regulations.

- a. **Shall meet or exceed Uniform Building Codes.**
- b. **Shall have less than seven hundred (700) square feet gross floor area (excluding lofts)**
- c. **Shall be placed on a permanent foundation.**
- d. **Shall not have attached running gear and a trailer hitch or the capacity to have attached running gear and trailer hitch.**
- e. **Shall have siding material of a type customarily used on site-constructed residences.**
- f. **Shall have roofing material of a type customarily used on site-constructed residences.**
- g. **Shall have received written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site (excluding streets and alleys).**

CHAPTER 5.17. ACCESSORY BUILDINGS.

- 1. Only specifically authorized accessory uses allowed; accessory uses must be subordinate to principal use.
- 2. No accessory use shall be permitted in any district unless such principal use is specifically authorized by this Ordinance. No accessory use shall be deemed to be authorized by this Ordinance unless such use is in fact subordinate to and on the same zoning lot with the principal use in conjunction with which it is maintained.
- 3. No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building.
- 4. No accessory building may be used for residential dwelling purposes at any time.
- 5. Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically

prohibited in the district. **Intermodal shipping containers are considered customarily incidental in the Agricultural District.**

6. Commercial/**Industrial** and ~~Industrial~~ Districts. In any Commercial/**Industrial** or ~~Industrial~~ district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district. **Intermodal shipping containers are considered customarily incidental in the Commercial/Industrial District.**
7. Town, Lake Park, and Planned Residential Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town, Lake Park, and Planned Residential Districts only in accordance with the provisions of the Table 5.17.1. **Intermodal shipping containers are not considered customarily incidental in the Town, Lake Park and Planned Residential Zoning Districts.**
8. ~~Agricultural District. In any Agricultural district, any accessory use customarily incident to the principal permitted use or conditional use shall be permitted, except those uses specifically prohibited in the district.~~ **Intermodal shipping containers may be used as a temporary accessory use in the LP, TD and PR zoning districts under the following conditions:**
 - a. **A permit is required;**
 - b. **The permit shall not be issued for more than ninety (90) days;**
 - c. **The Zoning Officer may extend the permit one time for an additional ninety (90) days, subject to permission being granted by adjoining landowners;**
 - d. **The container shall be located on the property and meet all setback requirements.**

Table 5.17-1

Permitted Accessory Uses: TD, LP, and PR Districts

Principal Use	Permitted Accessory Uses
Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers 1. Have siding material of a type customarily used on site-constructed residence. This is not to include corrugated galvanized steel or steel panel siding. 2. Have roofing material of a type customarily used on site-constructed residence. This may include steel panels but not corrugated galvanized steel. 3. Exception: Steel Panel Siding, not including corrugated galvanized steel, for principal uses may receive a special permitted use permit if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site has been received.	1. Private garages. a. Attached and unattached garages shall be limited to maximum dimensions per 3.04.07.3.g a total area less than or equal to the gross floor area of the house and conform to the design of the house. With the exception of Shop-style Dwellings, steel panel siding is prohibited. See d. Exceptions, below. b. Attached garages shall be limited to maximum sidewalls of ten (10) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house. c. Unattached garages shall be limited to maximum sidewalls of twelve and one-half (12 ½) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house. b. Unattached garages shall be limited to a maximum sidewall height of sixteen (16) feet and a total area one thousand five hundred (1,500) feet. See f. Exceptions, below. c. Unattached garages shall have siding and roofing materials of a type customarily used on site-constructed residence. Comparable to and color coordinated with principal dwelling. See e. Exceptions, below. d. Exceptions: Unless a special permitted use permit is granted, steel panel siding for attached garages is prohibited. Attached garages may receive a special permitted use permit to use steel panel siding materials if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site has been received. Corrugated galvanized steel siding is prohibited. e. Exceptions: Unless a special permitted use permit is granted, steel panel siding for unattached garages is prohibited. Unattached garages may receive a special permitted use permit to use steel panel siding materials if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site has been received. f. Exceptions: Unattached garages may receive a special permitted use permit to exceed maximum area dimensions and height requirements if written consent of one hundred (100) percent of property owners owning property immediately adjacent (excluding streets and alleys) to the proposed building site has been received. The maximum sidewall height shall not exceed eighteen (18) feet. The maximum area dimensions shall not exceed 1,800 square feet. 1. Buildings or structures for customary residential storage purposes, including weather protective canopies (carports), not over ten (10) twelve (12) feet in height and not exceeding one hundred fifty (150) two hundred forty (240) square feet in gross floor area with a door opening no wider than seven (7) feet. 2. Readily moveable sports, recreation, or outdoor cooking equipment. 3. Permanent sports or recreational structures or facilities, such as tennis courts, swimming pools, barbeque pits, and similar improvements provided a site plan for such facility is approved. 4. Home occupations but only as defined herein. 5. Non-commercial greenhouses provided that greenhouses over one hundred (100) square feet in floor area must have an approved site plan. 6. Off-street parking and storage of vehicles.
Churches, Convents and Monasteries	1. All customarily incidental uses reasonably necessary to allow the free exercise of religion, but not to include commercial use.
All conditional uses	1. All customarily incidental uses reasonably necessary to promote the primary purposes of the principal use, provided that such use must be specifically authorized by the Board of Adjustment for the principal use.
All other items	1. No accessory uses permitted.

CHAPTER 5.18 SIGNS.

Section 5.18.01 On-premise and Off-premise Signs

1. Prohibited signs:
 - a. No sign shall be erected or maintained which creates a hazard due to collapse, fire, collision, decay, or abandonment; or creates traffic hazards, by either:
 - i. Confusing or distracting motorists; or
 - ii. Impairing the driver's ability to see pedestrians, obstacles or other vehicles; or
 - iii. Impairing the driver's ability to see and interpret any official traffic sign, signal or device; or
 - iv. Creates a nuisance to persons using a public right-of-way; or
 - v. Constitutes a nuisance to occupancy of adjacent and contiguous property by its brightness, size, height, or movement.
 - b. Any vehicle or trailer parking on public right-of-way, public property or private property so as to be visible from the public right-of-way and which displays an advertising message, unless said vehicle is used in the regular course of a business.
2. Signs shall be permitted in zoning districts per Article III, subject to the following provisions:
 - a. Wall signs may be located anywhere on the wall of a building.
 - b. Signs shall not project over public property.
 - c. Signs shall not be erected adjacent to a corner of two (2) intersecting streets, unless such signs are constructed to not obstruct the view of said intersection. See Chapter 5.01.
 - d. Each sign – size, lighting, and location - in the County shall at least meet the standards established by the South Dakota Department of Transportation.
 - e. Other than utility fixtures or holiday decorations, no signs, awnings, or display shall be suspended, hanged, or placed so that the same shall hang over any part of a street or sidewalk, used for vehicular or pedestrian travel unless a written application for a permit is made to the Zoning Officer and the said Official grants a permit therefore.
 - f. The Zoning Officer shall take into consideration factors that would make the proposed structure likely to endanger the property or personal safety of passerby traveling the streets or sidewalks in question, and whether or not such structure complies with codes relating to outdoor advertising.
3. On-premise Signs: Each sign erected as an on-premise sign in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:

- a. Unless otherwise specified herein, each sign erected as an on-site sign in those districts where permitted shall have a maximum surface area of eighty (80) square feet and shall observe all yard and height requirements of the district in which it is located. Each sign shall meet clear view triangle standards identified in Chapter 5.02. The maximum cumulative amount of all on-site signage allowed shall not exceed eighty (80) square feet.
 - b. No on-premise sign may be converted to an off-premise sign.
4. Off-premise Signs: Off-premise signs erected in those zoning districts where permitted shall, unless specified elsewhere in this ordinance, conform to the following requirements:
- a. Each sign shall have a maximum surface area of three hundred (300) square feet.
 - b. The sign structure or sign shall have a maximum height of thirty (30) feet. Height of sign is the vertical distance from the top of the sign or sign structure, whichever is greater, to the ground in a straight line directly below, measured from a point equidistant from the sides or edges of the sign.
 - c. Stacked signs (two or more signs stacked vertically on a single sign structure) are prohibited.
 - d. Each sign shall not be closer than three hundred (300) feet from any street intersection and five hundred (500) feet from another permitted Off-premise sign on the same side of the street or road.
 - e. Each sign shall not be closer than ten (10) feet from any street right-of-way.
 - f. Each sign shall not be closer than two hundred fifty (250) feet from adjoining property lines.

CHAPTER 5.19. STRUCTURES TO HAVE ACCESS.

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to private streets approved by the Board of Adjustment, and all structures shall be so located on lots as to provide safe and convenient access for services, fire protection and required off-street parking.

CHAPTER 5.20. YARDS.

No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

Section 5.20.01. Yards, Reduction in Size.

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

Section 5.20.02. Additional Yard Requirements.

The following yard requirements must be observed in addition to the yard requirements of the various districts:

1. A corner lot must have a front yard on both streets.
2. On developed property, in the **TD – Town District**, LP-Lake Park District, and PR-Planned Residential District, fronting on one side of the street between two streets where one or more residences already exist, no building shall hereafter be erected and no existing building shall be reconstructed or altered in such a way that any portion thereof shall be closer to the street line than the average improved building front on that street in that block, but in no case shall the set-back line be less than twelve (12) feet from the front lot line.
3. In the **TD**, LP, and PR Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.
4. In the **TD**, LP, and PR Districts, required front yards shall be devoted entirely to landscaped area except for the necessary paving or driveways and sidewalks to reach parking or loading areas in the side or rear yard.

Section 5.20.03. Exceptions to Yard Requirements.

The following exceptions may be made to the yard requirements in the LP and PRL Districts:

1. Air conditioning units, sills, chimneys, cornices, and ornamental features may project into a required yard a distance not to exceed twenty-four (24) inches.
2. In commercial and industrial districts, filling station pumps and pump islands may occupy required yards, provided, however, that they are not less than fifteen (15) feet from all lot lines.
3. An accessory building may be located in a rear yard but not occupy more than 30 percent of a rear yard.
4. Any accessory buildings closer than ten (10) feet to a main building shall be considered as part of the main building and shall be provided with the same side and rear yard requirements as the main building.

CHAPTER 5.21. PERMANENT FOUNDATIONS REQUIRED FOR DWELLINGS.

No dwelling shall be constructed, installed, or moved into the area under the jurisdiction of these regulations, unless said dwelling is constructed upon, installed on or moved onto a permanent foundation, as defined in these regulations. Exempted from this requirement are manufactured homes as defined herein.

CHAPTER 5.22. UTILITY EASEMENTS.

~~No building or addition thereto shall be erected over or across any existing public utility or upon any platted easement.~~

~~Unless such structure is constructed by the utility provider for which the easement is reserved, no structure or addition thereto shall be erected over or across any existing public utility or upon any platted easement.~~

~~Building and use permits are not required for utility structures constructed within utility easements by the utility provider for which the easement is reserved.~~

CHAPTER 5.23. ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT.

In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met. Exception: Secondary residences in the Agricultural Zone, per 4.01.03.8, and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met

CHAPTER 5.24 WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES.

Section 5.24.01. Purposes.

1. The general purpose of this Section is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the County. Specifically, the purposes of this Ordinance are:
 - a. To regulate the location of Towers and Telecommunications Facilities in the County;
 - b. To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;
 - c. To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
 - d. To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;
 - e. To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;
 - f. To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and

- g. To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

Section 5.24.02. Development of Towers.

1. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with "Criteria for Site Plan Development Modifications."
2. No new Tower shall be built, constructed, or erected in the County unless the Tower is capable of supporting three other Persons' operating Tele-communications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the Tower within six (6) months of the completion of the Tower construction. No tower shall charge co-location fees in excess of commercially reasonable industry amounts. Each tower constructed shall upon the request of Kingsbury County mount law-enforcement or public safety communications apparatus.
3. An application to develop a Tower shall include:
 - a. The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.
 - b. The legal description, folio number, and address of the parcel of land upon which the Tower is situated.
 - c. The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including County-owned property.
 - d. A description of the design plan proposed by the Applicant. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.
 - e. An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or collocate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site. In the event that one reason for the unsuccessful efforts to install or collocate is that fees to be charged are not commercially reasonable, an explanation shall be provided why said charges are commercially reasonable.
 - f. Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.

