



# Roberts County Zoning Ordinance

4/20/2021

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**DISCLAIMER:**

The Zoning Ordinances that appear in this document are meant to reflect the most current zoning regulations adopted by Roberts County. This document is provided for informational purposes only and should not be relied upon as the definitive authority for local legislation. The official printed copies of the various zoning ordinances may be reviewed in the Office of the County Auditor.

**COMPREHENSIVE ZONING ORDINANCE  
ROBERTS COUNTY, SOUTH DAKOTA**

**ORDINANCE NO. 22**

**AN ORDINANCE AMENDING “THE ZONING ORDINANCE OF ROBERTS COUNTY” AS ESTABLISHED BY  
ORDINANCE #10 AND ALL AMENDMENTS THERETO, IN ACCORDANCE WITH THE PROVISIONS OF  
CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL  
RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH**

WHEREAS, the Roberts County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact zoning regulations and to provide for its administration, and

WHEREAS, the Board of County Commissioners has appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Roberts County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this Ordinance; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulations in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, 1967, with regard to the preparation of these regulations and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning regulations and zoning map have been filed with the Roberts County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances, or parts of regulations in conflict herewith are hereby expressly repealed;



THEREFORE, BE IT ORDAINED that the Roberts County Zoning Ordinance is hereby adopted by the Board of County Commissioners, Roberts County, South Dakota.

Adopted this \_\_\_\_\_ day of September 2019.

\_\_\_\_\_  
Chairperson  
Roberts County Board of County Commissioners

ATTEST:

\_\_\_\_\_  
Roberts County Auditor

**ARTICLE 1  
GENERAL PROVISIONS**

**Section 101. Short Title** This Ordinance may be known and may be cited and referred to as “The Zoning Ordinance of Roberts County, South Dakota,” to the same effect as if the full titles were stated.

**Section 102. Purpose.**

The purpose of the regulations contained herein is to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. Any land use conducted in conformance with the Zoning Ordinance of Roberts County, South Dakota is hereby deemed to be consistent with the purpose of this ordinance. More specifically, the Zoning Ordinance is adopted in order to achieve the following objectives:

1. To assist in the implementation of Roberts 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 insure 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 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.

**Section 103. Jurisdiction.** The provisions of this Ordinance shall apply within the unincorporated areas of Roberts County, South Dakota, as established on the map entitled “The Official Zoning Map of Roberts County, South Dakota.”

**Section 104. Provisions of the 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. Whenever 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 105. 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 106. 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 Roberts County Zoning Administrator 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 Roberts 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 107. 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 108. 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.

**Section 109. Effective Date.**

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

**Section 110. 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 Section 110 of Ordinance Number 22 of Roberts 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 110.01. 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 110.02. 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 110.03. 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, the Board of County Commissioners may by resolution adopt a new 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 and may correct drafting or other errors or omissions in the prior Official Zoning Map.

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 Roberts 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 Article 23 of these regulations

**Section 110.04 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 2**  
**APPLICATION OF DISTRICT REGULATIONS**

**Section 201. General.** The regulations set forth by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land and particularly, except as hereinafter provided.

**Section 202. Zoning Affects Every Building and Use.** No structure, permanent or temporary, or any part thereof shall hereafter be erected, converted, enlarged, constructed, reconstructed, moved 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 use of land it is located.

**Section 203. Performance Standards.**

1. No building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height or bulk limits established for the district in which the building or structure is located.
2. 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.
3. 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.
4. All sign sizes, lighting, and locations shall, at a minimum, meet all State and Federal laws and regulations.

**Section 204. NONCONFORMING USES.**

**Section 204.01. 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 204.02. 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 204.03. Use Becoming Nonconforming by Change in Law or Boundaries.** Whenever the use of a 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 204.04. 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 204.05. 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 204.06. 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 204.07. 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 204.08. 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.

**Section 204.09. 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 204.10. 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 204.11. 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. Structural alteration of buildings or structures may be made if such changes do not further 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.
2. 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.

**Section 204.12. 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.

**ARTICLE 3  
ESTABLISHMENT OF DISTRICTS**

**Section 301. Districts Created.** For the purposes of this Ordinance the unincorporated areas of the County may be divided into any of the following zoning districts:

|             |                    |
|-------------|--------------------|
| (AG)        | Agricultural       |
| <b>(LF)</b> | Lake Front         |
| (HC)        | Highway Commercial |
| (TD)        | Town District      |
| (I)         | Industrial         |

In addition to zoning districts, the FP-Flood Protection and AP-Aquifer Protection 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.

**Section 302. Prohibited Uses**

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

**ARTICLE 4**  
**AGRICULTURAL DISTRICT (AG)**

**Section 401. Statement of Intent.** The intent of the Agricultural District is to protect agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and municipal fiscal integrity.

**Section 402. Permitted Principal Uses and Structures.** The following principal uses and structures shall be permitted in the Agricultural Districts:

1. Agricultural activities and farm related buildings, including Class D Concentrated Animal Feeding Operations;
2. Single-family dwelling, but not within three-quarter mile of an existing concentrated animal feeding operation without a waiver per Section 407.2.
3. Railroad track right-of-way;
4. Wildlife propagation and fisheries services.
5. Field crops and grasslands.
6. Orchards and tree farms.
7. Public parks and recreation areas.
8. Botanical gardens (nurseries and greenhouses); without on-site retail sales.
9. Stables.
10. Grain bins.
11. Home occupations provided they meet the requirements of Section 1619.
12. Signs provided they meet the requirements of Section 1612.
13. Accessory uses and buildings.
14. Temporary roadside stands for sales of agricultural products grown or produced on the premises.
15. Private Wind Energy Conversion System (PWECS) provided they meet the requirements of Section 1634.
16. Artificial Lake

17. Type A and B manufactured homes

**Section 403. Conditional Uses.**

1. Commercial public entertainment enterprises not normally accommodated in commercial areas including, but not limited to, the following: fairgrounds, racetracks, and amusement parks music concerts, rodeos, tractor pulls, and animal and vehicle races.
2. Public utility and public service structure including transmission lines, substations, gas regulator stations, pipelines, community equipment buildings, pumping stations, and reservoirs.
3. Municipal Airports and private airstrips;
4. Churches and Cemeteries;
5. Golf courses, clubhouse, and golf driving ranges;
6. Group Home
7. Riding stables, playfields, athletic fields, swimming pools;
8. Private parks, public and recreational areas;
9. Class A, Class B, and Class C Concentrated Animal Feeding Operations provided they meet requirements of Article 27.
10. Government-owned operation and maintenance terminal for truck and other equipment;
11. 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 Section 1638.
12. Junkyards and salvage yards, provided meet the requirements of Section 1640.
13. Wireless Telecommunications Towers and Facilities provided they meet requirements of Section 1628.
14. Kennels and veterinary operations;
15. Game Lodge
16. Agribusiness activities provided it meets requirements of Section 1642.
17. Wind Energy System (WES) provided it meets requirements of Section 1613.
18. Extended home occupation (provided it meets requirements of ~~See~~ Section 1610);

19. Single-family dwelling, located within three-quarter mile of a concentrated animal feeding operation without a waiver per Section 407.2.
20. Institution farms, including religious farming communities.
21. Bed and breakfast provided it meets requirements of Section 1635.
22. Orchards and tree farms with retail sales.
23. Botanical gardens (nurseries and greenhouses), wineries with retail sales.
24. Horticulture Services.
25. Commercial Stables.
26. Target/Shooting Range provided it meets requirements of Section 1631.
27. Seasonal retail stands – including produce and fireworks - utilizing a temporary or permanent structure.
28. Livestock sales barns.
29. Automotive Tow Business/Impound Lot – provided it meets requirements of Section 1641.
30. Private clubs.
31. Domestic sanitary sewer treatment plant/facility; provided they meet the requirements of Section 1639.
32. Schools
33. Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants provided they meet requirements of Section 1620.
34. Multiple single-family dwellings on a single lot provided;
  - a. The dwelling is located on the same legal description as the existing farmstead.
  - b. The maximum number of dwelling units within the existing farmstead will not exceed two (3).
  - c. The dwelling is to be occupied by employees or relatives of the farm owner (existing farming operation).
35. Private Campground provided it meets requirements of Section 1637.

**Section 404. Minimum Lot Area and Yard Requirements. See Table 404.**

**Table 404**

|  | Minimum Lot Area                            | Minimum Lot Width                           | Minimum Front Yard <sup>1</sup>             | Minimum Side Yard                           | Minimum Rear Yard                           |
|--|---|---|---|---|---|
| <b>Permitted Uses</b>  | 1 Acre                                      | 200 Feet                                    | 80 Feet                                     | 7 Feet                                      | 25 Feet                                     |
| <b>Conditional Uses</b>  | To be determined by the Board of Adjustment | To be determined by the Board of Adjustment | To be determined by the Board of Adjustment | To be determined by the Board of Adjustment | To be determined by the Board of Adjustment |
| <b>Dwellings of Lots of Record<sup>2</sup></b>                     | 1 Acre                                      | 200 Feet                                    | 80 Feet                                     | 7 Feet                                      | 25 Feet                                     |
| <b>Dwellings on lots created after January 1, 2019<sup>2</sup></b> | 3 Acres                                     | 200 Feet                                    | 80 Feet                                     | 25 Feet                                     | 25 Feet                                     |

1. Two (2) Front yards required on all corner lots
2. Multiple Single-family dwellings on a single lot shall have sufficient lot area to comply with SDLRC Administrative Rule 74:53:01

**Section 405. Maximum Number of Approaches.** Requests for approaches to State, County, municipal, township or BIA roads must be approved by the corresponding jurisdiction. Where safety or traffic issues are of concern, consolidation or relocation of proposed approaches may be required. 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:

1. 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

**Section 406. Height Regulations:** All buildings must meet FAA standards within one (1) mile of airports. Further, no principal building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height. Exceptions include the following structures:

1. Agricultural buildings.
2. Chimneys, smokestacks, cooling towers.
3. Water tanks.
4. Wind Energy System (WES).
5. Private Wind Energy Conversion Systems.
6. Wireless Telecommunications Towers and Facilities.