- g. A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - h. Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in, "Structural Requirements," of this Ordinance.
 - i. Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
 - j. The ~~Act gives the~~ FCC ~~has~~ sole jurisdiction of the field of regulation of RF emissions and does not allow the County to condition or deny on the basis of RF impacts the approval of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the County shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.
 - k. No application shall be accepted from landowners or on property on which there are current or past unresolved violations outstanding.
4. The Board of Adjustment may require an Applicant to supplement any information that the Board considers inadequate or that the Applicant has failed to supply. The Board of Adjustment may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the Board in a prompt manner, and all decisions shall be supported in writing setting forth the reasons for approval or denial.

Section 5.24.03. Setbacks.

- 1. All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
- 2. Towers in excess of one hundred (100) feet in height shall meet the following.
 - a. Distance from existing off-site residences, business and public buildings shall be one thousand (1,000) feet. Distance from on-site or lessor's residence shall be five hundred (500) feet.
 - b. Distance from public right-of-way shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.
 - c. Distance from any property line shall be set back one (1) additional foot per each foot of tower height in excess of one hundred (100) feet.

3. Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.
4. Setback requirements may be modified, as provided herein, when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

Section 5.24.04. Structural Requirements.

1. All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with applicable building codes, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

Section 5.24.05. Separation of Buffer Requirements.

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower.

Proposed Towers must meet the following minimum separation requirements from existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance:

1. Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.
2. Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.
3. Self-supporting lattice or guyed Tower structures shall be separated from all monopole Towers by a minimum of seven hundred and fifty (750) feet.
4. The separation requirements contained in 5.24.05 shall not be required of existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Ordinance.

Section 5.24.06. Method Of Determining Tower Height.

1. Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

Section 5.24.07. Illumination.

1. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA.

Section 5.24.08. Exterior Finish.

1. Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

Section 5.24.09. Modification Of Towers.

1. A Tower existing prior to the effective date of this Ordinance, which was in compliance with the County's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such nonconforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections "Separation or Buffer Requirements", "Certification and Inspections", and "Maintenance," provided:
 - a. The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.
 - b. An Application for a development permit is made to the Board of Adjustment which shall have the authority to issue a development permit without further approval. The grant of a development permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.
 - c. The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.
2. Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

Section 5.24.10. Certifications And Inspections.

1. The County or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with this ordinance and all other construction standards provided by federal and state law.
2. The County reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the County shall be borne by the Tower owner.

Section 5.24.11. Maintenance.

1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

2. Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
3. All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.
4. All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.
5. All Towers shall maintain compliance with current RF emission standards of the FCC.
6. In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the County of its intent to discontinue use and the date when the use shall be discontinued.

Section 5.24.12. Criteria For Site Plan Development Modifications.

1. Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the Board of Adjustment as a Conditional use in accordance with the following:
 - a. In addition to the requirement for a Tower Application, the Application for modification shall include the following:
 - i. A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
 - ii. A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.
 - iii. A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.
 - iv. For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for collocation, and the result of such attempts.
 - v. The Board of Adjustment may require the Application to be reviewed by an independent Engineer under contract to the County to determine whether the antenna study supports the basis for the modification requested. The cost of review by the County's Engineer shall be reimbursed to the County by the Applicant.
 - b. The Board of Adjustment shall consider the Application for modification based on the following criteria:

- i. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
 - ii. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - iii. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.
- 2. In addition to the requirements of subparagraph (A) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:
 - a. In the case of a requested modification to the setback requirement, the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.
 - b. In the case of a request for modification of the separation and buffer requirements from residential use of land of , if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially used property.
 - c. In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to:
 - i. facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower; or
 - ii. To meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

Section 5.24.13. Abandonment.

- 1. If any Tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the Kingsbury County Board of Adjustment shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the Board of Adjustment that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the Board

of Adjustment shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.

2. To secure the obligation set forth in this Section, the Applicant [and/or Owner] may be required to post a bond.

Section 5.24.14. Action of the Board of Adjustment.

1. Kingsbury County shall approve or deny an application for co-location within ninety (90) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
2. Kingsbury County shall approve or deny an application for a new wireless telecommunications facility within one hundred fifty (150) days of the submission date of a complete application. Failure to act by the Board of Adjustment within the prescribed time frame entitles the applicant the ability to file a court action. The court action is to be filed within thirty (30) days from the required date of action of the Board of Adjustment.
3. The Board of Adjustment may not deny the application on the basis that a competing provider already provides coverage.

CHAPTER 5.25. SOIL EROSION AND SEDIMENTATION CONTROL. (Reserved)

- ~~1. Before issuing a building permit, the Zoning Officer may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Kingsbury County Conservation District. The Zoning Officer shall consult the Kingsbury County Soil Erosion and Sedimentation Control Ordinance that was developed pursuant to SDCL 38-8A before determining if the proposed activity requires such a certificate of intent.~~
- ~~2. If a complaint is received regarding a violation of the county soil loss standards caused by non-agricultural activity, the Zoning Officer shall undertake those actions outlined herein in order to bring about compliance.~~

CHAPTER 5.26. RIGHT TO FARM NOTICE COVENANT.

The following easement is to be utilized as required for farm and non-farm residential development within the Agricultural, Lake Park and Planned Residential Districts. ~~(See 3.04.03.9.a)~~ **(See 4.01.03.9.a)**

Prepared by:

Kingsbury County Zoning Officer (or by Grantor or Grantor's Attorney)

Zoning Officer Address (or Grantor's or Grantor's Attorney's address)

DeSmet, SD 57231 (or Grantor's or Grantor's Attorney's city)

RIGHT TO FARM NOTICE COVENANT

You are hereby notified that the property for which you are purchasing applying for a Kingsbury County residential building permit is ~~in~~ located within or near agriculturally zoned land, agricultural operations or agricultural processing facilities or operations. You are also notified that you may be subject to inconvenience or discomfort from lawful agricultural operations permitted by Kingsbury County zoning regulations. Agricultural operations permitted by Kingsbury County may include, but are not limited to, the following: the cultivation, harvesting, and storage of crops; livestock production; ground rig or aerial application of pesticides or herbicides; the application of fertilizer, including animal manure; the operation of machinery; the application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with Federal, State, and County laws. Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. If you live near an agriculturally zoned area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. You are also notified that there is the potential for Kingsbury County approved agricultural operations to expand. This notice does not abdicate your rights as a landowner to object to agricultural uses permitted by Kingsbury County. Nor does this notice allow for agricultural uses permitted by Kingsbury County to be conducted in an illegal manner. This notification shall extend to all landowners, their heirs, successors or assigns and because it is required pursuant to obtaining a building permit, may not be removed from the record title without consent of the Kingsbury County Board of Adjustment.

Legal Description: _____

Signature

STATE OF SOUTH DAKOTA COUNTY OF KINGSBURY

On this the _____ day of _____, 20__, before me, _____, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that _____ executed the same for the purposes contained.

In witness whereof I hereunto set my hand and official seal.

_____ My commission expires _____

CHAPTER 5.27. RANGE REQUIREMENTS.

Section 5.27.01. Conditional Use Permits.

No Range shall be established within the Kingsbury County without first obtaining a Conditional Use Permit.

Section 5.27.02. General Regulations for All Ranges.

No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment):

1. A safety plan shall be submitted along with the application. The plan, once approved, shall be posted in a prominent place at the site. Any changes to the safety plan shall be submitted to the County Board of Adjustment for approval. At a minimum the safety plan must state:
 - a. A method of identifying the Range Officer when the Range Officer is present at the site. Additionally, a permanent log identifying the Range Officer who is present when required at the facility must be maintained and available for inspection by the County or local law enforcement officers.
 - b. The authority of Range Officers to carry out the rules and regulations on the site and to enforce penalties.
 - c. The policy for the site for the use of alcohol.
 - d. Controlled substances are prohibited on the site.
 - e. Rules for the safe handling of weapons.
 - f. A building and grounds maintenance plan.
 - g. Administrative Rules to include regulations that normally govern range schedules, parking, guest policies, member/user responsibilities, hours of operation, security, program development, range supervision and other items such as sign-in procedures.
 - h. Regulations on the type of weapon, shooting activity, caliber, shot size or type of target to ensure safety for range users and others.
 - i. The penalties that are in force for violations of the safety plan.
 - j. The method used to control trespass or unauthorized access to the range or preserve.
2. On an annual basis, applicants must provide proof of insurance.
3. Applicants shall continuously keep the City informed as to the current names and telephone numbers of the officers of any organization having an interest in the Range. Any changes to the names or telephone numbers of the officers shall be reported to the County within thirty (30) days of the change.
4. All Ranges must control entrance to their sites.
5. No alcohol licenses shall be granted to any site which has a Range.
6. Parking space for all members, owners or guests must be on-site and is not allowed on public streets or roads.

Section 5.27.03. Special Regulations for Ranges.

Applications for all ranges, in addition to any other requirements of this Ordinance, must also show:

1. A survey delineating the layout of all individual Ranges.
2. Setbacks to all property lines.
3. Method of containing projectiles within each individual range (such as earthen berms or other method).
4. Methods to be employed to reduce noise, including impulse noise.
 - a. The maximum noise that may escape the range into areas not controlled by the owner is 125 dB.
5. All Ranges shall be designed using the NRA Range Source Book as a guideline.

Section 5.27.04. Application Requirements.

Each application for a Range shall, at a minimum, include the following:

1. A description of specific activities to be conducted on-site.
2. The hours and days of operation.
3. The maximum number of people using the facility at any one time.
4. A plan, if applicable, for collecting and recycling used shot.
5. A delineation of any special events, if any.
6. A sewage, water and solid waste management plan.

Section 5.27.05. Area Regulations.

1. Minimum Lot Size: Ten (10) acres.
2. Minimum Front Yard: One hundred fifty (150) feet.
3. Minimum Side Yard: Three hundred (300) feet.
4. Back of the Range Setback: A minimum of one thousand (1000) feet from any buildings and/or roads.
5. Setback from Residences: One-quarter (1/4) mile to be measured from the firing line to the nearest residential dwelling.
6. Setback from Commercial Uses: One-quarter (1/4) mile to be measured from the firing line to the nearest commercial structure.

7. Setback from Churches and Schools: One-quarter (1/4) mile to be measured from the firing line to the nearest church or school.
8. Setback from Municipalities: Three (3) miles to be measured from the firing line to the corporate limits of the municipality.

Section 5.27.06. Miscellaneous Regulations.

1. In the event that any provision of this Chapter or the Conditional Use Permit is violated, or the County otherwise reasonably believes that the health, safety or general welfare of the public is endangered by the use, or if the County reasonably believes that a public nuisance has been created, then, upon ten (10) days written notice, the County may originate action to either modify or cancel any Conditional Use Permit.

**CHAPTER 5.28. ~~WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION~~
ACKNOWLEDGEMENT OF EXISTING CONCENTRATED ANIMAL FEEDING OPERATION COVENANT**

The following **waiver covenant** is to be utilized as required for farm and non-farm residential development in the Agricultural, Lake Park, and Planned Residential Zoning Districts which is located within one-half mile of an existing concentrated animal feeding operation in the Agricultural Zoning District ~~(See 3.04.03.9.b)~~ **(See 4.01.03.9.a)**

Prepared by:

Kingsbury County Zoning Officer (or by Grantor or Grantor's Attorney)

Zoning Officer Address (or Grantor's or Grantor's Attorney's address)

DeSmet, SD 57231 (or Grantor's or Grantor's Attorney's city)

**~~WAIVER OF SETBACK FROM~~ ACKNOWLEDGEMENT OF
EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following **waiver covenant** is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The waiver shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. ~~(See 3.04.03.9.b)~~ **(See 4.01.03.9.a)**

1. Purpose. This **waiver covenant** is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Kingsbury County Zoning Ordinance.
2. **Waiver covenant:**

("Grantors") are the owners of real property described as follows: _____

In accordance with the conditions set forth in the decision of Kingsbury County, dated _____ 20____, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation located at the following property, _____

and in consideration of such approval, Grantors agree to the perpetual non-exclusive **easement** as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation.
- 2. The Grantors, their heirs, successors, and assigns hereby acknowledge that the construction of this residence will not result in the existing concentrated animal feeding operation becoming a nonconforming use as defined by the Kingsbury County Zoning Ordinance.**
3. This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Kingsbury County Zoning Ordinance.
4. Further, the grantors, **their heirs, successors, and assigns** hereby waive all common law rights to appeal any decision of Kingsbury County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description.

IN WITNESS WHEREOF, _____, 20__

Grantors (Print) _____

Grantors (Signature) _____

STATE OF SOUTH DAKOTA

SS:

COUNTY OF KINGSBURY

This instrument was acknowledged before me on _____, 20__ by _____
(Grantors).

Notary Public

My Commission Expires: _____

CHAPTER 5.29. ADULT USE REGULATIONS.

In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.

Section 5.29.01. Setbacks.

1. None of the following uses may be established, operated or maintained within one thousand (1,000) feet of a residence, a church, a school meeting all the requirements of the Compulsory Education Laws of the State of South Dakota, or a public park.
 - a. Adult bookstore.
 - b. Adult motion picture theater.
 - c. Adult photo studio.
 - d. Adult Entertainment Facility.
 - e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
 - f. Any use intended to provide adult amusement or entertainment.
2. Not more than two of the following uses may be established, operated or maintained within one thousand (1,000) feet of each other:
 - a. Adult bookstore.
 - b. Adult motion picture theater.
 - c. Adult photo studio.
 - d. Adult entertainment facility.
 - e. Any use which has as a part of its operation an adult use component including but not limited to, a restaurant or eating place, a bar, lounge or tavern.
 - f. Any use intended to provide adult amusement or entertainment.
 - g. A bar.
 - h. A liquor store.
4. The 1,000-foot restriction provided for in 5.29.01.2 above may be waived and a conditional use permit issued upon proper application if the Board of Adjustment finds:
 - a. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of these regulations will be observed.
 - b. That the proposed use will not enlarge or encourage the development of a 'skid row' area.
 - c. That all applicable regulations will be observed.

Section 5.29.02. Required License.

It shall be unlawful for any person to engage in the business of operating an adult use in Kingsbury County without first having obtained a license from the Kingsbury County Commissioners.

Section 5.29.03. Application; Standards for Issuance.

1. Application for an adult use license shall be made in writing and shall state the following:
 - a. The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
 - b. The location of the adult use business.
 - c. The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.
 - d. A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.
 - e. A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.
 - f. A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use in any other community revoked within the last two (2) years.
2. Within fifteen (15) days after receipt of an application for an adult use license, the Kingsbury County Commissioners shall investigate the information contained in the application and shall determine the following:
 - a. That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of Kingsbury County, including zoning ordinances.
 - b. That the premises and each manager and employee comply with the provisions of Section 5.29.03.1 as such provisions apply to them.
 - c. That the applicant, each manager and each employee are over twenty-one (21) years of age.
 - d. That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the South Dakota Compiled Statutes within the last two (2) years, and that the applicant has not had any license for an adult use revoked within the last two (2) years.

3. If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted and each manager and employee, if applicable, with each of the requirements established in subsections (1) and (2) of this section, and with the conditions and regulations set forth in Section 5.29.03 within fifteen (15) days after completion of such investigation, the Kingsbury County Commissioners shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.
4. If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (1) of this section, and with the conditions and regulations set forth in Section 5.29.03 within fifteen (15) days after completion of such investigation, the Kingsbury County Commissioners shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the County with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

Section 5.29.04. Conditions & Regulations Governing Operation; Violation; Penalty.

1. The following regulations shall govern and control the business of operating an adult use in Kingsbury County:
 - a. No person under twenty-one (21) years of age shall be allowed on the licensed premises.
 - b. At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than twenty-one (21) years of age.
 - c. Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the County Commissioners written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five (5) regular business days, provide the information concerning the new manager which is required in Section 5.29.03.
 - d. No adult use shall be located on-premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.
 - e. No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.
 - f. No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the South Dakota Compiled Statutes.
 - g. No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
 - h. No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.

2. In addition to the requirements established in Section 5.29.04.1, the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on-premises by use of motion picture devices or other such operations means:
 - a. All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.
 - b. There shall be no aperture whatsoever in any wall or partition between viewing areas.
 - c. Each viewing area shall be lighted at a minimum level of ten (10) foot candles in all parts thereof.
3. In addition to the requirements established in Section (1) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:
 - a. All performers shall be at least twenty-one (21) years of age.
 - b. All performances, exhibitions or displays shall take place on a platform raised at least two (2) feet from the level of the floor, and located at least ten (10) feet from any patron.
 - c. No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.
 - d. No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.
4. It shall be unlawful for any person licensed to engage in the business of operating an adult use within the County to fail to comply with the conditions and regulations set forth in subsections 5.29.03 and 5.29.04 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.
5. Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 1.02.03 of this Ordinance.

Section 5.29.05 Suspension or Revocation.

Nothing in the terms of this article shall preclude the right of the Kingsbury County Commissioners to suspend or revoke the license of the licensee, as follows:

1. The Kingsbury County Commissioners may temporarily suspend any license issued under the terms of this article when ~~he~~ **the Commission** has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the seven (7)-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.
2. The Kingsbury County Commissioners may suspend or revoke any license issued under the terms of this article upon ten (10) days notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the Kingsbury County Commissioners determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

CHAPTER 5.30. PRIVATE WIND ENERGY CONVERSION SYSTEMS (PWECS).

The regulations regarding Private Wind Energy Conversion Systems (hereafter referred to as PWECS) shall be as follows:

1. Limited Use. No PWECS installed in accordance with the requirements of these regulations shall generate power as a commercial enterprise as defined by the Public Utility Commission.
2. Setback Requirements. The minimum distance between the property line, overhead utility lines or another wind **turban turbine**, and any tower support base of a PWECS shall be equal to the proposed tower height (plus the radius of the rotor for the horizontal access machines).
3. Contiguous property owners and planned developments may construct a PWECS for their use in common. If property held by more than one (1) single owner is used to meet the setback requirements, a site plan establishing easements or reserved areas must be submitted to the Board of Adjustment for their approval.
4. Tower Access. Climbing access to the PWECS tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus so there is access to it no lower than twelve (12) feet from the ground.

5. Electromagnetic Interference. If a PWECS is installed in any location along or within the major access of an existing microwave communications link, the person desiring to install the PWECS shall be required to provide a letter from the business whose link they are within or adjacent to stating that the business whose link is affected would have no objection to the installation of the PWECS.
6. Air Space. A PWECS shall be located or installed in compliance with the guidelines of the Federal Aviation Administration Regulations with regard to Airport Approach Zones and clearance around VOR stations.
7. Interconnect. The PWECS, if interconnected to an electric utility distribution system, shall meet the interconnect requirements of the electric utility company.
8. **Utility Notification. No PWECS will be installed until evidence has been provided that the utility company has been informed of the applicant's intent to install an interconnected applicant-owned generator. Off-grid systems are exempt from this requirement.**

CHAPTER 5.31. BED AND BREAKFAST ESTABLISHMENTS.

The regulations regarding Bed and Breakfast Establishments (hereafter referred to as B & B's) shall be as follows:

1. B & B's shall be limited to residential structures with an overall minimum of one thousand eight hundred (1,800) square feet of floor. Preference will be given to structures with historic or other unique qualities.
2. They shall be in compliance with applicable state laws including registration with the South Dakota Department of Health, maintaining a guest list, and providing a smoke detector in each sleeping room.
3. Accessory use signs shall be based on similar requirements for a home occupation permit and shall not be more than four (4) square foot in area.
4. Such uses shall be an incidental use with an owner occupied principal dwelling structure provided that not more than four (4) bedrooms in such dwelling structure shall be used for such purpose.
5. Off-street parking requirements shall be one (1) space per guestroom and shall be in addition to parking requirements for the principal use. Off-street parking shall not be located in a required front or side yard and screening shall be required when adjacent to residentially used property.
6. The building shall meet all building codes and zoning requirements. A site plan showing the location of guest parking spaces and floor plan showing a location of the sleeping rooms, lavatories, and bathing facilities, and kitchen shall be submitted with application.
7. The length of stay shall not exceed fourteen (14) consecutive days during any one hundred twenty (120) day period.

8. Meals shall be limited to breakfast, which is prepared in a common facility (household kitchen). Meals may be served only to overnight registered guests and cooking is not permitted in the sleeping rooms.

CHAPTER 5.32. WIND ENERGY SYSTEM (WES) REQUIREMENTS

Section 5.32.01. Applicability

The requirements of these regulations shall apply to all WES facilities except private **PWECS** facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.

Section 5.32.02. Federal and State Requirements

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

Section 5.32.03. General Provisions

1. Mitigation Measures

- a. Site Clearance. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- b. Topsoil Protection. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. Compaction. The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. Livestock Protection. The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. Fences. The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. Roads
 - i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

- ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.
- iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
- iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.
- vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slop stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

- a. Distance from existing off-site residences, business, churches, and buildings or structures shall be at least one thousand (1,000) feet. Distance from on-site or lessor's residence shall be at least five hundred (500) feet. Distance to be measured from the wall line of the neighboring principal building to the base of the WES tower.
- b. Distance from centerline of public roads shall be five hundred (500) feet or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the tower to the centerline of the public road.

c. Distance from any property line shall be at least five hundred (500) feet or one hundred ten percent (110%) of the height of the wind turbine, whichever distance is greater. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position. The horizontal setback shall be measured from the base of the tower to the adjoining property line unless wind easement has been obtained from adjoining property owner.

i. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified above, if the adjoining landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Kingsbury County Zoning Officer. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

a. Distance from participating and non-participating residences, businesses, churches, and buildings owned and/or maintained by a governmental entity, public rights of way, and property lines shall be in accordance with Table 5.03.03.2.

i. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distances identified in Table 5.03.03.2, if the participating or non-participating entities, or governmental entities agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Kingsbury County Zoning Officer. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

Table 5.03.03.2
WES Setbacks

	Setback Distance
Participating Residence, business, church, school, building owned and/or operated by a governmental entity	500 Feet** #
Non-Participating Residence, business, church, school, building owned and/or operated by a governmental entity	1,000 Feet #
Municipal Boundaries existing at the time of Conditional Use Permit Application	5,280 Feet #
Distance from Public Right-of-Way	500 Feet or 110% of the vertical height of the wind turbine, whichever is greater***
Distance from Property Line	500 Feet or 110% of the vertical height of the wind turbine, whichever is greater ****

Setback distance to be measured from the wall line of the neighboring principal building to the base of the WES tower. The vertical height of the wind turbine is measured from the ground surface to the tip of the blade when in a fully vertical position.

** No less than 110% of the vertical height of the wind turbine unless if agreed upon by participating entity

*** The horizontal setback shall be measured from the base of the tower to the public right-of-way.

**** The horizontal setback shall be measured from the base of the tower to the adjoining property line unless wind easement has been obtained from adjoining property owner.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.
4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
5. Turbine Spacing. The turbines shall be spaced no closer than three ~~(3) rotor diameters~~ **two and one-half (2.5)** (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to 10 percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.
6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. Collector Lines. Collector lines are the conductors of electric energy from the WES to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.

9. Decommissioning/Restoration/Abandonment

- a. Decommissioning Plan. ~~Within 120 days of completion of construction,~~ **At least thirty (30) days prior to construction,** the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
- b. Site Restoration. The decommissioning of the WES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen **(18)** months after expiration.
- c. Cost Responsibility. The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.
- d. Financial Assurance. ~~After the tenth (10th) year of operation of a WES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility.~~ **In the event the South Dakota Public Utilities Commission does not adequately address the need for a financial instrument to cover the anticipated costs of decommissioning the WES facility, the Board shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility. The financial assurance plan is subject to the following provisions:**
 - i. **The financial instrument shall be funded annually at a rate of five thousand dollars (\$5,000) per turbine for a period of thirty (30) years.**
 - ii. **The Board may allow a decreased annual payment, if the Board determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning**
 - iii. **All interest earned by any financial assurance account remains in the account.**

- iv. A financial assurances statement is to be provided upon request to the Zoning Official.
 - v. The financial assurance plan follows ownership of the wind turbines. The Board of Adjustment may allow current and subsequent WES owners to request a change in the type of financial assurance instrument to be utilized.
 - vi. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.
 - vii. After the 10th year of operation and each fifth year thereafter, the turbine owner shall submit to the Board an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.
 - viii. Funds from the financial assurances are to be paid to the turbine owner at the time of the decommissioning. Said funds are to be paid to the turbine owner after the County has certified compliance with the decommissioning plan and County regulations.
 - ix. If the WES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
- e. Failure to Decommission. If the WES facility owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a WES facility.
10. Abandoned Turbines. The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
12. Towers.
- a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
 - b. All towers shall be singular tubular design.
13. Noise. Noise level shall not exceed 50 45 dBA, average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity. Noise level measurements shall be made with a sound level meter using the A-weighting scale, in accordance with standards promulgated by the American National Standards Institute. A L90 measurement shall be used and have a measurement period no less than ten (10) minutes unless otherwise specified by the Board of Adjustment.

14. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance. **Flicker Analysis.** A Flicker Analysis shall include the duration and location of flicker potential for all schools, churches, businesses, and occupied dwellings within a one (1) mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sunrise to sunset over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees. Flicker at any receptor shall not exceed thirty (30) hours per year within the analysis area.

Exception: The Board of Adjustment may allow for a greater amount of flicker than identified above if the participating or non-participating landowners agree to said amount of flicker. If approved, such agreement is to be recorded and filed with the Kingsbury County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

15. Required Information for Permit.

- a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
- b. Map of easements for WES.
- c. Affidavit attesting that necessary easement agreements with landowners have been obtained.
- d. Map of occupied residential structures, businesses, churches and buildings owned and/or maintained by a governmental entity within one (1) mile of the project area.
- e. Preliminary map of sites for WES, access roads and collector and feeder lines. Final map of sites for WES, access roads and utility lines ~~to be submitted sixty (60) days prior to construction~~ **is required prior to the issuance of any building permits associated with the conditional use permit.**
- f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection ~~to be submitted prior to construction.~~
- g. Location of other WES in general area.
- h. Project schedule.
- i. Mitigation measures.
- j. ~~Project-specific environmental concerns (e.g. native habitat, rare species, and migratory routes). This information shall be obtained by consulting with state and federal wildlife agencies. Evidence of such consultation with State and Federal wildlife agencies regarding Project-specific environmental concerns (e.g., native habitat, rare species, and migratory routes) shall be included in the application.~~

- k. Final haul road agreements to be submitted sixty (60) days prior to construction

CHAPTER 5.33 PIPELINE STRUCTURES.

Any above ground structure associated with a pipeline requiring South Dakota Public Utilities Commission approval shall also require a Kingsbury County conditional use permit and building permit. The conditional use permit shall be issued by the Board of Adjustment if the applicant adheres to all requirements of the South Dakota Public Utilities Commission which may include various Kingsbury County recommendations regarding such issues such as but not limited to right-of-way, haul roads, and building permits. The requirement of the conditional use permit may be waived in the event said permit requirement is contrary to federal law.

Kingsbury County does not require or issue building permits for underground pipelines or subsurface components of pipeline systems (water, natural gas, oil, CO₂, etc). However, a permit shall be required for any pipeline that occupies or encroaches upon a public right-of-way.

CHAPTER 5.34 PRIVATE CAMPGROUND

Section 5.34.01 Purpose.

The purpose of this chapter is to provide for areas in the county for recreational vehicles to be located and occupied as temporary living quarters in a campground setting.

Section 5.34.02 Minimum Requirements.

1. A private campground shall comply with the following conditions:
 - a. A private campground may not be permitted on a parcel that contains an existing single family residence.
 - b. The minimum lot area for a private campground facility shall be five (5) acres.
 - c. Each campsite shall contain at least two thousand (2,000) square feet.
 - d. Access roads shall be provided to each campsite and all access roads shall have a minimum unobstructed width of fourteen (14) feet for all one-way roads, and twenty (20) feet for all two-way roads.
 - e. No manufactured homes shall be located in the campground.
 - f. The campground(s) shall be supplied with a potable water supply and sewage disposal facilities, including washing, toilets and bathing facilities, and similar facilities, and all of which shall meet all applicable State and County codes and regulations.
 - g. Garbage and rubbish storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. The campground shall provide a sanitary method of disposing of solid waste, in compliance with state laws, rules and regulations. It is recommended that one (1) refuse collection station shall be provided, with a minimum of one (1) two-yard dumpster situated on a concrete pad, screened on four sides, for each twelve (12) tenants or fractions thereof, conveniently located to serve tenants not more than one hundred fifty (150) feet from any camper served, and to be conveniently located for collection.

- h. The grounds shall be kept free of rubbish, trash, or debris, which could become a safety hazard.
- i. The growth of brush, weeds, and grass shall be controlled. All areas shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health.
- j. A private campground shall have a responsible person on duty at all times.
- k. The owner of the private campground shall keep accurate record of guests. Such a record shall be available for inspection and copying by the Secretary of Health or Zoning Officer for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The registry shall contain the name of the guest, the number in the party, the place of permanent residence of the guest, the date of registration, the date of departure, and the motor vehicle license number of the registrant. The record shall also include each rate, price, or fee charged to the guest for the guest's stay at the campground. These records shall be kept for a minimum of one (1) year.
- l. Public Safety Access – The owner of the private campground shall allow Law Enforcement and Kingsbury County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
- m. (Reserved)
- n. In the event the private campground does not comply with the terms of the conditional use permit and said permit is revoked, the owner of the private campground shall provide for, at their expense, the restoration of the site to its original condition, including the removal of all campers or RV's, dumpsters, and other related vehicles, or to a use permitted by the zoning ordinance in a time frame to be determined by the Board of Adjustment.
- o. All applicable requirements of the South Dakota Department of Health shall be met.
- p. The Board of Adjustment may impose other conditions to ensure that the use of property related to the private campground is conducted in a manner to be compatible with the surrounding neighborhood.

Section 5.34.03 Application Requirements. An application for a private campground shall be filed with the County Auditor. The application shall contain the following:

1. The address and legal description of all property upon which the campground is to be located, together with the name, residence and mailing address of the recorded owners of all such property.
2. Plans for supplying potable water including the source, amount available and location of outlets.
3. The plans for providing toilet and bathing facilities including the source, number and location, type and the means of disposing of waste deposited.
4. The plans for holding, collecting and disposing of solid waste material.
5. The plans, if any, to illuminate the campground, including the source and amount of power and the location of lamps.
6. A sketch plan of the property showing:

- a. Location of Camping Pads/sites.
- b. All amenities (bathrooms, showers, drinking water, outlets, light poles, roads)
- c. All existing and proposed buildings or additions.
- d. Dimensions of all buildings.
- e. Distance from all campsites/buildings to the property lines at the closest points.
- f. Dimensions of all property lines.
- g. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles.
- h. Name and location of all adjacent streets, alleys, waterways and other public places.
- i. Proposed grading and drainage pattern.
- j. Proposed interior circulation pattern indicating the status of street ownership and maintenance agreement.
- k. Proposed open space uses.
- l. Utility (water, sewer, electricity) plans.
- m. Relation of the proposed development to the surrounding area and comprehensive plan.

CHAPTER 5.35 SANITARY LANDFILLS, RUBBLE SITES, COMPOSTING SITES, WASTE TIRE SITES, AND RESTRICTED USE SITES REQUIREMENTS.

- 1. The site meets the requirements of the State Department of Environment and Natural Resources.
- 2. A site plan is provided indicating the following information:
 - a. Present topography, soil types, depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Proposed monitoring wells.
 - f. A minimum of two thousand six hundred forty (2,640) feet from the property line of the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site to the nearest residence or commercial use; excluding: the residence of the landfill operator.

- g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the sanitary landfill, rubble site, composting site, waste tire site, and restricted use site is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.36 DOMESTIC SANITARY SEWER TREATMENT PLANT/FACILITY REQUIREMENTS.

1. The site meets the requirements of the State Department of Environment and Natural Resources.
2. A site plan is provided indicating the following information:
 - a. Present topography, soil types, and depth to groundwater.
 - b. Location of existing water drainage, existing buildings, existing shelterbelts.
 - c. Identification of roads leading to the site.
 - d. Proposed changes at the site such as new shelterbelts, new buildings, changes in topography, new fence lines.
 - e. Proposed monitoring wells.
 - f. No sewage treatment plant/facility will be allowed within one thousand three hundred twenty (1,320) feet from the property line of the sewage treatment plant/facility to **the wall line of** the nearest residence; excluding: the residence of the sewage treatment plant/facility operator
 - g. The Board of Adjustment may impose other conditions to ensure that the use of property related to the domestic sanitary sewer treatment plant/facility is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.37 JUNKYARDS/SALVAGE YARDS REQUIREMENTS.

1. Storage for junkyards/salvage yards shall be set back a minimum of three hundred thirty (330) feet from any adjoining property line or road right-of-way.
2. Junkyards/salvage yards shall be screened on all sides by a solid wall, with construction materials and design to be approved by the Board of Adjustment, at least two (2) feet above the highest stock pile or by a shelterbelt of shrubs and trees as approved by the Board of Adjustment; screening must be maintained in good repair.
3. No junkyards/salvage yards will be allowed within one thousand (1,000) feet from the property line of the junkyard/salvage yard to **the wall line of** the nearest residence; excluding: the residence of the junkyard/salvage yard operator.
4. All junkyards/salvage yards must have a minimum lot of ten (10) acres.

5. The Board of Adjustment may impose other conditions to ensure that the use of property related to the junkyard/salvage yard is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.38 AUTOMOTIVE TOW BUSINESS/IMPOUND LOT REQUIREMENTS. Impound lots, incident to the operation of an automotive tow business, may be established within districts pursuant to the zoning laws of the County for the storage of vehicles under the following conditions and requirements:

1. The area used for an impound lot must be free of debris and regularly maintained.
2. The area used for an impound lot must be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.
3. An impound lot may be used for the temporary storage of vehicles from which major parts have not been removed, and which are capable of being made fully operable.
4. An impound lot may be used for the storage of not more than twenty (20) vehicles at any one time.
5. Vehicle parts shall not be stored within an impound lot.
6. Vehicle parts shall not be taken or sold from vehicles stored within an impound lot.
7. Vehicles stored in an impound lot must be parked neatly in rows and meet or exceed all County, State and Federal laws governing the same.
8. The Board of Adjustment may impose other conditions to ensure that the use of property related to the automotive tow business/impound lot is conducted in a manner to be compatible with the surrounding neighborhood.

CHAPTER 5.38 ACCESSORY AGRICULTURAL HOUSING [ORD #67]

Section 5.38.01. General Provisions

1. Accessory Agricultural Housing is a permitted accessory use to Class A Concentrated Animal Feeding Operations (CAFOs).
2. Accessory Agricultural Housing must be approved by the Board of Adjustment.
 - a. Any Class A CAFO, permitted after January 1, 2024 is required to submit a request for accessory agricultural housing at the time of the initial CAFO application.
 - b. Any Class A CAFO, permitted before January 1, 2024 may submit a request for Accessory Agricultural Housing if such request is made prior to January 1, 2026.

3. Accessory Agricultural Housing is recommended to be located within the same section of land as the permitted Class A CAFO, but shall be no further than one (1) mile from the permitted Class A CAFO, provided the property is owned by the permit-holder.
4. Minimum lot area shall consist of at least two (2) acres per accessory agricultural housing dwelling unit , including the residence of the agricultural employer if on the same lot.
5. Accessory agricultural housing shall be in accordance with the following table:

Number of Animal Units	Maximum Number of Dwellings	Maximum number of persons in Accessory Agricultural Housing
1,000 to 5,999 AU's	6	18
6,000 to 8,999 AU's	9	27
9,000 to 12,999 AU's	13	39
13,000 to 19,999 AU's	16	48
Over 20,000 AU's	32	96

6. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with the most recently adopted version of the International Building Code in accordance with SDCL 11-10-6 for any dwelling structure with two (2) or more dwelling units.
7. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with any South Dakota Administrative Rules 74:53.
8. The dwelling/shared dwelling shall be removed or renovated into a single-family dwelling in the event the permit for the CAFO becomes void.
9. In the event the accessory agricultural housing dwelling/shared dwelling remains unoccupied for a period of one (1) year; or is not used in conformance with this Chapter, the accessory agricultural housing dwelling/shared dwelling shall be removed or with permission of the Board of Adjustment may be used for any use accessory to the CAFO.