7. Others, as determined by the Board of Adjustment, providing that they are not used for human occupancy.

**Section 407. Agriculture Covenant:**

1. All new residential development (farm and non-farm) shall be required to file an “Right to Farm Notice Covenant” with the Register of Deeds before the issuance of a building permit. (See Section 1630). 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.
2. 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 three-quarter (3/4) 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 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 Section 1632). 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.



**ARTICLE 7  
(RESERVED)**

**ARTICLE 8  
(RESERVED)**

**ARTICLE 9**  
**LAKE FRONT RESIDENTIAL (LF)**

**Section 901. Intent and Area.** The intent of the Lake Front Residential District LF” is to provide for residential uses of shoreline land without altering natural surrounding of the District. All land, unless otherwise zoned, within one thousand (1,000) feet of the normal high-water line of Drywood Lake, Lake Traverse and Big Stone Lake shall be contained in “LF” Lake Front Residential District and usage shall conform to the regulations for this district.

**Section 902. Permitted Principal Uses and Structures.**

1. Site-built Single-family dwelling.
2. Modular home.
3. Type A and B manufactured homes.
4. Public and private parks.
5. Agricultural or horticulture uses excluding concentrated animal feeding operations.
6. Attached garages and unattached garages shall be limited to maximum dimensions of thirty-six (36) feet by forty-eight (48) feet with maximum 14 feet sidewalls and conform to the design and exterior siding of the house.
7. Essential public services.
8. Accessory uses and 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 903. Conditional Uses.**

1. Golf courses, driving range, clubhouse and related accessory uses;
2. Resorts;
3. Convenience store;
4. Recreational sales;
5. Unattached garages with sidewalls greater than 14 feet and/or dimensions greater than 36 feet by 48 feet and/or garages that do not conform to design and exterior siding of house. Signatures from adjoining property owners are a required condition.
6. Private parks and campgrounds;

7. Twin homes.
8. Boathouses within fifty (50) feet of the high-water mark or from a point as determined by the Board of Adjustment.
9. Multiple family dwellings, including condominiums.
10. Commercial storage garage.
11. Home occupation provided it meets requirements of Section 1619.
12. Extended home occupation provided it meets requirements of Section 1610.
13. Bait shop;
14. Bar, tavern, or lounge;
15. Rental services;
16. Outdoor music event.
17. Type B manufactured home with less than 700 square feet of occupied space
18. Dwelling units in an accessory structure located on a backlot.

**Section 904. Area Regulations**

**Table 904.1**

|  | Minimum Lot Area (Sq. Ft) | Minimum Lot Width (1) | Minimum Lot Depth | Minimum Side Yard | Minimum Front Yard (2) | Minimum Rear Yard (Lake Front) (3) | Maximum Height |
|--|---------------------------|-----------------------|-------------------|-------------------|------------------------|------------------------------------|----------------|
| <b>Rural Water/Septic Tank &amp; Drainfield</b>  |                           |                       |                   |                   |                        |                                    |                |
| Single Family Dwelling                           | 20,000                    | 50'                   | 150'              | 7'                | 50'                    | 50'                                | 30'            |
| Multiple Family Dwelling                         | 43,560                    | 100'                  | 200'              | 10'               | 50'                    | 50'                                | 45'            |
| Commercial                                       | 43,560                    | 100'                  | 150'              | 10'               | 50'                    | 50'                                | 45'            |
| <b>Rural Water/Holding Tank</b>                  |                           |                       |                   |                   |                        |                                    |                |
| Single Family Dwelling                           | 20,000                    | 50'                   | 150'              | 7'                | 50'                    | 50'                                | 30'            |
| Multiple Family Dwelling                         | 20,000                    | 100'                  | 200'              | 10'               | 50'                    | 50'                                | 45'            |
| Commercial                                       | 20,000                    | 100'                  | 150'              | 10'               | 50'                    | 50'                                | 45'            |
| <b>Private Well/Septic Tank &amp; Drainfield</b> |                           |                       |                   |                   |                        |                                    |                |
| Single Family Dwelling                           | 20,000                    | 50'                   | 150'              | 7'                | 50'                    | 50'                                | 30'            |
| Multiple Family Dwelling                         | Not Allowed               | Not Allowed           | Not Allowed       | Not Allowed       | Not Allowed            | Not Allowed                        | Not Allowed    |
| Commercial                                       | Not Allowed               | Not Allowed           | Not Allowed       | Not Allowed       | Not Allowed            | Not Allowed                        | Not Allowed    |

- (1) Each lot in the LF District shall have a road frontage of not less than fifty (50) feet in width (100' for multiple family dwellings). Each lot in the LF District shall have a shoreline frontage width of not less than seventy-five (75) feet.
- (2) Side of lot facing road right-of-way or access easement. The road setback shall be fifty (50) feet from Federal and State highways and thirty (30) feet from other roads.
- (3) Measured from the known high-water mark or from a point as determined by the Board of Adjustment. In locations where sufficient data on known high water levels are not available, the elevation of the line of permanent terrestrial vegetation shall be used as the estimated high-water elevation. The Zoning Administrator may require the permit applicant to provide documentation of the normal high-water mark location on applicant's property. The applicant shall further provide an elevation certificate prepared by a registered engineer.
- (4) No structure except boathouses, piers and docks shall be placed at an elevation such that the lowest floor, including basement, is less than three (3) feet above the highest known water level.
- (5) 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) 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, 2019) 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.
- (7) There shall be no more than one (1) principal residential building on any parcel of land.
- (8) 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.
- (9) All setbacks are to be measured from the eaves.
- (10) Non-standard structures are allowed to be expanded in accordance with Section 2.04.11.
- (11) If a non-conforming or non-standard structure is destroyed as identified in Section 2.04.05, said structure may be replaced in the same footprint prior to the calamity unless the structure can meet area regulations contained herein.
- (12) Existing lots of record with a lot area of less than 20,000 square feet may be enlarged and platted while retaining building rights even if said enlargement results in a nonconforming lot. Structures are required to meet all setback requirements. Approved septic systems shall be either a sealed holding tank without drain field or a mound system to be constructed in accordance with South Dakota Administrative Rule Chapter 74:53:01.

**Section 905. Private Sewage Disposal Systems.** Individual and small on-site wastewater systems are regulated by South Dakota Department of Environment & Natural Resources guidelines for sewage disposal (Title 74, Chapter 74:53:01). In addition, the applicant shall provide the name of the certified installer that is responsible for supervision.

**Section 906. Shoreline Alterations, Filling, Grading, Dredging, and Lagooning.**

1. Shoreline stabilization, filling, grading, dredging, and lagooning projects in the “LF” District shall be governed by Section 1609 of this ordinance.

**Section 907. Easement/Waivers.**

1. Easements/Waivers per Section 407 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.

**ARTICLE 10**  
**"TD" TOWN DISTRICT**

**Section 1001.** Intent. 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 in the unincorporated towns of Roberts County (Hammer and Victor).

**Section 1002. Permitted Uses.**

1. Single-family residential usage, including Modular and Type A and Type B manufactured homes provided that provisions of Section 1622 are met.
2. Public parks.
3. Agriculture and horticulture uses, excluding feedlots.
4. Home occupations.

**Section 1003. Conditional Uses.**

1. Retail and service business.
2. Light manufacturing.
3. Bar or tavern.
4. Warehouse.
5. Multi-family housing.
6. Contractors' offices, shops and yards.
7. Manufactured home park.
8. Church

**Section 1004. Area Regulations**

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.

Minimum Yard Requirements:

- Front – Twenty-five (25) feet
- Side – Seven (7) feet
- Rear – Twenty-five (25) feet

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.

**Commercial Uses/Lots**

Lot size shall be determined by off-street parking needs; availability of water and sewage disposal systems; adjacent land uses; need for screening; and type of business. Front, side and rear yards shall be determined by the Board of Adjustment.

**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.

**Section 1005. Sewage Disposal Systems.** Individual and small on-site wastewater systems are regulated by South Dakota Department of Environment & Natural Resources guidelines for sewage disposal (Title 74, Chapter 74:53:01). In addition, the applicant shall provide the name of the certified installer that is responsible for supervision.



**ARTICLE 11**  
**AQUIFER PROTECTION OVERLAY DISTRICT**

**Section 1101. Purpose and Intent:**

1. The Roberts County Planning Commission and Board of County Commissioners recognize (1) that residents of Roberts County rely on groundwater for a safe drinking water supply, and (2) that certain land uses in Roberts 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 Roberts 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 1102. 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 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 22” dated 2006.

**Section 1103. Zone A** – Shallow Aquifer Zone A is the mapped shallow aquifer in the county. Zone A is being protected because (1) the aquifer is a valuable natural resource for future development, (2) the aquifer provides drinking water supply for individual and domestic users.

**Section 1104. Permitted Uses in Zone A:**

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 1105. 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. 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.
2. 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.

3. Expansion of existing Class A, B, C, and D Concentrated Animal Feeding Operations (Existing as of January 1, 2019) 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.
4. New public water supply wells located within two thousand five hundred (2,500) feet of a concentrated animal feeding operation or feedlot.

**Section 1106. Prohibited Uses in Zone A:**

The following uses are expressly prohibited in Zone A:

1. New concentrated animal feeding operations after January 1, 2019.
2. Manure storage areas except above ground tanks.
3. Disposal of solid waste except spreading of manure. (see Section 1107 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. Earthen storage basins and lagoons.
19. Stockpiling of solid waste.