CHAPTER 5.39. TRANSPORTATION/APPLICATION OF MANURE GENERATED OUTSIDE KINGSBURY COUNTY [ORD #51]

1. Transportation of Manure into the County: Any landowner with the "A" Agricultural District receiving and utilizing manure generated from a concentrated animal feeding operation which has a State General Permit and is furthermore located outside of Kingsbury County shall be required to obtain a conditional use permit to transport and land apply manure.
2. Haul road agreements with applicable road authorities are required.
3. Land application of manure shall be in accordance with Section 5.12.05.4.vi "Manure Management and Operation Plan" and Section 5.12.05.9 "Manure Application Setbacks".

CHAPTER 5.39. CANNABIS DISPENSARIES AND CANNABIS CULTIVATION FACILITIES. [Ord #62]

1. Maximum Number of Cannabis Dispensaries and Cannabis Cultivation Facilities.

- a. In the development and execution of these regulations, it is recognized that there are some uses which because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a potential deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area.
- b. The County shall allow up to one (1) cannabis dispensary provided the time, place, and manner of said dispensaries comply with this ordinance.
- c. The County may allow up to three (3) cannabis cultivation facilities provided the time, place, and manner of said facilities comply with this ordinance.

2. Required Separation Distances

- a. A cannabis dispensary or cannabis cultivation facility shall be located not less than one thousand (1,000) feet from a public or private school existing before the date of the cannabis dispensary application;
- b. A cannabis dispensary or cannabis cultivation facility shall be located not less than one thousand (1,000) feet from a church, residence, and/or public park and recreation area existing before the date of the cannabis dispensary application;
- c. Exemption from separation requirements. Any separation distance requirement, other than the State requirement from schools (1,000 feet), may be waived, provided:
 - i. The applicant provides documentation waiving the setback requirement from the title holder of the land benefiting from the separation.
- d. Prescribed separation/setback distances from certain existing uses are to be measured from the lot line of the property where the dispensary is proposed.
- e. Cannabis cultivation facilities shall only be located within one (1) mile of South Dakota Highways, 14, and 25, and U.S. Highway 81. Further no cannabis cultivation facility shall be located within one (1) mile of the communities of Arlington, De Smet, Iroquois, or Lake Preston. [Ord #64]

3. Other Locational Requirements

- a. Permanent or temporary dispensaries or cannabis cultivation facilities are prohibited in all zoning districts other than the "CI" -Commercial/Industrial District and further not eligible for a home occupation use.

- b. It shall be unlawful to operate a dispensary in a building which contains a residence or a mixed-use building with commercial and residential uses.
- 4. Controlled Access - No cannabis establishment shall share premises with or permit access directly from another medical cannabis establishment, business that sells alcohol or tobacco, or, if allowed by law, another cannabis establishment.
- 5. Hours of operation:
 - a. Cannabis dispensaries are allowed to be open on Monday through Saturday between the hours of 7 a.m. and 7 p.m.
- 6. Documentation of State Licensure.
 - a. No cannabis dispensary shall acquire, possess, store, deliver transfer, transport, supply or dispense cannabis, cannabis products, paraphernalia without providing documentation of licensure from the State of South Dakota.
- 7. The zoning official is authorized to issue permits (building/use) for cannabis dispensaries subject to following:
 - a. Submission of a site plan containing the following:
 - i. Any information required for applicable building permit
 - ii. Ingress and egress plan
 - iii. Parking plan
 - iv. Lighting plan (including security lighting);
 - v. Screening/security fencing plan;
 - vi. Refuse plan;
 - vii. Hours of Operation;
 - viii. Any other information as lawfully may be required by the Zoning official to determine compliance with this ordinance.
 - b. Documentation of ability to meet setback/separation requirements;
 - c. Documentation of State Licensure.
- 8. All Cannabis Establishments are required to be constructed in conformance with the 2021 Edition of the International Building Code and International Fire Code.

Section 5.40. Solar Energy Systems (SES)

Section 5.40.01. Purpose.

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands and other sensitive lands. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.

Section 5.40.02. Private Solar Energy System (PSES).

PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district. A PSES shall be for a single use commercial or residential structure and used primarily for on-site consumption of power.

Section 5.40.03. Permitting.

- 1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.**
- 2. Application(s) for SES Conditional Use Permits shall be accompanied by:**
 - a. Site plan as required by 5.40.05 (4)**
 - b. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or another map as appropriate.**
 - c. Map of easements for SES, if applicable.**
 - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.**
 - e. Aviation/Airport protection if required. See 5.40.05 (6)**
 - f. The fencing and gates required to be around the exterior perimeter. See 5.40.05 (8)**
 - g. The storm water pollution and prevention plan. See 5.40.04 (1)**
 - h. The decommissioning plan. See 5.40.06**
 - i. Weed/Grass control plan 1 See 5.40.05 (12)**
 - j. Haul roads identified. See 5.40.05 (13)**

k. Project schedule

l. Any other factors relevant to the proposed system.

3. All copies of the plan must be submitted, signed and sealed by an engineer.

4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.

Section 5.40.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions if adopted and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.

2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.

3. An emergency contact name and phone number must be posted at the point of access on all SES sites.

4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.

5. All SES shall meet or exceed applicable standards and regulations of any state or federal agency.

Section 5.40.05. General Provisions for Solar Energy Systems.

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. Ground Cover and Buffer Areas. Ground-mount systems shall be maintained. Topsoils shall not be removed during development unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. It is required that any crops planted follow all federal and state laws protecting endangered species. This will also include pollinators such as bees. Foundations, gravel or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.

2. Foundations. A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.

3. Power and Communication Lines. Power and communication lines running between banks of solar

panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.

4. **Site Plan Required.** A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the Board of Adjustment.
5. **Setbacks.** Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties. Solar panels will be kept at least seven hundred fifty (750) feet from the property line of a residence. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
 - a. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet.
 - b. Every SES shall meet the minimum front yard setback of the applicable zoning district.
 - c. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.
6. **Aviation/Airport Protection:** If required by state or federal agencies the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
7. **Glare:** All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
8. **Safety Fencing/Gates and Locks.**
 - a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
 - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.
 - c. All gates to the fences of all SES shall be equipped with locks and shall always remained locked except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.

- d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
 - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.
 - f. Fences are exempt from Section 5.05 and may further be constructed on property and right-of-way lines.
9. Maximum height: Solar panel arrays shall be no more than twenty (20) feet in height, not including power lines.
10. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
11. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar energy system shall be allowed.
12. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
13. Roads.
- a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
 - b. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate governmental body having jurisdiction over approved haul roads.
 - c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
 - d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.
14. Permit Expiration. Unless otherwise determined by the BOA, the permit shall become void if no substantial construction has been completed within three (3) years of issuance.

Section 5.40.06. Decommissioning/Restoration/Abandonment.

1. **Cost Responsibility.** The owner or operator of a SES is responsible for all costs associated with decommissioning the SES facility and any associated facilities.
2. **Decommissioning Plan.** At least thirty (30) days prior to construction, the applicant shall file a decommissioning plan for Board of Adjustment approval in accordance with the requirements of paragraphs (2), (3) and (4) below. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
3. **Financial Assurance.** The Board of Adjustment shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the SES facility. The financial assurance plan is subject to the following provisions:
 - a. A decommissioning account is to be funded by the project owner annually at a rate of two thousand five hundred dollars (\$2,500) per megawatt of installed DC capacity per year for the first 30 years, commencing no later than the commercial operation date.
 - b. The Board of Adjustment may allow a decreased annual payment, if the Board of Adjustment determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.
 - c. All interest earned by any financial assurance account remains in the account.
 - d. A financial assurances statement is to be provided upon request to the Zoning Official.
 - e. The financial assurance plan follows ownership of the SES. The Board of Adjustment may allow current and subsequent SES owners to request a change in the type of financial assurance instrument to be utilized.
 - f. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.
 - g. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the SES owner shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board of Adjustment may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.
 - h. Funds from the financial assurances are to be paid to the SES owner at the time of decommissioning. Said funds are to be paid to the SES owner after the County has certified compliance with the decommissioning plan and County regulations.

- i. If the SES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
 - j. In the event the South Dakota Public Utilities Commission requires a Decommissioning Plan which includes a financial instrument to decommission to be filed with the State. The county may waive its required financial instrument.
4. **Site Restoration.** The decommissioning of the SES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the SES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the SES. The permittees shall have the obligation to dismantle and remove from the site all solar collectors and components, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
5. **Failure to Decommission.** If the SES owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond or other forms of final assurances. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a SES facility.

Section 5.41. Shop-style Dwelling Standards.

Shop-style dwellings may only be permitted provided the following conditions are met:

- 1. The construction of shop-style dwellings shall meet the requirements of Section 5.21 Permanent Foundations Required for Dwellings;
- 2. Shop-style dwellings shall include a minimum 2,000 square feet or twenty (20) percent of the gross floor area, which ever is less, of the structure to be dedicated for dwelling purposes;
 - i. Gross area is the sum of the gross horizontal area of all floors of a building measured from the exterior walls, but not including the basement or attic areas not intended for living space.
- 3. The owner of the building must actively reside in the living area of the structure a minimum of six (6) months a year;
- 4. The owner of the building shall not lease or rent any portion of the building separately. The building may only be leased or rented in its entirety to a single tenant;
- 5. The storage/garage area must be completely within the enclosed building;

6. There must be separate outside entrances for the living area and storage/garage area;
7. The separation wall between the storage/garage and living area shall be 5/8 inch fire-code drywall;
8. The living area must include a full kitchen, living area, full bathroom, at least one (1) bedroom and laundry facilities;
9. Shop-style dwellings do not include structures with corrugated steel siding (or maybe only not allowed in the lake park or Town district?).
10. Required Roof Lines. Figures 5.41.a and 5.41.b (below) include examples of structures that meet the required number of roof lines for a “Shop-Style Dwelling” in the Agricultural, Lake Park, and Town Zoning Districts and otherwise comply with the requirements of Chapter 5.41:

Figure 5.41.a



Figure 5.41.b



11. Figures 5.41.c and 5.41.d (below), in addition to Figures 5.41.a and 5.41.b (above), provide examples of structures that meet the required number of roof lines for a “Shop-Style Dwelling” in the Agricultural Zoning District and otherwise comply with the requirements of Chapter 5.41. However, Figures 5.41.c and 5.41.d do not meet the required number of roof lines for a “Shop-Style Dwelling” in the Lake Park or Town Zoning Districts.

Figure 5.41.c



Figure 5.41.d



Section 5.42. Data Processing Center Performance Standards.

Section 5.42.01. Siting Requirements

a. Data processing centers shall comply with the following:

- a. Fencing: A six (6) foot sight-obscuring fence shall be installed along the entire perimeter of the facility. Such fencing shall comply with all applicable requirements of the Kingsbury County Zoning Ordinance.**
- b. Generator Enclosures: All electrical generators shall be enclosed by a solid wall constructed of concrete or an equivalent sound-absorbing material. The enclosure shall extend a minimum of four (4) feet above the highest point of the generator. This requirement may be reduced or waived if a noise mitigation plan is submitted in accordance with this Ordinance demonstrating compliance with applicable sound limits.**
- c. Buffer Yards: The entire perimeter of the facility shall be screened from adjoining properties by a buffer yard.**
 - i. Side and rear buffer yards: minimum fifty (50) feet**
 - ii. Front buffer yard: minimum one hundred fifty (150) feet**
- d. Setbacks: All equipment and structures shall be located**
 - i. A minimum of fifty (50) feet from any property boundary; and**
 - ii. A minimum setback of one-quarter (¼) mile (1,320 feet) shall be maintained from any occupied residence, school, business, church and/or government building, measured from the property line of said structures to the nearest point of the proposed facility.**

Section 5.42.02. Electric Utility Notification

- 1. No grid-connected data processing center shall be issued a permit until the operator provides written verification from the applicable electric utility provider. Off-grid systems are exempt from this requirement.**
- 2. The utility provider verification shall confirm:**
 - a. Adequate capacity is available on supply lines and substations to serve the proposed facility while maintaining projected load growth for the service area;**
 - b. Electrical infrastructure is properly sized and can safely accommodate the proposed use; and**
 - c. The proposed use will not cause electrical interference or unacceptable voltage fluctuations on or off the site.**

Section 5.42.03. Water Usage and Redundancy Requirements

1. Purpose. Data processing centers shall utilize water resources efficiently, minimize impacts on aquifers and water systems, and maintain operational resilience during service interruptions.
2. Applicability. This section applies to all new construction, expansion, or substantial modification of data processing centers exceeding 10 megawatts of IT load
3. Water Efficiency Plan: All applicants shall submit a Water Efficiency Plan demonstrating:

- a. Estimated annual and peak water demand;
- b. Cooling system type and associated water consumption;
- c. Measures to minimize potable water use, including use of air-cooled or hybrid cooling systems, Closed-loop water systems (recycled water), or alternative non-potable sources where feasible.

4. Maximum Water Usage Requirements

- a. All data processing centers shall achieve and maintain a maximum annual Water Usage Effectiveness (WUE) of 0.05 gallons per kWh.

A minimum of 50% of total water usage—the water used for cooling and mechanical systems shall ~~come~~ be obtained from non-potable water sources (e.g., such as reclaimed water, or stormwater reuse) shall be utilized for cooling and mechanical systems unless the use of non-potable water is infeasible due to public health or technical constraints. This requirement may be reduced or eliminated upon submission and approval of a Water Use Mitigation Plan that, with the concurrence of the South Dakota Department of Agriculture and Natural Resources (DANR) and in accordance with all applicable requirements of the Kingsbury County Zoning Ordinance, demonstrates responsible water use and conservation practices.

- b. Use of potable water for cooling shall be minimized and may be restricted during drought or emergency conditions.
- c. Facilities must comply with all applicable drought restrictions and demonstrate operational adjustments under reduced water availability conditions.
- d. Data processing centers shall provide at least one of the following:
 - i. Dual independent water supply connections; or
 - ii. On-site water storage sufficient to maintain critical cooling operations for a minimum of [24–72] hours at peak load.

5. Monitoring and Reporting

a. Operators shall install water metering systems capable of measuring:

- i. Total facility water use;**
- ii. Cooling system water use; and**
- iii. Source type (potable vs. non-potable).**

b. An annual report shall be submitted to the county including:

- i. Total water consumption;**
- ii. Calculated WUE;**
- iii. Breakdown by source; and**
- iv. Measures taken to reduce water use.**
- v. Copy of annual SDDANR Surface Water Discharge Permit Report**

6. Backup Cooling Capability. Facilities must be designed to maintain safe operating temperatures during water supply interruptions through:

- a. Air-cooled backup systems;**
- b. Thermal storage systems; or**
- c. Equivalent approved technologies.**

7. Emergency Operations Plan. Applicants shall submit an Emergency Water Supply and Cooling Plan including:

- a. Procedures for water supply interruption;**
- b. Load shedding or operational scaling strategies;**
- c. Coordination with local utilities and emergency management.**

8. Conditions of Approval. Approval of a data center may be conditioned upon:

- a. Demonstration of long-term water availability;**
- b. Submission of a water conservation plan; and**
- c. Financial assurance to cover infrastructure impacts related to water supply.**
- d. Haul Road Agreements**

9. Modifications. The Board of Adjustment may grant modifications where the applicant demonstrates:

- a. Equivalent or superior water efficiency; and
- b. No increased burden on municipal/rural water infrastructure or water resources.

Section 5.42.04. Noise.

1. Data processing centers located within one-quarter (¼) mile (1,320 feet) from an occupied residence, school, business, church and/or government buildings shall submit a noise mitigation plan including:

- a. Name and qualifications of the person who measured the decibel levels.
- b. Equipment used.
- c. Noise measurement locations shown on a scaled site plan, including property lines and nearby receptors (occupied residences, schools, businesses, churches and government buildings);
- d. A list of all sound sources that contribute to the overall sound emissions from the site and the following for each source;
 - i. Peak sound levels, in decibels, emitted by each source; and,
 - ii. Continuous sound levels exceeding thirty (30) minutes;;
 - iii. The frequencies of the sound emissions from each source;
 - iv. A site diagram showing the location of each sound source.
- e. A description of any and all methods, systems, devices or structures intended to be used to mitigate sound emissions, including technical specifications, descriptions of materials and/or engineering specifications;
- f. Certification of accuracy by the preparer attesting to the accuracy of the materials contained within the noise mitigation plan and that the plan will effectively reduce sound emissions to levels required by Kingsbury County.

2. The County may require independent verification or additional measurements.

3. Noise Limits.

- a. Maximum sound level shall not exceed forty-five (45) dBA (A-weighted), including constructive interference, measured twenty-five (25) feet from any occupied residence, business, church or government building.

b. The above limits may be exceeded as follows:

- i. 5 dBA for a total of 15 minutes in any one-hour period; or
- ii. 10 dBA for a total of 5 minutes in any one-hour period; or
- iii. 15 dBA for a total of 1.5 minutes in any one-hour period.

Section 5.42.05. Signage.

1. No signage shall be permitted on the perimeter fence, with the exception of one (1) sign not to exceed thirty-two (32) square feet that displays the name, address and emergency contact information of the facility as well as appropriate warning signs.

Section 5.42.06. Structural Requirements.

1. The facility shall meet all requirements of the most current edition of the International Building Code (IBC).
2. Electrical wiring shall be installed underground except where necessary for interconnection.
3. The use of cargo containers, railroad cars, semi-truck trailers and other similar storage containers for any component of the operation is strictly prohibited.

Section 5.42.07. Access.

1. All access roads shall be of sufficient width and design to accommodate emergency vehicles, as determined by the Kingsbury County Emergency Management Director.

Section 5.42.08. Submittal Requirements. Applicants shall provide:

1. A project narrative describing the proposed facility;
2. A site plan showing all structures, equipment, fencing, screening, property lines, access roads, and nearby residences, schools, churches, businesses, and/or governmental buildings within 1,320 feet of the perimeter of the facility;
3. An acoustical study prepared by a qualified engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, additional separation from surrounding uses, etc.;
4. Information required in Sections 5.42.02, 5.42.03 and 5.42.04;
5. Any additional studies or documentation reasonably required by the County; and
6. Signatures of the property owner(s) and facility operator (if different).

Section 5.42.08. Decommissioning/Cessation of Operations Requirements

1. Decommissioning. Prior to construction, the Board may require the owner or operator of a Data Center to provide the County with a performance surety bond, irrevocable letter of credit, or escrow account in an amount equal to one hundred ten percent (110%) of the estimated cost of full site decommissioning and restoration. The Board may defer to any decommissioning requirements imposed by the State of South Dakota.
2. Upon permanent cessation of Data Center operations, the property owner shall decommission the Data Center facility and remove all equipment, structures, and improvements associated with the Data Center use that are no longer needed or intended for another permitted or conditional use. If the Data Center structure or improvements are not placed into another permitted or conditional use within two (2) years following the permanent cessation of operations, the property shall be restored to a safe and orderly condition in accordance with applicable County, State, and Federal requirements.
3. The owner or operator of the Data Center shall be responsible for completing decommissioning and for all costs associated with decommissioning the facility and associated improvements.
4. If the owner or operator fails to complete the required decommissioning, the Board may take such action as is necessary to complete the decommissioning, including drawing upon or requiring forfeiture of any required financial assurance.

Section 5.42.09 Waiver/Exception: The Board of Adjustment may allow setback/separation distances and noise thresholds to be less than the requirements established in Sections 5.42.01 and 5.42.04 , if the affected owners of property agree to a lesser setback/separation distances and/or noise thresholds. If approved, such agreement is to be recorded and filed with the Kingsbury County Zoning Officer. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

CHAPTER 5.43. AGRIBUSINESS ACTIVITIES.

Section 5.43.01. Intent

Agribusiness activities include identified commercial activities involving the handling, storage, processing and distribution of agricultural products. Agribusiness activities are intended to be operated as a principle use on a property. They may be operated as an extended home occupation, when such activities are accessory to the residential use of the lot.

Section 5.43.02. Requirements.

1. Agribusiness activities must have access to either:
 - a. A concrete or bituminous asphalt street;
 - b. A county-maintained gravel street; or

- c. A Township-maintained gravel street with a Township approved haul road agreement.
- 2. Operators of agribusiness activities shall enter into and comply with a haul road agreement for the applicable streets if deemed necessary by the applicable road authority for the maintenance of identified haul routes attendant to the operation of the proposed business.
- 3. Lighting on the site shall be limited to downward directed lights or other lighting customarily used for agricultural operations.
- 4. The number, size, and illumination standards for signs shall be determined by the Board of Adjustment.
- 5. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
- 6. All vehicles and equipment stored outside shall be operable.
- 7. Permits for an agribusiness activity may only be changed to another agribusiness activity if specifically authorized by the Board of Adjustment.
- 8. Permits for agribusiness activities may be transferred, unless otherwise stated by the Board of Adjustment.

CHAPTER 5.44. HAUL ROAD AGREEMENTS.

Section 5.44.01. Required.

- 1. Prior to approval of any conditional use, the applicant shall enter into a haul road agreement with each affected Township and County for any public road that will be used for hauling associated with the conditional use. The agreement shall establish the applicant's responsibilities for road maintenance, repair, and restoration resulting from the use and shall be approved prior to commencement of the conditional use.

Section 5.44.01. Standards.

- 1. The agreement shall address, at a minimum, the following:
 - a. Road Construction or Upgrade. A written agreement between the applicant and the road authority responsible for maintaining the right-of-way establishing the minimum improvements, construction, or upgrades necessary to the road to accommodate the proposed land use.
 - b. Long-Term Maintenance. A written agreement between the applicant and the road authority responsible for maintaining the right-of-way establishing minimum maintenance standards and the required road condition necessary to accommodate the proposed land use.

c. Existing Road Conditions. Prior to commencement of the proposed use, the applicant and the road authority responsible for maintaining the right-of-way shall jointly document the existing condition of the affected roadway. The documentation shall include, at a minimum:

i. Existing road grade, crown, gravel or pavement thickness, and general road condition. Photographs may be used to supplement the written documentation.

ii. A written statement signed by both the applicant and the road authority responsible for maintaining the right-of-way acknowledging and agreeing upon the documented existing road conditions.

d. Maintenance Schedule. The haul road agreement shall identify the existing summer and winter maintenance schedule for the affected roadway.

e. Additional Maintenance Needs. The haul road agreement shall identify any additional maintenance, improvements, or repairs anticipated to be necessary to accommodate the proposed land use.

f. Allocation of Costs. The haul road agreement shall identify the party responsible for the cost of improvements, maintenance, repairs, or other expenses attributable to the proposed land use that exceed the existing road condition and established maintenance schedule.

2. Compliance. The inclusion of the above requirements in an approved haul road agreement shall constitute compliance with the County's haul road requirements for the applicable conditional use. The County reserves the right to establish a maximum time period within which the applicant and applicable Road Authority shall reach an agreement. The County may waive or modify any additional requirements proposed by the Road Authority that exceed the requirements specified above.

3. In lieu of a signed haul road agreement, the Road Authority may submit a written statement indicating that no such haul road agreement is required.

CHAPTER 5.45. COMMERCIAL STORAGE FACILITY.

1. In the Agricultural Zoning District.

a. Storage of agriculturally related equipment/property owned by the landowner or by others shall be a permitted use.

b. Limited Commercial storage of non-agricultural equipment or property shall be a permitted use when all of the following apply:

i. No more than one building is used for such storage;

- ii. No more than four distinct storage areas or bays within a building are used for such storage; or
 - iii. No more than fifty percent (50%) of a building is dedicated to such storage.
- c. An Extended Home Occupation Permit shall be required when any of the thresholds identified above are exceeded.
- i. The Board of Adjustment reserves the right to restrict the number of buildings and or the number of distinct storage areas associated with the extended home occupation.
- d. The storage building shall be located within the same quarter-quarter section as the residence.
- e. Haul road agreements per Chapter 5.44 are required.

CHAPTER 5.46. SHORT-TERM RENTAL (STR).

Section 5.46.01. Purpose.

The purpose of this ordinance is to regulate short-term rentals in order to:

1. Protect residential neighborhood character.
2. Provide fair opportunities for property owners.
3. Ensure public safety.
4. Maintain housing availability for residents.
5. Minimize impacts related to noise, parking, and overcrowding.