**Section 1107. Performance Standards for Aquifer Protection Overlay Zones:**

The following standards shall apply to land uses in Zone A of the Aquifer Protection Overlay District:

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 A 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. Expansion of existing Class A, B, C and D concentrated animal feeding operations must have a Nutrient Management Plan and Manure Management and Operations 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 1108. Grant of Permit, Alteration of Use**

1. Before a permit is granted, the County Zoning Administrator must examine an application and determine that the proposed use, activity or development meets the provisions of this ordinance.
2. When securing a use permit, the owner/developer agrees to comply with performance standards in relationship to the applied for permit.
3. 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 1109. 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 in Zone A 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 1110. Elimination of County Liability**

Nothing in this ordinance shall be construed to imply that Roberts 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 1111. Underlying Zones**

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

**ARTICLE 12**  
**HIGHWAY COMMERCIAL DISTRICT (HC)**

**Section 1201. Intent.** The intent of the Highway Commercial District (HC) is to provide commercial areas for those establishments which can function most satisfactorily in an area directly related to a major vehicular circulation route due to the nature of the merchandise handled and the display space required, particularly items requiring expansive display area such as motor vehicles, trailers, and farm implements, the method of transport required of the purchases for the merchandise handled, particularly goods customarily traded in bulk such as lumber or feed requiring access for the customer to the sales area, primary dependence upon vehicular, as opposed to pedestrian, access such as drive-in facilities and all types of automotive and farm implement service, or the clientele toward which the establishments are primarily oriented, particularly travelers on the highways.

**Section 1202. Permitted Principal Uses and Structures.**

1. Field crops and grasslands.
2. Orchards and tree farms.
3. Temporary structures used for sales of agricultural products provided that there have been no past violations regarding previous sales.
4. Accessory Uses and buildings subordinate to uses listed as a permitted use or conditional use
5. 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.
6. On-Premise Signs provided they meet the requirements of Section 1612.

**Section 1204. Conditional Uses.** After proper notice and appropriate safeguards, Board of Adjustment may permit as a conditional use:

1. Truck terminals and freight warehouses.
2. Structures containing both commercial and residential uses,
3. Implement sales and service.
4. Seed sales and grain storage, fertilizer and chemical storage and sales.
5. Highway and street maintenance shops operated by a government institution.
6. Welding and machine shops.
7. Gas, oil, liquid propane, and liquid hydrogen stations, including bulk stations.
8. Public and private utilities.

9. Livestock sales.
10. Contractors' shops and yards including offices when in conjunction with a shop or yard.
11. Wholesale distributing companies.
12. Restaurants.
13. Motel/hotels;
14. Recreation vehicle sales and park.
15. Bar/Tavern.
16. Commercial stables.
17. Kennel with or without animal grooming.
18. Veterinary clinics.
19. Wireless telecommunication towers and facilities provided they meet requirements of Section 1628.
20. Convenience store/service station.
21. Seasonal retail stands utilizing a permanent structure
22. Commercial orchards, tree farms, truck gardening, and greenhouses – with retail sales.
23. Light manufacturing.
24. Adult Uses provided they meet requirements of Section 1633
25. Agri-business Activity provided they meet requirements of Section 1642.
26. Private wind energy conversion system (PWECS) provided they meet requirements of Section 1634.
27. Retail sales and trade
28. Automotive tow business/Impound lot provided they meet requirements of Section 1641
29. 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.
30. Temporary structures used for sales of agricultural products where have been past violations regarding previous sales.
31. Funeral and crematory services;

- 32. Automobile repair and service;
- 33. Off-Premise Signs provided they meet the requirements of Section 1612.
- 34. Commercial Storage Garage

**Section 1205. Minimum Lot Area and Yard Requirements.** See Table 1205.

**Table 1205**

|   | Minimum Lot Area <sup>5</sup> | Minimum Lot Width | Minimum Front Yard <sup>1</sup> | Minimum Side Yard <sup>3</sup> | Minimum Rear Yard <sup>4</sup> |
|---|-------------------------------|-------------------|---------------------------------|--------------------------------|--------------------------------|
| <b>Uses on Lots of Record<sup>2</sup></b>                     | 10,000 Square Feet            | 100 Feet          | 40 Feet                         | 10 Feet                        | 20 Feet                        |
| <b>Uses on lots created after January 1, 2019<sup>2</sup></b> | 5 Acres                       | 200 Feet          | 100 Feet                        | 50 Feet                        | 50 Feet                        |

- 1. Two (2) Front yards required on all corner lots
- 2. Multiple Single-family dwellings on a single lot shall have sufficient lot area to comply with SDLRC Administrative Rule 74:53:01
- 3. 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.
- 4. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.
- 5. For commercial and industrial uses, buildings shall occupy no more than fifty percent (50%) of the lot.

**Section 1206. Access.** It is recommended that all property in the “HC” District have access to an asphalt paved or concrete State or County Highway.

**Section 1207. Service or Access Roads.** Service or access roads may be required at the discretion of the Board of Adjustment.

**Section 1208. Sewage Disposal Systems.** Individual and small on-site wastewater systems are regulated by South Dakota Department of Environment & Natural Resources guidelines for sewage disposal (Title 74, Chapter 74:53:01). -In addition, the applicant shall provide the name of the certified installer that is responsible for supervision.

**Section 1209. Height Regulations.** No building shall exceed four (4) stories or fifty (50) feet in height. Exceptions include the following structures:

- 1. Chimneys, smokestacks, cooling towers;
- 2. Water tanks;
- 3. Wireless Telecommunications Towers and Facilities;
- 4. Wind Energy Systems (WES)
- 5. Private Wind Energy Systems (PWES)
- 6. Others, providing that they are not used for human occupancy.



**Section 1210. 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 stockpile which fence shall be maintained in safe and good repair. The County may require asphalt or concrete surfacing of parking lots.

Section 1211. Section 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.

**ARTICLE 13  
INDUSTRIAL DISTRICT (I)**

**Section 1301. Intent.** The intent of the Industrial District (I) is to provide space for certain types of industrial and/or manufacturing and/or warehousing or storage operations which are compatible to adjoining districts. Such uses generally require open storage of materials or goods either before, during, or after the manufacturing process but are of a low noise or nuisance level. Land designated for this District should be located in relation to the thoroughfare network of the community as well as rail and air if required and designated so as to not disrupt normal traffic flow. Planned Industrial Parks are encouraged in this District.

**Section 1302. Permitted Principal Uses and Structures.**

1. Field crops and grasslands.
2. Accessory uses and buildings.
3. On-premise signs provided they meet the requirements of Section 1612.

**Section 1303. Permitted Accessory Uses and Structures.** There shall be no permitted accessory uses and structures.

**Section 1304. Conditional Uses.**

1. Agricultural product processing facilities such as ethanol plants and corn/soybean processing.
2. Crematory.
3. Explosive manufacture or storage.
4. Fertilizer manufacture.
5. Incineration or reduction of garbage, dead animals, fat or refuse.
6. Soap manufacture.
7. Tanning of leather, rawhide, or skins.
8. Light Manufacturing
9. Warehousing
10. Off-premise signs provided they meet the requirements of Section 1612.
11. Adult uses. provided they meet the requirements of Section 1633.

**Section 1305. Minimum Lot Area and Yard Requirements.** See Table 1305.

**Table 1305**

|   | <b>Minimum Lot Area<sup>5</sup></b> | <b>Minimum Lot Width</b> | <b>Minimum Front Yard<sup>1</sup></b> | <b>Minimum Side Yard<sup>3</sup></b> | <b>Minimum Rear Yard<sup>4</sup></b> |
|---|-------------------------------------|--------------------------|---------------------------------------|--------------------------------------|--------------------------------------|
| <b>Uses on Lots of Record<sup>2</sup></b>                     | ½ Acre                              | 125 Feet                 | 25 Feet                               | 20 Feet                              | 20 Feet                              |
| <b>Uses on lots created after January 1, 2019<sup>2</sup></b> | 10 Acres                            | 200 Feet                 | 100 Feet                              | 50 Feet                              | 50 Feet                              |

1. Two (2) Front yards required on all corner lots
2. Multiple Single-family dwellings on a single lot shall have sufficient lot area to comply with SDLRC Administrative Rule 74:53:01
3. 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.
4. The rear yard shall be one hundred (100) feet if the lot abuts a State or County asphalt paved/concrete highway.
5. For commercial and industrial uses, buildings shall occupy no more than fifty percent (50%) of the lot.

**Section 1306. Height Regulations. None.**

**Section 1307. Sewage Disposal Systems.** Individual and small on-site wastewater systems are regulated by South Dakota Department of Environment & Natural Resources guidelines for sewage disposal (Title 74, Chapter 74:53:01). In addition, the applicant shall provide the name of the certified installer that is responsible for supervision.

**Section 1308. Performance Standards**

1. Physical Appearance. All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in the open. All outdoor storage within five hundred (500) feet of a residential dwelling shall be completely enclosed in a building or by a solid walled fence at least two (2) feet above the highest point of the stockpile which fence shall be maintained in safe and good repair. The County may require hard surfacing of parking lots.

Normal daily wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from the street.

2. Fire Hazard. No operation shall involve the use of highly flammable gases, acid, liquids, grinding processes or other inherent fire hazard. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with other county ordinances.
3. Noise. No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used, and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

4. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations.
5. Air Contaminant. Air contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated each one-half (1/2) hour. Light colored contaminants of such an opacity as to obscure an observer's view to a degree equal to or greater than the aforesaid shall not be permitted.

Particular matter of dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenths (.2) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit, except for a period of four (4) minutes in any one-half (1/2) hour, at which time it may equal but not exceed six-tenths (.6) grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit.

Due to the fact that the possibility of air contamination cannot reasonably be comprehensively covered in this section, there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health or safety of any such considerable number of persons or to the public in general or to cause or have a natural tendency to cause injury or damage to business, vegetation or property.

6. Odor. The emissions of odors that are generally agreed to be obnoxious to any considerable number of persons shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor, it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of this Ordinance.
7. Gases. The gases sulphur dioxide and hydrogen sulphide shall not exceed five (5) parts per million. All nitrous fumes shall not exceed one (1) part per million. Measurements shall be taken at the property line of the particular establishment involved.
8. Vibration. All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths (3/1,000) of an inch measured at the property line. The use of steam or board hammers shall not be permitted in the Industrial District
9. Glare and Heat. All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the property lines. No heat from furnaces or processing equipment shall be sensed at the property line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

**10. Access.** 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.

**ARTICLE 14**  
**FLOODPLAIN DISTRICT (FP)**

**Section 1400. “FP” Flood Plain District.**

**Section 1400.01. - Statutory Authorization, Findings of Fact, Purpose and Objectives.**

1. Statutory Authorization

The Legislature of the State of South Dakota has in SDCL Chapter 11-2 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County Commissioners of Roberts County, South Dakota, ordain as follows:

2. Findings of Fact

- a. The flood hazard areas of Roberts 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
- b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

3. Statement of Purpose

It is the purpose of these regulations 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 money for costly 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;
- 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; and,
- h. To ensure that those who occupy the areas of special flood hazards assume responsibility for their actions.