Section 5.46.02. Registration Requirement

All short-term rentals must register with the County prior to operation. Registration shall include:

1. Owner name and contact information
2. Property address
3. Information of the responsible local contact who shall be a person located within 50 miles of the property who can respond to complaints within 1 hour.
4. Maximum occupancy
5. Proof of liability insurance

6. Proof of State of South Dakota Sales Tax License

7. Proof State of South Dakota Department of Health Lodging License

8. Registration Fee: \$50 per year. Registration shall be renewed annually.

Section 5.46.03. Operational Standards

1. All short-term rentals must comply with the following standards:

i. Occupancy Limits Maximum occupancy shall be 2 persons per bedroom + 2 additional persons

ii. Parking: Minimum of 1 off-street parking space per bedroom.

iii. Noise: The owner and occupants of a short-term rental shall not create, cause, or allow any loud, excessive, or unreasonable noise that unreasonably disturbs the peace, quiet, or comfort of neighboring properties.

Section 5.46.04. Posting Requirements

1. The following information must be posted inside the rental unit:

i. Emergency contact number

ii. Maximum occupancy

iii. Parking instructions

iv. Trash disposal instructions

Section 5.46.05. Trash

1. Trash must be stored in appropriate containers and may not accumulate outdoors.

Section 5.46.06. Safety Requirements

1. All STR units must have:

i. Working smoke detectors

ii. Working carbon monoxide detectors (if fuel-burning appliances exist)

iii. Clearly posted emergency exit information

Section 5.46.07. Complaint Process

1. Complaints may be submitted to the Zoning Officer.

2. If three (3) verified violations occur within a 12-month period, the County may:

- i. Suspend the registration for up to 12 months, or

Section 5.46.08. Revocation

1. The Board of Adjustment may revoke a short-term rental registration for:

- i. Failure to maintain registration

- ii. Repeated violations

- iii. False information on the application

2. Revocation may occur after notice and opportunity for a hearing.

Section 5.46.09. Existing Rentals

1. Short-term rentals operating prior to December 31, 2026 must register by March 1, 2027.

ARTICLE VI ADMINISTRATION

CHAPTER 6.01. GENERAL.

Section 6.01.01. Permits Required.

1. No building or other structure shall be erected, moved, added to, structurally altered or used without a permit issued by the Zoning Officer. The Zoning Officer except in conformity with the provisions of this ordinance shall issue no permit, unless he received a written order from the Board of Adjustment in the form of an administrative review, under conditional use, or variance as provided by this ordinance.
2. It shall be unlawful to commence the excavation for the construction of any building or any accessory building without a permit. A permit is also required for any filling, grading, lagooning, or dredging which is related to site preparation for future construction.

Section 6.01.02. Applications.

1. Application for building and use permits shall be made to the Zoning Officer upon forms approved by the Board of County Commissioners. These forms shall be filled in by the owner, or authorized agent. All applications for permits shall be accompanied by a site plan ~~drawn to scale~~, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building(s) or alteration. The applicant shall also state the existing and intended use of all such buildings, and the location of existing or proposed water and sewer facilities. In the case of a change of use, the applicant shall, in writing, state the intended change. The application shall include such other information as lawfully may be required by the Zoning Officer, ~~including legal description, existing or proposed buildings or alterations; existing or proposed uses of the building and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; existing or proposed water, sewer, electrical facilities; and such other matters as may be necessary to determine conformity with, and provide for the enforcement of, this ordinance.~~ All plans and data accompanying the permit shall be final and conclusive. Deviations shall be deemed a violation of this Ordinance, and punishable as provided in 1.02.03 and shall require a new building and use permit.

Section 6.01.03. Building/Use Permit.

1. Issuance of a Building/Use Permit. If the proposed excavation alteration, construction, or change of use, as set forth in the application for a Building/Use Permit are in conformity with the provisions of this Ordinance, and other regulations of the County then in force, the Zoning Officer shall issue a building/use permit for such excavation, construction, alteration or change in use. If a building/use permit is refused, the Zoning Officer shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application with the cause for denial. The Zoning Officer shall grant or deny the permit within a reasonable time from the date the application is submitted.

2. A Building/Use Permit shall be deemed to authorize, and is required for both initial and continued occupancy and use of the building or land to which it applies, and shall continue in effect, so long as such building and the use thereof or the use of such land is in full conformity with the requirements of this ordinance and any requirements pursuant thereto. However, on the serving of a written notice by the Zoning Officer of any violation of any of the said provisions or requirements with respect to any building or the use thereof or of land, the Building/Use Permit for such use shall without further action, be null and void, and a new Building/Use Permit shall be required for any further use of such building or land.
3. The issuance of a building/use permit shall, in no case, be construed as waiving any provisions of this Ordinance. ~~A Building Permit shall become null and void twelve (12) months from the date of issuance thereof unless substantial progress has been made by that date on the project described therein.~~ If the work described in any building/use permit has not begun within six (6) months or has not been substantially completed within one ~~(1) year~~ **eighteen (18)** months of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Officer and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building/use permit has been issued. If substantial progress has been made within ~~twelve (12)~~ **eighteen (18)** months from the issuance of the permit but has not been completed, the Zoning Officer may extend the building/use permit and additional ~~six (6)~~ **twelve (12)** months.

Section 6.01.04. Permits Displayed.

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

Section 6.01.05. Fees.

1. The Board of County Commissioners shall, by resolution, establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance, The schedule of fees shall be posted in the office of the County Auditor and may be altered or amended only by the Board of County Commissioners.
2. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

Section 6.01.06. Building Standards.

The design standard for any new construction commenced after July 1, 2026 shall be based on the standards established by South Dakota Codified Law Chapter 11-10-6. The provisions of this section do not apply to new construction for any one or two-family dwelling, mobile or manufactured home, townhouse, farmstead and any accessory structure or building thereto.

For purposes of this section the term, farmstead, means a farm or ranch, including any structure or building located on the land. The provisions of this section do not apply to any mobile or manufactured home as defined in chapter SDCL 32-7A which is used for purposes other than residential that is constructed in compliance with the applicable prevailing standards of the United States Department of Housing and Urban Development at the time of construction if the structure complies with applicable accessibility standards for the occupancy intended. The provisions of this section do not apply to any specialty resort or vacation home establishment as defined in chapter SDCL 34-18 that is constructed in compliance with the requirements of Group R-3 of the 2024 edition of the International Building Code.

CHAPTER 6.02. ZONING OFFICER.

Section 6.02.01. Zoning Officer.

1. The provisions of this Ordinance shall be administered and enforced by a County Zoning Officer appointed by the Board of County Commissioners, who shall have the ~~power to make inspection of buildings or premises~~ necessary **authority** to carry out his/**her** duties in the **enforcement administration** of this Ordinance.

Section 6.02.02. Duties.

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

1. Issue all building/use permits and make and maintain records thereof.
2. Conduct inspections of buildings, structures, and the use of land to determine compliance with this Ordinance.
3. Notify in writing persons responsible for violations, indicating the nature of the violation and ordering action necessary to correct.
4. Order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions; alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.
5. Revoke any permit, which was unlawfully issued, or any permit wherein defective work has been performed, and when such work has not been corrected within ninety (90) days of notification.
6. Maintain permanent and current records of this regulation, including, but not limited to, all maps, amendments, variances, appeals, and applications.
7. Prepare documents, easements, letters of assurance, waivers, etc. as required by this Ordinance, or at the direction of the Kingsbury County Planning Commission and/or the Kingsbury County Board of Adjustment and/or Kingsbury County Commissioners.
8. Provide public information relative to all matters arising out of this Ordinance.

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

Section 6.02.03. Right of Entry.

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

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

Section 6.02.04. Stop Order.

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

Section 6.02.05. Occupancy Violation.

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

CHAPTER 6.03. PLANNING COMMISSION.

Section 6.03.01. Establishment.

1. The Planning Commission shall consist of the membership of the Board of County Commissioners.

Section 6.03.02. Term of Office.

1. The terms shall run concurrent with the terms of the membership of the Board of County Commissioners. **Zoning Officials of the County may be appointed as ex-officio members of the Planning Commission.**

Section 6.03.03. Meetings of the Planning Commission

1. The Planning Commission shall meet at such times as may be necessary to accomplish the purposes of their duties, but in no event shall they meet less than once every three (3) months.

Section 6.03.04. Per Diem and Expenses of Commission

1. Per diem and expenses of the County Planning Commission shall be established by the Board of County Commissioners and paid by the County.

Section 6.03.05. Duties of Planning Commission

The Planning Commission shall have the following duties:

1. Comprehensive Plan:

The Planning Commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated, or which have requested by resolution of the governing board of such municipality to be included. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.

2. Zoning Ordinance:

To develop and recommend a zoning ordinance, in accordance with the Plan, for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density as may be provided by SDCL 11-2-13 and 11-2-14. Upon preparation the Planning Commission shall make recommendation to the Board of County Commissioners subject to SDCL 11-2-18.

3. Subdivision:

- a. To develop and recommend regulations governing the subdivision of land within Kingsbury County.
- b. To review proposals for subdivision to determine whether such subdivisions comply with the subdivision ordinance of Kingsbury County and make recommendation to the Board of County Commissioners relating to the approval of subdivisions.

4. Amendments:

The Planning Commission may from time to time propose and make recommendation on amendments to the comprehensive plan, zoning ordinance, and subdivision regulations subject to SDCL 11-2-28.

Section 603.06. Procedures for Meetings.

1. The members of the Planning Commission shall select one (1) of their members as Chairperson and another as Vice-chairperson, who shall act as Chairperson in the Chairperson's absence. Both shall serve one (1) year terms or until their successors have been selected. Meetings of the Planning Commission shall be held at the call of the Chairperson and at such times as the Planning Commission shall determine.
2. The Chairperson, or in his or her absence the acting Chairperson, may administer oaths and compel the attendance of witnesses in order to execute the purposes of this Article.
3. All meetings of the Planning Commission shall be open to the public and conducted in accordance with the rules established by the Planning Commission. The Planning Commission shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Kingsbury County Auditor's Office and shall be public record. The Planning Commission shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.
4. A simple majority vote of a quorum of members of the Planning Commission in attendance is required to forward a recommendation, pertaining to its duties described in Section 601.03, on to the Board of County Commissioners.

CHAPTER 6.04. BOARD OF ADJUSTMENT.

Section 6.04.01. Establishment.

Within Kingsbury County, outside of incorporated municipalities, the power and jurisdiction related to this article shall be executed by the Board of Adjustment.

1. The membership of the County Board of Adjustment shall consist of five (5) members. Four (4) members from the Board of County Commissioners and one individual appointed by the Board of County Commissioners. The County Commissioner that serves in the role of Zoning Officer shall not be a member of the Board of Adjustment. The individual appointed to the Board of Adjustment shall reside in the Commissioner's District of the County Commissioner serving as Zoning Officer.
2. The Board of County Commissioners shall appoint two (2) alternates to the Board of Adjustment. If a County Commissioner acting as a Board of Adjustment member is unable to participate in a meeting, the alternate, or second alternate in turn, shall serve in the absent County Commissioner's place. The term of the Alternates shall be for three (3) years.

Section 6.04.02. Procedures for Meetings.

1. The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
2. The Board of Adjustment shall keep minutes of its proceedings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Officer and shall be public record. The Board of Adjustment shall keep record in the minutes showing the vote of each member upon each question or if absent or failing to vote, indicating that fact.

Section 6.04.04. Powers and Jurisdiction Relating to Administrative Review; Reversing Decision of Zoning Officer. [Ord #67]

- 1.** The Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Officer based on or made in the enforcement of any zoning regulation or any regulation relating to the location of structures or to interpret any map. **An appeal will not be heard until:**

- ~~1. The applicant or any other person aggrieved by the decision of the Zoning Officer shall file a written appeal with the Board of Adjustment within five (5) working days of the decision.~~
- ~~2. The Zoning Officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed was taken.~~
- ~~3. Notice of public hearing shall published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected. Written notice shall be given to the appellant seven (7) days prior to meeting.~~

~~4. The Zoning Officer shall present his/her decision to the Board of Adjustment for review.~~

~~5.2.~~ The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Officer from whom the appeal is taken.

~~6.3.~~ The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment (four (4) votes) is required to ~~overrule or amend the~~ **reverse any order, requirement, decision, decision or determination** of the Zoning Officer.