**Section 1400.02. Methods of Reducing Flood Losses**

In order to accomplish its purposes, these regulations include methods and provisions for:

- 1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- 2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- 3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- 4. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- 5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

**Section 1400.03. General Provisions**

- 1. Lands to Which This Ordinance Applies.

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Roberts County.

- 2. Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), dated July 20, 2009, is adopted by reference and declared to be part of these regulations. The FIRM is on file at the County Zoning Office, Roberts, SD.

- 3. Compliance

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

#### 4. Abrogation and Greater Restrictions

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations 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 these regulations, 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 statutes.

#### 6. Warning and Disclaimer of Liability

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazards or uses permitted within such areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of Roberts County, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

### **Section 1400.04. Administration**

#### 1. Establishment of Development Permit

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 1400.03.2 Application for a development permit shall be made on forms furnished by the Zoning Administrator and may include, but not be limited to: Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the forgoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any structure has been flood proofed;
- c. Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in Section 1400.05.2.b; and



- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

## 2. Designation of the Zoning Administrator

The Zoning Administrator is hereby appointed to administer and implement these regulations by granting or denying development permit applications in accordance with their provisions.

## 3. Duties and Responsibilities of the Zoning Administrator

Duties of the Zoning Administrator shall include but not be limited to:

### a. Permit Review

- i. Review of all development permits to determine that the permit requirements of these regulations have been satisfied.
- ii. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- iii. Review all development permits to determine if the proposed development adversely affects the flood carrying capacity of the area of special flood hazard. For the purposes of these regulations, "adversely affects" means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent overbank areas.
  - 1. If it is determined that there is no adverse effect and the development is not a building, then the permit shall be granted without further consideration.
  - 2. If it is determined that there is an adverse effect, then technical justification (i.e., a registered professional engineer's certification) for the proposed development shall be required.
  - 3. If the proposed development is a building, then the provisions of these regulations shall apply.

### b. Uses of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 1400.03.2, Basis for Establishing the Areas of Special Flood Hazard, the Zoning Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance with Section 1400.05.2, Specific Standards.

### c. Information to be Obtained and Maintained.

- i. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  - ii. For all new or substantially improved flood proofed structures:
    - 1. Verify and record the Actual elevation (in relation to mean sea level) to which the structure has been flood proofed.
    - 2. Maintain the flood proofing certification required in Section 1400.04.1.c.
  - iii. Maintain for public inspection all records pertaining to the provisions of these regulations.
- d. Alteration of Watercourses
- i. Notify adjacent communities and Emergency and Disaster Services, Pierre, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
  - ii. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- e. Interpretation of FIRM Boundaries

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, there appears to be a conflict between a mapped boundary and actual field conditions).

**Section 1400.05. Provisions for Flood Hazard Reduction**

1. General Standards

In all areas of special flood hazards, the following standards are required:

- a. Anchoring
  - i. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
  - ii. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. 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. Specific requirements may be:

1. Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side.
  2. Frame ties must be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
  3. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
  4. Any additions to the manufactured home must be similarly anchored.
- b. Construction Materials and Methods
- i. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - ii. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - iii. All new construction and 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.
- c. Utilities
- i. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  - ii. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
  - iii. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- d. Subdivision Proposals
- i. All subdivision proposals shall be consistent with the need to minimize flood damage;
  - ii. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
  - iii. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

iv. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).

e. Encroachments

Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited in any floodway unless a technical evaluation demonstrates that the encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.

2. Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 1400.05.3.b, Use of Other Base Flood Data, the following standards are require.

a. Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to one (1) foot above the base flood elevation.

i. Below-Grade Residential Crawlspace Construction

New construction and substantial improvement of any below-grade crawlspace shall:

1. Have the interior grade elevation that is below base flood elevation no lower than two (2) feet below the lowest adjacent grade;
2. Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceed four feet at any point;
3. Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;
4. Be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads;
5. Be constructed with materials and utility equipment resistant to flood damage;
6. Be constructed using methods and practices that minimize flood damage;
7. 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;

8. 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 meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one 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 one foot above grade;
  - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

b. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to one foot above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- i. Must be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- iii. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this paragraph. Such certifications shall be provided to the official as set forth in Section 1400.04.3.c.ii.

**ARTICLE 15**  
**PLANNING COMMISSION**  
**ESTABLISHMENT**

**Section 1501. Planning Commission Created.**

There is hereby created a County Planning Commission for Roberts County, South Dakota.

**Section 1502. Membership of the Planning Commission.**

The Planning Commission shall consist of the membership of the Board of County Commissioners. Administrative officials of the County may be appointed as ex-officio members of the commission.

**Section 1503. Terms of Members.**

The terms shall run concurrent with the terms of the membership of the Board of County Commissioners.

**Section 1504. Compensation.**

All members of the Roberts County Planning Commission shall receive compensation for meetings and mileage as established by the Board of County Commissioners.

**Section 1505 Organizations, Rules, Staff and Finances.**

Such Planning Commission shall elect its chairman from among its members for a term of one year with eligibility for re-election and may fill such other of its offices as it may create in a manner prescribed by the rules of such Commission. The Commission shall hold at least one regular meeting each month and shall adopt rules for transaction of its business and keep a record of its resolutions transactions, findings and determinations which shall be a public record. The Planning Commission may appoint such employees as it may deem necessary for its work whose appointment, promotion, demotion and removal shall be subject to the same provisions of law, including Civil Service Regulations as govern other corresponding civil employees of the county. The Commission may also contract with planners, engineers, architects and other consultants for such services as it may require. The expenditures of the Commission, exclusive of those made from funds received by it, shall be within the amount appropriated for the purpose by the Board of County Commissioners which shall provide the funds, equipment and accommodations necessary for the commission's work.

**ARTICLE 16**  
**SUPPLEMENTARY DISTRICT REGULATIONS**

**Section 1601. Visibility at Intersections.** On corner lot in any zoning district, no planting, structure or obstruction to vision shall be placed or maintained within the Clear View Triangle. The prescribed distance for measuring from the point of intersection is one hundred (100) feet. Exception: In the Lake Front Residential District, Town District, and Planned Residential District, the prescribed measuring distance from the point of intersection is fifty (50) feet.

**Section 1602. 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 a single lot,-provided, that yard and other requirements of this Ordinance shall be are met Exception: Secondary residences in the Agricultural Zone, per 4.03.34, and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met

**Section 1603. Structures to Have Access.** Every building hereafter erected or moved shall be on a lot adjacent to a street and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.

**Section 1604. Parking and Storage of Certain Vehicles.** Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residential zoned property other than in completely enclosed buildings.

**Section 1605. Minimum Off-Street Parking and Loading Requirements.** Off-street motor vehicle parking and loading space shall be provided on any lot on which any of the indicated structures and uses are hereafter established. Such space should be provided with vehicular access to a street or alley. For the purpose of computing the number of parking spaces available in a given area, the formula of two hundred fifty (250) square feet per parking space shall be required. A schedule of minimum recommended off-street parking and loading requirements found in Section 1611 may be used in all zoning districts to the structures and uses indicated.

**Section 1606. Utility Easements.**

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

**Section 1607. Sign Requirements.** No off-premise signs will be permitted along State and Federal highways except in Commercial, Highway Commercial, and Industrial Districts. State law will prevail along all Federal Aid Primary and Interstate roads. No other signs hereafter may be erected or maintained in the remaining districts except as erected by an official unit of government for the direction or control of traffic, and information to the general public shall conform to the provisions of this Ordinance.

**Section 1608. Screening.** Where any commercial or 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 1601.

**Section 1609. Shoreline Alterations, Filling, Grading, Lagooning, and dredging**

1. 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 Administrator. 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 Administrator, 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 Administrator, include review from the Corps of Engineers, US Fish and Wildlife and/or any other applicable Federal, State or Local agencies.

**Section 1610. 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 purposes of this section, provided all requirements are met, the following shall be considered extended 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; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.

## 2. Performance Standards

- a. An extended home occupation may not be changed to another extended 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.

**Section 1611. Schedule of Off-Street Parking and Loading Requirements.**

| <b>Structures and Uses</b>                               | <b>Minimum Off-Street Parking Requirements</b>      | <b>Minimum Off-Street Loading Requirement</b> |
|--|---|---|
| Bowling Alleys   | 4 spaces per alley                                  | 1 space per establishment                     |
| Churches, Synagogues and Temples                         | 1 space per 4 seats in main unit of worship         | None required                                 |
| Eating and Drinking Places                               | Parking spaces equal to 30% of capacity in persons  | 2 spaces per establishment                    |
| Educational Uses, Nursery and Primary                    | Parking spaces equal to 20% of capacity in students | 2 spaces per structure                        |
| Educational Uses, All Other                              | Parking spaces equal to 40% of capacity in students | 2 spaces per structure                        |
| Funeral Homes and Chapels                                | 8 spaces per reposeing room                         | 2 spaces per establishment                    |
| Hotels   | 1 space per 2 rental units                          | 1 space per establishment                     |
| Industrial Uses  | 1 space per 2 employees on largest shift            | 2 spaces per establishment                    |
| Libraries  | 1 space per 500 sq. ft. of floor area               | 1 space per structure                         |
| Lodging and Boarding Houses                              | 1 space per 2 rental units                          | None required                                 |
| Medical Clinics  | 5 spaces per staff doctor or dentist                | None required                                 |
| Mobile Home Park   | 2 spaces per dwelling unit                          | None required                                 |
| Motels   | 1 space per rental unit                             | None required                                 |
| Private Clubs and Lodges                                 | 1 space per 500 sq. ft. of floor area               | 1 space per establishment                     |
| Residential Structures (Including Mobile Home Dwellings) | 1 space per dwelling unit                           | None required                                 |
| Retail Sales Establishments                              | 1 space per 200 sq. ft. of gross floor area         | 1 space per establishment                     |

| <b>Structures and Uses</b>                        | <b>Minimum Off-Street Parking Requirements</b> | <b>Minimum Off-Street Loading Requirement</b> |
|---|--|---|
| Roadside Stands                                   | 4 spaces per establishment                     | None required                                 |
| Sanitariums, Convalescent, and Rest Home Services | 1 space per 3 beds, plus 1 space per employee  | 1 space per establishment                     |
| Service Establishments                            | 1 space per 200 sq. ft. of gross floor area    | 1 space per establishment                     |
| Theaters, Auditoriums, and Places of Assembly     | 1 space per 5 people in designed capacity      | 1 space per establishment                     |
| Veterinary Establishments                         | 3 spaces per staff doctor                      | None required                                 |
| Wholesaling and Distribution Operations           | 1 space per 2 employees on largest shift       | 2 spaces per establishment                    |

**Section 1612. SIGNS AND OUTDOOR ADVERTISING.**

**Section 1612.01 On – Premise and Off –Premise Signs**

1. No private sign shall be erected or maintained which:
  - a. Creates a hazard due to collapse, fire, collision, decay, or abandonment; or
  - b. 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
  - c. 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 that are permitted in zoning districts shall be subject to the following provisions:
  - a. Wall signs may be located anywhere on the wall of a building.

- b. Freestanding signs shall not project over public property.
  - c. Freestanding signs shall not be erected adjacent to a corner of two intersecting streets, unless such signs are constructed to not obstruct the view of said intersection.
  - 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 Administrator and the said official grants a permit therefore.
3. The Zoning Administrator 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.
4. On-Premise Signs: Each sign erected as an on-site sign in those 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 Section 1601. 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.
5. Off-Premise Signs: Off-site signs erected in those districts where permitted shall conform to the following requirements:
- a. Each sign shall have a maximum surface area of one thousand two hundred (1,200) 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.

## **SECTION 1613. WIND ENERGY SYSTEM (WES) REQUIREMENTS**

### **Section 1613.01. Applicability**

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

### **Section 1613.02. 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 1613.03. 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 sixty (60) days 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. A haul road agreement in accordance with county standards shall be executed between the applicant and appropriate road authority.
- 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. 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 slope 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.

- i. Distance from participating and non-participating residences, businesses, churches, and schools shall be in accordance with Table 1613-1. With the exception that the Board of Adjustment may allow setback/separation distances to be less than the established distances identified below, if the adjoining landowners agree to a lesser setback/separation distance. If approved, such agreement is to be recorded and filed with the Roberts 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.

**Table 1613-1  
WES Setbacks**

|  | Setback Distance*                         |  |
|--|---|--|
|  | Vertical Height of Tower<br>75' to 500'   | Vertical Height of Tower<br>Over 500'  |
| Participating Residence, business, church, or school     | 1,275'                                    | 1,275' plus 2.5' feet for each additional vertical foot more than 500' in height |
| Non-Participating Residence, business, church, or school | 1,275'                                    | 1,275' plus 2.5' feet for each additional vertical foot more than 500' in height |
| Distance from Public Right-of-Way                        | 110% of the height of the wind turbine**  |  |
| Distance from Property Line                              | 110% of the height of the wind turbine*** |  |

\* 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.

\*\* 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.

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

3. Towers.

a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.

b. All towers shall be tubular design.

4. 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.

5. Noise. Noise level shall not exceed 50 dB (A), average A-weighted Sound pressure including constructive interference effects as measured at the exterior wall of the closest principal and accessory structures.

a. Exception: The Board of Adjustment may allow for a greater decibel level than identified above if the participating or non-participating landowners agree to said decibel level. If approved, such agreement is to be recorded and filed with the Roberts 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.



6. 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.
7. 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.
8. Turbine Spacing. The turbines shall be spaced no closer than two and one-half (2.5) rotor diameters (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.
9. 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.
10. 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.
  - a. 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 Roberts 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.
11. 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. Collector lines and cables shall be placed as negotiated with the affected landowner. This paragraph does not apply to feeder lines.

12. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. They may be located either above or below ground. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes on public rights-of-way may be made as long as approval has been obtained from the governmental unit responsible for the affected right-of-way. 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.

13. Decommissioning/Restoration/Abandonment

- a. 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.
- b. Decommissioning Plan. At least thirty (30) days prior to construction, the applicant shall file a decommissioning plan for Board approval in accordance with the requirements of this section. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost per turbine 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.
- c. 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 months after expiration.
- d. 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.

- e. Financial Assurance. Financial Assurance. In the event the South Dakota Public Utility Commission fails to establish a decommissioning plan with financial assurances, 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. A decommissioning account is to be funded by the turbine owner 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 Administrator.
    - v. The financial assurance plan follows ownership of the wind turbines.
    - vi. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.
    - vii. Beginning in year ten (10) following the beginning 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 decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the turbine owner.
    - ix. If the turbine owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
  - f. 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.
14. Permit Expiration. The permit shall become void if no construction as identified in the application has commenced within three (3) years from the date of County issuance; or if a State Permit from the South Dakota Public Utility Commission has not been issued within two (2) years of county issuance; or within two (2) years of the final decision regarding any appeal to circuit court relating to the issuance of the permit.

15. Information Required to Obtain a Permit.

- a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map(s) 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 and buildings.
- 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.
- f. Proof of right-of-way easement for access to transmission lines and/or utility interconnection.
- g. Location of other WES in general area.
- h. Project schedule.
- i. Mitigation measures, if applicable (i.e. haul roads, communication, aviation, environmental, etc.)
- 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 shall be included in the application.
- k. Final haul road agreements to be submitted sixty (60) days prior to construction

**Section 1614. 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.

**Section 1615. UNLICENSED VEHICLES.** Vehicles not in use and without current license may not be kept in any uncovered or unscreened area or 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.

**Section 1616. FENCES.**

**Section 1616.01. 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 1616.02. 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 are exempt from the requirements of this Section.

**Section 1616.03. 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 Section 1601. 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 Front Residential 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.

**Section 1617. MOVED IN BUILDINGS.**

1. Any building to be moved requires a building permit. The Zoning Administrator 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 Article 22 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 Administrator.

- c. Must have signatures, by petition, of sixty-six percent (66%) of landowners within two hundred (200) feet, excluding streets and public rights-of-way). 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 Administrator 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 section.

**Section 1618. AGRICULTURAL ZONING DISTRICT 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 one hundred (100) feet of a public right-of-way. Exception: A shelterbelt may be planted, with the non-windward row placed 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 Section 1618.2.
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 16.01. 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.

### Controlled Area Illustration



**Section 1619. 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.

**Section 1620. SAND, GRAVEL OR QUARRY OPERATION; ROCK CRUSHERS; MINERAL EXPLORATION AND DEVELOPMENT AND CONCRETE AND ASPHALT MIXING PLANTS REQUIREMENTS.**

**Section 1620.01 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 1620.02 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 1620.03 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 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 1620.04 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.
6. 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.
  7. 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.
  8. Solution mining, in situ mining of an ore body with circulation of chemicals through injection and recovery wells, for minerals is prohibited.

**Section 1621. 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 Administrator. If a public sewer is available, all such structures must be connected to said public sewer.

**Section 1622. MANUFACTURED HOME PARKS.**

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

## **Section 1623. MANUFACTURED HOME REGULATIONS.**

### **Section 1623.01 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:

- i. Have more than 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 twenty (20) 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.

b. Type B manufactured home shall:

- 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 home is fourteen (23) 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.
- iv. 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.
- 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. 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.

### 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 framework 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 Administrator 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 from Maximum Age Requirement

Type A and B manufactured homes may receive a variance from the maximum age requirement. The Board of Adjustment may grant a variance 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 Administrator that the said manufactured home complies with the gas, plumbing, electrical, and construction requirements of Roberts County.
- c. That the applicant shall obtain the written consent of sixty-six (66) percent of 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 1624. 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. Have siding material of a type customarily used on site-constructed residences.
- g. Have roofing material of a type customarily used on site-constructed residences.

**Section 1625. 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. Except in the Lake Front District, 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.
6. Commercial and Industrial Districts. In any Commercial 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.
7. Town, Lake Front Residential, and Planned Residential Districts. Accessory uses shall be permitted for the principal permitted uses and conditional uses of the Town, Lake Front Residential, and Planned Residential Districts only in accordance with the provisions of the Table 16.16.1.
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.

**Table 16.25-1**

**Permitted Accessory Uses: TD, LF, and PR Districts**

| Principal Use   | Permitted Accessory Uses  |
|---|---|
| Single-family dwellings; duplexes; townhouses and multiple-family dwellings; nursery schools and Day care centers | <ol style="list-style-type: none"><li>1. Private garages.<ol style="list-style-type: none"><li>a. Attached and unattached garages shall be limited to maximum dimensions per Section 902 and conform to the design of the house.</li><li>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.</li><li>c. Unattached garages shall be limited to maximum sidewalls of twelve and one-half (12 ) feet; and a maximum of 4/12 roof pitch or to conform to the design of the house.</li></ol></li></ol> |

- 1. Buildings or structures for customary residential storage purposes not over ten (10) feet in height and not exceeding one hundred fifty (150) square feet in gross floor area.
  - 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.

**Section 1626. 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 1626.01. 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 1626.02. 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 LF-Lake Front Residential 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 LF and PR Districts, on through lots and reversed frontage lots, a front yard must be provided on both streets.

4. In the LF 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 1626.03. Exceptions to Yard Requirements.**

The following exceptions may be made to the yard requirements in the LFR 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.

**Section 1627. 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.

**Section 1628. WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES.**

**Section 1628.01. 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 1628.02. 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 Telecommunications 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 Roberts 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 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 1628.03. 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 1628.04. 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 1628.05. 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 16.28.05 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 1628.06. 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 1628.07. 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 1628.08. 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 1628.09. 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 1628.10. 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 1628.11. 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 1628.12. 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, that 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 1628.13. Abandonment.**

1. If any Tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the Roberts 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 1628.14. Action of the Board of Adjustment.**

1. Roberts 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. Roberts 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.