Section 6.04.05. Appeals, Record of Appeal, Hearing and Stays

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Officer and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of the zoning officer to grant or deny the permit. No other appeal such as relating to a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision is authorized. Such appeals shall be taken within a reasonable time not to exceed twenty-one (21) days, as provided by the rules of the Board of Adjustment by filing with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard on an expedited basis [Ord #67]
3. An appeal stays all proceedings in furtherance of the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, or unless the Zoning Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. [Ord #67]
4. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the office from whom the appeal is taken and on due cause shown.

5. The Board of Adjustment shall hear and decide, on not less than ten (10) days public notice prior to an affixed time and place for hearing appeals where it is alleged by the appellant that there is error in any order, requirement, permit decision, determination or refusal made by the Zoning Officer or other administrative officers in carrying out the enforcement of any provision of this Ordinance, and for interpretation of the Zoning Map. At the hearing, any party may appear in person or by agent or attorney. The Board of Adjustment shall decide the appeal within sixty (60) days of receiving a notice of appeal. Any party may appear at the hearing in person or by agent or by attorney. [Ord #67]

Section 6.04.06. Appeals to a Court of Record. [Ord #67]

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board of Adjustment. The Board of Adjustment shall respond to the petition within thirty (30) days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the board appealed from, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ.

A petitioner to the circuit court under this section shall pay all transcript costs required to complete the record of proceedings of the board appealed from.

CHAPTER 6.05. PROCEDURES FOR CONDITIONAL USES, VARIANCES, AND ZONING AMENDMENTS, AND SPECIAL PERMITTED USES.

Section 6.05.01. Powers and Jurisdiction Relating to Conditional Uses. [Ord #67]

The Board of Adjustment shall have the power to hear and decide, in accordance with the provisions of this Ordinance, requests for conditional uses or for decisions upon other special questions upon which the Board of Adjustment is authorized by this Ordinance to pass; to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under this Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance. A conditional use shall not be granted by the Board of Adjustment unless and until:

1. A written application for a conditional use is submitted, indicating the section of this Ordinance under which the conditional use is sought and stating the grounds on which it is requested.
2. The Zoning Officer shall require the applicant for a conditional use permit to notify adjacent property owners by certified or registered mail, at the cost of the applicant, of the conditional use permit or in lieu of this, at the discretion of the Zoning Officer, obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant, grant with conditions, or deny the conditional use permit, the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
6. Before granting any conditional use, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements have been made concerning the following, where applicable:
 - a. Access:
 - i. The roads providing access to the property shall be determined to be adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with the applicable road authority regarding the upgrading and continued maintenance of any roads used for conditional use requested prior to issuance of a Conditional Use Permit.
 - ii. Reasonable provisions have been made for safe vehicular and pedestrian entrance and exit of the property for daily and emergency traffic.
 - b. Parking and internal traffic:
 - i. The parking areas and driveways will be covered in materials appropriate for the internal traffic generated by the use.
 - ii. The number of parking spaces is appropriate for the proposed use of the property.
 - c. Utilities and refuse:
 - i. The manner by which electricity, water, sewer, natural gas and other utilities will be provided has been described.
 - ii. Consideration has been given to the location of refuse and service areas and manner for disposing of trash, junk, or other debris.
 - d. Screening, buffering, and open space:
 - g. The type, dimensions, and character of any fences, walls, hedges or other materials used for screening; and/or open space is appropriate for the proposed use in reference the specific property.
 - e. Lighting:
 - i. Lights associated with the use will not create a nuisance nor distract traffic.
 - ii. Brightness, intensity, glare of lights will be similar to lighting which would be customarily used for permitted uses in the applicable zoning district.

- f. General compatibility with adjacent properties and other property in the district.
 - i. Any use listed as a Conditional Use is generally compatible in the district in which it is listed.
 - ii. General compatibility is used when prescribing conditions for approval of a permit.

8. Haul Roads. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment ~~may~~ **shall** require the applicant to enter into a written ~~contract~~ **haul road agreement** with ~~any~~ **each** affected township or other governmental unit regarding ~~the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit~~ **the use, maintenance, and repair of roads used for hauling associated with the conditional use. (See Section 5.44)**

8. An affirmative majority vote of the present and voting members of the Board of Adjustment is required to approve a conditional use permit.

9. Expiration of Permit

a. Unless otherwise specified by the Board of Adjustment, a conditional use permit shall expire ~~one~~ **(1) two (2)** years from the date ~~upon which~~ it becomes effective if ~~no~~ actual construction ~~or the authorized use~~ has ~~not~~ commenced. Upon written request ~~submitted~~ to the Board of Adjustment and prior to the ~~conditional use permit's~~ expiration date, ~~the Board of Adjustment may grant a one (1) extension for up to one (1) year time extension for the conditional use may be granted by the Board of Adjustment if it determines that reasonable progress has been made toward commencement of the approved conditional use.~~

b. If a decision by the Board of Adjustment to grant a conditional use permit is appealed to circuit court the conditional use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

10. Any alteration, construction, use of earthmoving equipment, or other change pursuant to a zoning permit or allowed land use on neighboring land that began after the date on which an application for a conditional use is received, and that causes the application to fail to meet one or more of the criteria or requirements for conditional use under the zoning ordinance, does not cause the request for a conditional use permit to be considered nonconforming until a final disposition of the conditional use request is determined pursuant to SDCL 11-2-61 or SDCL 11-2-65. If the conditional use permit is granted, the conditional use shall be considered a lawful use, lot, or occupancy of land or premises and may be continued even though the use, lot, or occupation does not conform to the provisions of the ordinance. If the conditional use is not pursued by the applicant for a period of more than one **(1)** year, any subsequent use, lot, or occupancy of the land or premises shall conform with the zoning ordinance.

Section 6.05.02. Powers and Jurisdiction Relating to Variances.

The Board of Adjustment shall have the power, where, by reason of exception, narrowness, shallowness or shape of a specific piece of property at the time of the enactment of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation under this Ordinance would result in peculiar

and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantially impairing the intent and purpose of this Ordinance. A variance shall not be granted by the Board of Adjustment unless and until:

1. A written application for a variance is submitted, indicating the section of this Ordinance under which the variance is sought and stating the grounds on which it is requested.
2. The Zoning Officer may require the applicant for a variance to notify adjacent property owners by certified or registered mail, at the expense of the applicant, of the variance request or in lieu of this, at the discretion of the Zoning Officer, obtain written consent from adjacent landowners.
3. Notice of hearing shall be published once, ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected.
4. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
5. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the variance, and that the granting of the variance will not adversely affect the public interest. A variance from the terms of this ordinance shall not be granted if the following occur:
 - a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
 - b. The literal interpretation of the provisions of this ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 - c. The special conditions and circumstances do result from the actions of the applicant;
 - d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
 - e. The granting the variance request would confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
 - f. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
6. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under the terms of this regulation.

7. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this regulation in the district involved, or any use expressly or by implication prohibited by the terms of this regulation in said district.
8. The concurring vote of two-thirds (2/3) of all members of the Board of Adjustment four (4) votes is required to pass any application for a variance.
9. Expiration of a Variance: [Ord #67]
 - a. Unless otherwise specified by the Board of Adjustment, a variance shall expire ~~(1)~~ **two (2)** years from the date ~~upon which~~ it becomes effective if ~~no~~ actual construction **or the authorized use** has **not** commenced. Upon written request to the Board of Adjustment and prior to the variance, a one (1) year time extension for the variance may be granted by the Board of Adjustment. Upon written request **submitted** to the Board of Adjustment and prior to the variance's expiration date, **the Board of Adjustment may grant a one (1) extension for up to one (1) year time extension for the variance may be granted by the Board of Adjustment if it determines that reasonable progress has been made toward commencement of the approved variance.**
 - b. If a decision by the Board of Adjustment to grant a variance is appealed to circuit court the variance that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

Section 6.05.03. Zoning Amendments.

3. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, use groups, or the regulations established by this ordinance. **Proposed changes may occur in the following manners:**
 - a. A proposed change of zoning district boundaries **or regulations** may be initiated by the Board of County Commissioners, the Planning Commission, or by application of one (1) or more of the owners of property within the area requested to be rezoned.
 - b. **A proposed textual change to use groups or other regulations established by this ordinance may be initiated by the Board of County Commissioners, the Planning Commission;**
 - c. Initiated petitions ~~which create~~ **specifying and requesting textual amendments to use groups or other regulations established by** this ordinance ~~are required to submit the~~ signatures of twenty (20) percent of the landowners in the zoning district or districts requesting change.
 - d. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.

2. The following procedure for requesting a Zoning Ordinance Amendment or Zoning District Boundary Change shall be followed:

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

- a. Any required attachments and fees, including Registered or Certified Mail.
- b. ~~Intention: A complete statement giving reason and intention for the planned future use of the area proposed for amendment. (Reserved)~~
- c. ~~Site Plan: A site plan, drawn to scale, showing existing and proposed structures, uses, open space, and facilities for parking and loading, and arrangements for pedestrian and vehicular circulation of the area proposed for amendment and all abutting properties with their use and zoning district defined. Water and sewer facilities must also be shown on site plan. (Reserved)~~
- d. ~~A proposed time schedule for beginning and completion of development. (Reserved)~~
- e. Any additional information, as requested by the Zoning Officer, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
- f. The Zoning Officer shall review the application, and shall forward a summary of the application, and his/her comments regarding said application, to the Planning Commission for their review.
- g. The Zoning Officer shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Officer shall publish notice of the public hearing in a newspaper of general circulation in the area affected by the proposed amendment; such notice shall be published not less than ten (10) days prior to each board's (Planning and Zoning, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Officer shall notify all owners of property within two hundred fifty (250) feet of the proposed boundary change, by Registered or Certified Mail at the expense of the applicant, at least one (1) week before the public hearing.
- h. The public hearing shall be held. Any person may appear in person, or by agent or attorney. Minutes of the public hearing shall be recorded and kept in the records of the Planning Commission.
- i. The Planning Commission shall recommend approval or disapproval of a requested change, either in whole or in part. Recommendations for changes shall be presented to the Board of County Commissioners.
- j. Adoption. The Board of County Commissioners shall thereafter by ordinance either adopt or reject the proposed amendment. After passage, the Ordinance Amendment shall take effect on the 20th day after its publication in an official newspaper of the County.

- k. When the Board of County Commissioners approves a proposed amendment affecting the zoning classification of property, affected property owners may file a written protest to stop such an amendment from taking effect. If the protest meets the following standard, such amendment shall not become effective unless the amendment is approved by two-thirds (4 votes) of the Board of County Commissioners.
- i. Protest Standard: The protest shall be signed by at least forty percent (40%) of the owners of equity in the parcels in the area affected by the amendment, and the parcels or parts of parcels within two hundred fifty (250) feet of the area affected by the amendment.

Section 6.05.04. Procedures for Approval of Special Permitted Use Permit

1. The special permitted use procedure is an administrative review process, where the Zoning Official shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a special permitted use permit. Requests for special permitted uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. A special permitted use permit shall not be granted unless and until:
 - a. A written application for a special permitted use is submitted, indicating the section of this Ordinance under which the special permitted use is sought and stating the grounds on which it is requested.
 - b. The Zoning Official shall review the application for conformance with this ordinance.
 - c. If the Zoning Official determines that the application is in conformance with the prescribed performance standards, the Zoning Official shall make written findings certifying compliance with the specific standards governing the specific special permitted use permit and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the special permitted use permit.
 - d. The Zoning Official shall then issue the special permitted use permit subject to the applicant agreeing to any conditions prescribed by this ordinance or the Zoning Official for the special permitted use permit.
 - e. The Zoning Official shall then issue any other associated building/use permits.
 - f. If the application does not meet all of the performance standards for the special permitted use, or the applicant fails to meet any of the prescribed conditions or safeguards; the Zoning Official shall make written findings certifying that the application is not in conformance with this Section and the specific standards governing the special permitted use and deny the application. The applicant may, as appropriate:
 - a. Apply for a variance from lot area, size of structure(s) or size of yards and open spaces
 - b. Apply for conditional use permit, if eligible.
 - c. Appeal the decision of the Zoning Official in accordance with Sections 6.04.04 and 6.04.05.

- g. A special permitted use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced. Upon written request to the Zoning Official and prior to the special permitted use expiration date, a one (1) year time extension for the special permitted use may be granted by the Zoning Official.**
- h. If a decision by the Zoning Official to issue a special permitted use permit is appealed to circuit court, the special permitted use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.**

Section 6.05.045. Reapplication.

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