**Section 1629. SOIL EROSION AND SEDIMENTATION CONTROL.**

1. Before issuing a building permit, the Zoning Administrator may require a filing of a certificate of intent to adhere to the county soil loss standards developed by the Roberts County Conservation District. The Zoning Administrator shall consult the Roberts 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 Administrator shall undertake those actions outlined herein in order to bring about compliance.

**Section 1630. 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 Front Residential and Planned Residential Districts.

Prepared by:

Roberts County Zoning Administrator (or by Grantor or Grantor's Attorney)  
Zoning Administrator Address (or Grantor's or Grantor's Attorney's address)  
Sisseton, SD 57262 (or Grantor's or Grantor's Attorney's city)

**RIGHT TO FARM NOTICE COVENANT**

You are hereby notified that the property you are purchasing is in or near agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural operations permitted by Roberts County zoning regulations. Agricultural operations 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 agricultural 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 agricultural operations to expand. 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 Roberts County Board of Adjustment.

Legal Description: \_\_\_\_\_

\_\_\_\_\_  
Signature

STATE OF SOUTH DAKOTA COUNTY OF ROBERTS

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 \_\_\_\_\_



**Section 1631. RANGE REQUIREMENTS.**

**Section 1631.01. Conditional Use Permits.**

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

**Section 1631.02. 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 County 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 1631.03. 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 dBa.
5. All Ranges shall be designed using the NRA Range Source Book as a guideline.

**Section 1631.04. 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 1631.05. 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 1631.06. 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.

**Section 1632. WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following waiver is to be utilized as required for farm and non-farm residential development in the Agricultural, Lake Front Residential, and Planned Residential Zoning Districts which is located within three-quarter mile of an existing concentrated animal feeding operation in the Agricultural Zoning District (See Section 4.09.b)

Prepared by:

Roberts County Zoning Administrator (or by Grantor or Grantor's Attorney)  
Zoning Administrator Address (or Grantor's or Grantor's Attorney's address)  
Sisseton, SD 57262 (or Grantor's or Grantor's Attorney's city)

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

The following waiver is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within three-quarter (3/4) 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)

1. Purpose. This waiver is required for any dwelling to be constructed within three-quarter (3/4) mile of an existing concentrated animal feeding operation as defined by the Roberts County Zoning Ordinance.

2. Waiver:

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

\_\_\_\_\_

In accordance with the conditions set forth in the decision of Roberts 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 three-quarter (3/4) 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 three-quarter (3/4) mile of an existing concentrated animal feeding operation. 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 Roberts County Zoning Ordinance.
2. Further, the grantors hereby waive all common law rights to appeal any decision of Roberts 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 ROBERTS

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (Grantors).  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Section 1633. 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 1633.01. 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.

3. The 1,000-foot restriction provided for in 1633.01.2 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 1633.02. Required License.**

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

**Section 1633.03. 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 Roberts 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 Roberts County, including zoning ordinances.
  - b. That the premises and each manager and employee comply with the provisions of Section 1633.03.1 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 1633.03 within fifteen (15) days after completion of such investigation, the Roberts 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 1633.03 within fifteen (15) days after completion of such investigation, the Roberts 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 1633.04. Conditions & Regulations Governing Operation; Violation; Penalty.**

1. The following regulations shall govern and control the business of operating an adult use in Roberts 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 1633.03.
  - 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 1633.04.1, 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 1633.03 and 1633.04 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 1633.05 Suspension or Revocation.**

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

1. The Roberts County Commissioners may temporarily suspend any license issued under the terms of this article when he 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 Roberts 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 Roberts 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.

**Section 1634. 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, 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.

**Section 1635. 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.

### **Section 1636. Pipeline Structures.**

Any above ground structure associated with a pipeline requiring South Dakota Public Utilities Commission approval shall also require a Roberts 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 Roberts 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.

### **Section 1637 Private Campground**

#### **Section 1637.01 Purpose.**

The purpose of this section 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 1637.02 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 Administrator 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 Roberts County personnel immediate access to determine if the terms and conditions within the conditional use permit are complied with.
- m. 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.
- n. All applicable requirements of the South Dakota Department of Health shall be met.
- o. 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 1637.03 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.

**Section 1638. 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.

**Section 1639. 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 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.

**Section 1640. 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 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.

**Section 1641. 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.

**Section 1642. Agribusiness Activities:**

**Section 1642.01. 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 1642.02. Requirements**

1. Agribusiness activities must have access to a concrete or bituminous asphalt, or county-maintained gravel street.
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.

### **Section 1643. Solar Energy Systems (SES)**

#### **Section 1643.01. 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 1643.02. 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 1643.03. 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 1643.05 (4)



- b. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or other 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 1643.05 (6)
  - f. The fencing and gates required to be around the exterior perimeter. See 1643.05 (8)
  - g. The storm water pollution and prevention plan. See 1643.04 (1)
  - h. The decommissioning plan. See 1643.06
  - i. Weed/Grass control plan 1 See 643.05 (12)
  - j. Haul roads identified. See 1643.05 (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 1643.04. 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 1643.05. 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 five hundred (500) feet from 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 1616.03 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 farm 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 state, county or township governmental body having jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.
  - 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 1643.06. 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 administrative 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 as decommissioning costs are incurred and paid for by the SES owner.
  - 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.

**ARTICLE 17**  
**ADMINISTRATIVE PROCEDURE AND ENFORCEMENT – BUILDING PERMITS**

**Section 1701. Administration and Enforcement.** An administrative official, who shall be known as the Zoning Administrator and who shall be designated by the County Board of Commissioners, shall administer and enforce this Ordinance. He/she may be provided with the assistance of such other persons as the County Board of Commissioners may direct.

**Section 1701.01. Zoning Administrator Duties.**

The powers and duties of the Zoning Administrator 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 Roberts County Planning Commission and/or the Roberts County Board of Adjustment and/or Roberts 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 Administrator shall receive applications required under this ordinance, specifically but not limited to Building Permits, Conditional Uses, Variances, and Zoning Amendments.

- a. For building permits, the Zoning Administrator shall approve the application only in accordance with the provisions of the County's Zoning Ordinance.
- b. For Conditional Uses and Variances, the Zoning Administrator shall review the application, and shall make recommendations regarding said application to the Board of Adjustment.
- c. For Zoning Amendments, the Zoning Administrator shall review the application, and shall make recommendations regarding said application to the Planning Commission and Board of County Commissioners.

**Section 1701.02. Right of Entry.**

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

When the Zoning Administrator 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 Administrator or an authorized representative for the purpose of inspection and examination pursuant to this regulation.

**Section 1701.03. Stop Order.**

Whenever any work is being done contrary to the provisions of this ordinance, the Zoning Administrator 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 Administrator to proceed with the work.

**Section 1701.04. Occupancy Violation.**

Whenever any building or structure regulated by this ordinance is being used contrary to the provisions of this ordinance, the Zoning Administrator 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.



**Section 1702. Building Permits Required.**

1. No building shall be erected, partially erected, moved, added to, structurally altered or used without a permit therefore issued by the Zoning Administrator. No building permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance, unless he/she received a written order from the Board of Adjustment Commission in the form of an administrative review, 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 1703. Application for Building Permits.** All applications for building permits shall be accompanied by a drawing showing location of building on lot or site with footage from side, front & back to lot line, road and or street. The County may require the drawing to drawn to scale.

The application shall include such other information as lawfully may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; and number of families, housekeeping units, or rental units the building is designated to accommodate; conditions existing on the lot; approximate elevation; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this Ordinance.

A copy of the application for building permit shall be returned to the applicant by the Zoning Administrator after he shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. If a building permit is refused, the Zoning Administrator shall state the reasons for such refusal in writing. The original shall be retained by the Zoning Administrator. The issuance of a building permit shall, in no case, be construed as waiving any provisions 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 Section 106 and shall require a new building and use permit.

**Section 1704. Expiration of Building Permit.** If the work described in any building permit has not begun within twelve (12) months from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Administrator; 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) months from the issuance of the permit but has not been completed, the Zoning Administrator may extend the building/use permit and additional twelve (12) months.

**Section 1705. Construction and Use to be as Provided in Applications, Plans, and Permits.** Building permits issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance and punishable as provided by Section 106 hereof.

**Section 1706. Permits Posted.** 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.

**ARTICLE 18  
(RESERVED)**

**ARTICLE 19**  
**BOARD OF ADJUSTMENT**

**Section 1901. Establishment.** Within Roberts 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 members of the Roberts County Board of County Commissioners.
2. The Board of County Commissioners may 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 1901. Proceedings of the Board of Adjustment.** The Board of Adjustment shall adopt rules necessary for the conduct of its affairs and in keeping with the provisions of this Ordinance. The Board of Adjustment shall keep a record of all proceedings. 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.

The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the Auditor. The Board of Adjustment shall adopt from time to time, such rules and regulations as it may deem necessary to carry appropriate provisions of this Ordinance into effect.

**Section 1902. Hearings; Appeals; Notices.**

1. It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by the laws of the State of South Dakota.
2. An appeal to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the County-affected by any decision of the Zoning Administrator, that is not a ministerial act or other preliminary act to bring an application or matter before the Board of Adjustment for hearing and a final decision.. Such appeal shall be filed with the Zoning administrator specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days.

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 Administrator 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.

**Section 1903. Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board of Adjustment, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Adjustment, after the notice of appeal shall have been filed with the Zoning Administrator, that by reason of facts stated in the certificate, a stay would, in the Zoning Administrator's opinion, cause imminent peril to life or property.

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, unless the Administrative Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

**ARTICLE 20**  
**BOARD OF ADJUSTMENT**  
**POWERS AND DUTIES**

**Section 2001. Administrative Review.** The Board of *Adjustment* is to hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation relating to the location or soundness of structures and for interpretation of the Zoning Map.

In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal 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 Administrator from whom the appeal is taken.

The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in the ordinance

**Section 2002. Conditional Uses,** The Board of Adjustment shall have the power to 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 specifically authorized by this Ordinance to pass; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant conditional uses with such 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 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. Notice of public hearing shall be published once, at least ten (10) days prior to the Board of Adjustment public hearing, in a paper of general circulation in the area affected. The County will 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.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
4. The Board of Adjustment shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.
5. Before any conditional use shall be issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing individual conditional use and that satisfactory provision and arrangement has 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:
  - i. 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 it is listed in.
  - ii. General compatibility is used when prescribing conditions for approval of a permit.

- g. The roads providing access to the property are adequate to meet the transportation demands of the proposed conditional use. The Board of Adjustment may require the applicant to enter into a written contract with any affected township or other governmental unit regarding the upgrading and continued maintenance of any roads used for the conditional use requested prior to issuance of a Conditional Use Permit.
6. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this regulation. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this regulation and punishable under the terms of this regulation.
7. If the conditional use or construction associated with the conditional use has not commenced within two (2) years of the granting of the conditional use by the Board of Adjustment or by a specific time established by the Board of Adjustment, the approved conditional use shall expire.
8. The concurring vote of two-thirds (2/3) of those Board of Adjustment members present is required to pass any application for a Conditional Use.
9. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance.
10. The Board of Adjustment may, after notice and hearing, revoke a conditional use permit in the event of a violation of any of the conditions upon which such permit was issued. In addition, the conditional use permit may not be transferred during any violation.
11. No application requesting a conditional use permit, of which application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment, shall again be considered by the Board of Adjustment before the expiration of twelve (12) months from the date of the final action of the Board of Adjustment.

### **Section 2003. Variances.**

The Board of Adjustment shall have the power, where by reason of exceptional 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, as such relief may be granted without substantially impairing the intent and purpose of this Ordinance.

1. No such variance shall be authorized by the Board of Adjustment unless it finds that the strict application of the Ordinance would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not be of substantial detriment to adjacent property and the character of the District will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variances for purposes of convenience, profit and caprice.
2. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.
3. A variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance; that the special conditions and circumstances do not result from the action of the applicant; that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structure, or buildings in the same district.
4. 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. The Zoning Administrator 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 Administrator, obtain written consent from adjacent landowners. 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. The public hearing shall be held. Any party may appear in person or by agent or by attorney; the Board of Adjustment shall make finding that the requirements of this section have been met by the applicant for a variance; the Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structures; the Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
5. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under the terms of this Ordinance.
6. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in said district.



7. 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.

Unless otherwise specified by the Board of Adjustment, a variance shall expire one (1) year from the date upon which it becomes effective if no work has commenced

8. No application requesting a variance, of which application includes any such property either entirely or substantially the same as that which has been denied by the Board of Adjustment, shall again be considered by the Board of Adjustment before the expiration of twelve (12) months from the date of the final action of the Board of Adjustment.

**ARTICLE 21**  
**APPEALS**

**Section 2101. Duties of Zoning Administrator, Board of Adjustment, Board of County Commissioners, and Courts on Matters of Appeal.** It is the intent of this Ordinance that all questions of interpretation and enforcement shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only in appeal from the decisions of the Zoning Administrator, and that recourse from the decisions of the Board of Adjustment shall be to the court as provided by law.

**Section 2102. Appeals to a Court of Record-**

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 County Auditor.

**ARTICLE 22**  
**SCHEDULE OF FEES, CHARGES, AND EXPENSES**

**Section 2201. Schedule of Fees, Charges, and Expenses.** The Board of County Commissioners shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, administrative fees, appeals, and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the office of the Zoning Administrator and may be altered or amended only by the Board of County Commissioners. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

**ARTICLE 23  
AMENDMENT**

**Section 2301. Amendments.**

1. Whenever the public necessity, safety, and general welfare or good zoning practices justifies such action, and after consideration and recommendation by the Planning Commission, as provided herein, the Board of County Commissioners may change zoning district boundaries, or the regulations established by this ordinance. A proposed change of zoning district boundaries or regulations may be in the following manners:
  - a. The Board of County Commissioners may direct the Planning Commission, to consider a change of zoning district boundaries or regulations;
  - b. The Planning Commission may initiate a change of zoning district boundaries or regulations;
  - c. One (1) or more of the owners of property within the area requested proposed to be rezoned may present a request to change the zoning district boundaries;
  - d. Initiated petitions specifying and requesting amendments to the regulations of this ordinance containing signatures of twenty (20) percent of the landowners in the zoning district or districts may be presented to the Zoning Administrator.
2. Unless otherwise provided for in these regulations, any change in these regulations, shall require Board of County Commissioners approval of an ordinance describing said changes. The Board of County Commissioners may not consider said ordinance until the Planning Commission has delivered a recommendation to either approve or not approve said ordinance amendment.
3. The following procedure for requesting a Zoning Amendment or Zoning District Boundary Change shall be followed:
4. The landowner or other person(s) requesting the Amendment/Boundary change shall complete an application, available from the Zoning Administrator. Completed applications shall be returned to the Zoning Administrator 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. Any additional information, as requested by the Zoning Administrator, as lawfully may be required to determine conformance with and provide for enforcement of this ordinance.
  - c. The Zoning Administrator 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.

- d. The Zoning Administrator shall set the date, time, and place for public hearings to be held by the Planning Commission and Board of County Commissioners. The Zoning Administrator 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 Commission, Board of County Commissioners) public hearing. If the proposed amendment will change the boundaries of a zoning district, the Zoning Administrator 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.
  - e. 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.
  - f. The Planning Commission shall either recommend approval or denial of the amendment to the Board of County Commissioners.
  - g. The Board of County Commissioners shall either approve or deny the ordinance describing the proposed changes to these zoning regulations, in accordance with standard procedures for reading, approval, publication, and effective date.
  - h. After passage the Ordinance Amendment shall take effect on the 20th day after its publication in the official newspaper of the County.
5. No application requesting a zoning ordinance amendment or district classification change which application includes any such property either entirely or substantially the same as that which has been denied by the County Commission, shall again be considered by the County Commission before the expiration of twelve (12) months from the date of the final action of the County Commission.

**ARTICLE 24**  
**(RESERVED)**

**ARTICLE 25**  
**(RESERVED)**

**ARTICLE 26  
DEFINITIONS**

**Section 2601. General.** For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall is mandatory, 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 words 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.

**Section 2602.** For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

**Accessory Structure Dwelling Unit:** A dwelling unit within an accessory structure located on a backlot, in which less than fifty-five (55) percent of the structure is dedicated to dwelling purposes and where ownership of said structure is adjacent to a waterfront parcel held in common with the backlot.

**Accessory Use or Structure.** 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.

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

**Adult Amusement or Entertainment Establishment.** Any use which has as part of its operations 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” as herein defined, or which features topless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

**Adult Bookstores.** An establishment having as a substantial or significant portion of its stock and trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, or an establishment with a segment or section devoted to the sale or display of such materials.

**Adult Mini-motion Picture Theater.** An enclosed building with a capacity for less than fifty (50) persons used for presenting material for observation by patrons and which excludes minors by virtue of age.

**Adult Motion Picture Theater.** An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” as herein defined, for observation by patrons therein.

**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 amusement or entertainment establishment, adult bookstores, adult mini motion picture theaters, adult motion picture theaters, and adult photo studios.

**Area of Special Flood Hazard.** Means the land in the flood plain within a community subject to a one percent (1%) or greater chance flooding in any given year.

**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.

**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 Unit.** (See Article 27)

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

**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.** 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, 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 Roberts 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 Section 5.38.

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

**Area of Special Flood Hazard.** Means the land in the floodplain subject to a one (1) percent or greater chance of flooding in any given year. The area of a special flood hazard refers to the area subject to inundation during the base 100-year flood.

**Array/Solar Array.** Is the collection of two or more connected solar modules or panels.

**Automobile Service Station.** Buildings and premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail and where, in addition, the following services may be rendered and sales made, and no other:

1. Sale and servicing of spark plugs, batteries, and distributors and distributor parts;
2. Tire servicing and repair, but not recapping or regrooving;
3. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors and the like;
4. Radiator cleaning and flushing;
5. Washing and polishing, and sale of automotive washing and polishing materials;
6. Greasing and lubrication;
7. Providing and repairing fuel pumps, oil pumps, and lines;
8. Minor servicing and repair of carburetors;
9. Emergency wiring repairs;
10. Adjusting and repairing brakes;
11. Motor adjustments;
12. Sales of cold drinks, packaged foods, tobacco, and similar convenience goods for automobile service station customers, as accessory and incidental to principal operation; and
13. Provision of road maps and other informational material to customers, provision of restroom facilities.

Uses permissible at an automobile service station do not include major mechanical and body work, straightening of body parts, painting, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in automobile service stations. An automobile service station is not a repair garage nor a body shop.

**Backlot:** An individual lot physically separated from by a legally conveyable parcel or road right-of-way/easement which is owned in common with a waterfront parcel.

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

**Base flood.** Means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

**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 Section 1635.

**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.

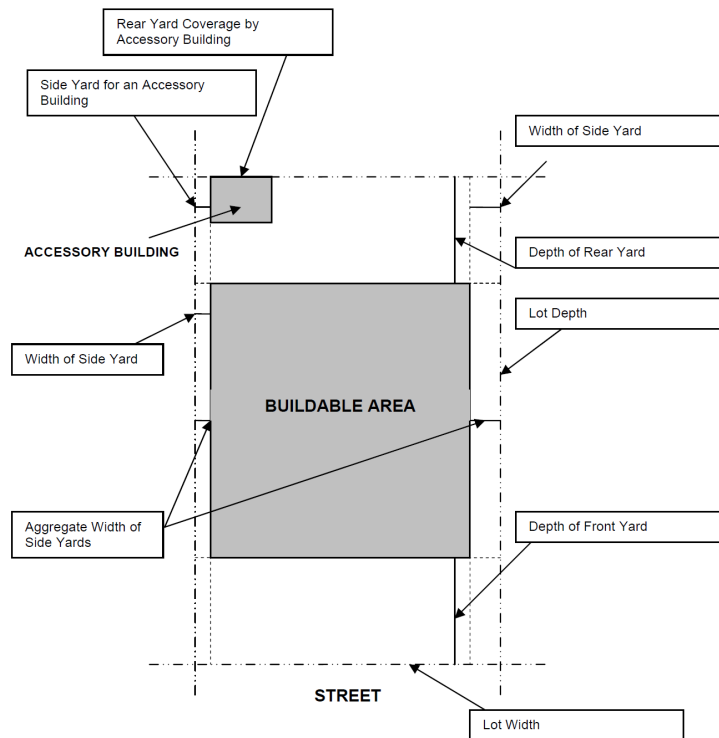
**Board of County Commissioners.** The Roberts County Board of Commissioners.

**Boathouse.** A boathouse is a structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts. A "wet boathouse" is a boathouse which extends over the water (beyond the ordinary high-water mark). A boat house shall not include living quarters or be used as a dwelling unit.

**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 is no communicating doors or windows or similar openings. A principal building including covered porches, and paved patios, and decks is a building in which is conducted the principal use of the lot on which it is situated.

**Buildable Area.** 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).

### **Buildable Area Illustration**



**Building, Height of.** The vertical distance from the grade to the peak (highest point of the structure).

**Calamity.** An event causing great and often sudden damage or distress to structures or use of land.

**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.

**Certified Crop Advisor.** Means any crop advisor/agronomist certified by the American Society of Agronomy.

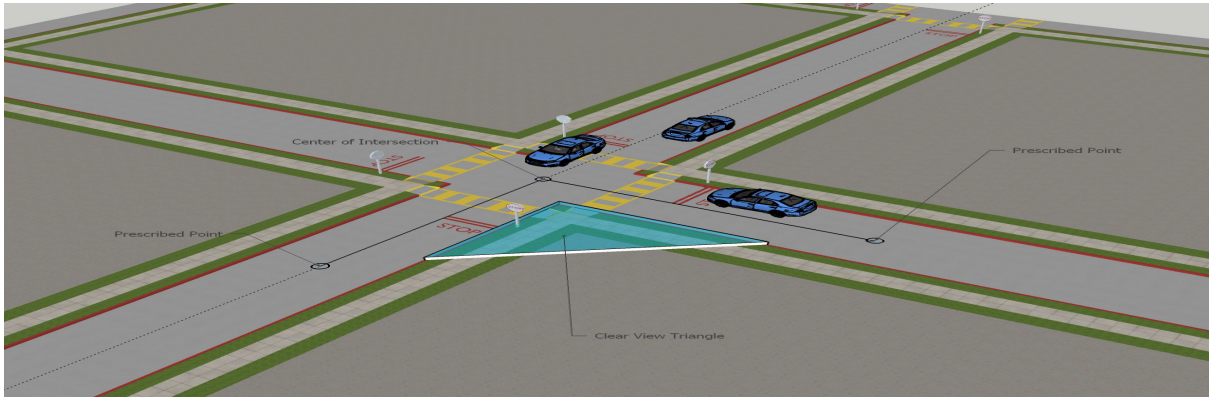
**Chemigation.** The process of applying agricultural chemicals (fertilizer or pesticides) through an irrigation system by injecting the chemicals into the water.

**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 Roberts 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 (See Illustration below).

#### **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.

**Commercial Vehicles.** Any motor vehicle licensed by the state as a commercial vehicle.

**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 Roberts County.

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

**Concentrated Animal Feeding Operation, New.** A new Concentrated animal feeding operation is a concentrated animal feeding operation which is located where one previously did not exist; or an expansion of an existing concentrated animal feeding operation from one class to a new class.

**Conditional Use.** A conditional use is 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 evaluation and approval by the Board of Adjustment and are administrative in nature.

**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 mrems 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 cleanup 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 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.

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

**Density.** Pertaining to the number of dwelling units per net acre or gross acre, as indicated for the appropriate zoning district. Residential District density shall not be exceeded for new subdivisions nor exceeded for re-subdivision of existing platted land.

**Development (In reference to Section 1400).** Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation, or drilling operations located within the area of special flood hazard.

**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.

**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 a mobile home or manufactured home.

**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, 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 long basis and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking, bathroom, and sleeping facilities.

**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.

**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.

**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 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 Article 27).** 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 Article 27).** A 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.

**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 January 1, 2019.
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 Section 1610.

**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.



**Flood or Flooding.** Means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

**Flood Insurance Rate Map (FIRM).** The official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS).** A Flood Insurance Study (FIS) is a book that contains information regarding flooding in a community and is developed in conjunction with the Flood Insurance Rate Map (FIRM).

**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.

**Floor Area.** The sum of all gross horizontal enclosed area of the several floors of a building and its accessory building on the same lot excluding basement floor areas and non-enclosed portions of the structure. All dimensions shall be measured between exterior faces of walls.

**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.

**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 Roberts 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

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

**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.

**Ground-Mount.** A solar energy system mounted on a rack or pole that rests or is attached to the ground.

**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.

**Habitable Floor.** Means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

**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.

**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. When fill is required to meet this elevation, the fill shall be required to stabilize before construction is begun.

**Home Occupation.** An occupation conducted in a dwelling unit subject to Section 1619.

**Horticulture.** The art or science of growing flowers, fruit, and vegetables.

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

**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 Section 1645.

**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.

**Inventory (in reference to Article 27).** The total number of animal units located on a concentrated animal feeding operation.

**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. Junkyards shall comply with Section 1640.

**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.

**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, occupied or intended for occupancy by a use permitted in this Ordinance including one (1) principal building together with its accessory buildings, open spaces and parking spaces required by this ordinance.

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

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

**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 January 1, 2019.

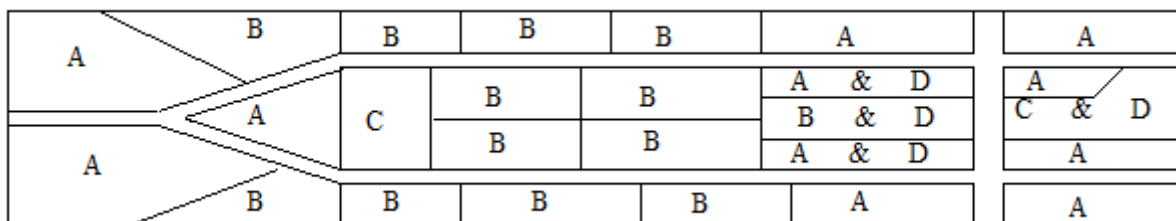
**Lot Types:** See figure below:

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

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

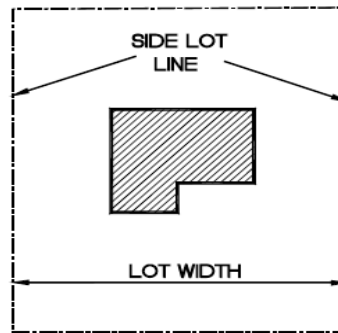
**Lot, Interior.** Defined as a lot other than a corner lot with only one frontage on a street. (Lot B)

**Lot, 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 C and Lot C & D).



**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. (see below).

### Lot Width Illustration



**Manufactured Home.** See Section 1623.

**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.

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

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

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

**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.

**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 Section 1624.

**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.

**MREM. One-thousandth of a REM.**

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

**Nonstandard Concentrated Animal Feeding Operation.** A concentrated animal feeding operation existing which is classified as a nonstandard use in accordance with Article 27.

**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.

**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 listed as a “permitted use” in a particular zoning district and subject to the restrictions applicable to that zoning district. Permitted uses are allowable by right and simply require the property owner to obtain a permit to establish the use based upon a properly filed application, without further action.

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

**Planning Commission.** The board appointed by the Roberts County Board of County Commissioners to serve as the Planning Commission.

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

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

**Principal Building.** A building in which is conducted the primary or predominant use of the lot on which it is located. For example, a dwelling on a residential lot.

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

**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 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.** Constitutes one or any combination of the following: a commercial business—having on/off liquor, retail sale of grocery supplies, boat rental, bait/tackle sales, dance facilities, eating establishments, and cabins under single ownership for lease or rent.

**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.

**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.

**Sand, Gravel, or Quarry Operation.** An operation which uses surface excavation techniques in order to extract sand and/or gravel. If the operation is not used for commercial purposes or owned by a governmental entity, the operation is deemed to be a private sand, gravel or quarry operation. See Section 1611.

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

**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.

**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. In regard to Concentrated Animal Feeding Operations the separation distance shall be measured from the wall line of the neighboring principal building to the wall line of the feedlot or structure housing animals and/or manure management facility.

**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 tree 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 Section 1618.

**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.

**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 designed to inform or attract the attention of persons not on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:

1. Signs not exceeding one (1) square foot in area and bearing only property numbers, post box number, names of occupants of premises or other identification of premises not having commercial connotations;
2. Flags and insignia of any government except when displayed in connection with commercial promotion;
3. Legal notices; identification, informational, or directional signs erected or required by governmental bodies;
4. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights; and
5. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

**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, one or more of the following factors are considered and/or may be prescribed as conditions of granting a permit:

1. Whether the site has or will obtain a General Water Pollution Control Permit for Concentrated Animal Feeding Operations from the South Dakota Department of Environment and Natural Resources; or
2. Whether the site will obtain a Certificate of Compliance from the South Dakota Department of Environment and Natural Resources; or
3. Whether engineered plans have been prepared/reviewed by an engineer licensed in the State of South Dakota to determine runoff and infiltration of solid waste will not exceed volumes allowed by the State of South Dakota Department of Environment and Natural Resources if a General Water Pollution Control Permit for Concentrated Animal Feeding Operations was applicable; or
4. Whether the changes to the existing manure management system is considered an improvement from existing practices at a site with no substantiated complaints prior to an application being made.

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

**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.

**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.

**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.

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

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

**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, 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.

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

**Structure.** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, manufactured homes, walls, fences, signs, 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 (In regard to Section 1400).** 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.

**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.

**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.

**Travel Trailer.** A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and/or recreational purposes having a body width not exceeding eight (8) feet.

**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 or Equipment Terminal.** Any lot, structure, or premises used for the parking or storage of capital equipment such as trucks, trailers, or other like equipment, over three-fourths (3/4) capacity.

**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 the generation, transmission or distribution of electric energy 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 the 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 nonconformities 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.

**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 Environment 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 CAFO).

**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.

**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.

**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.

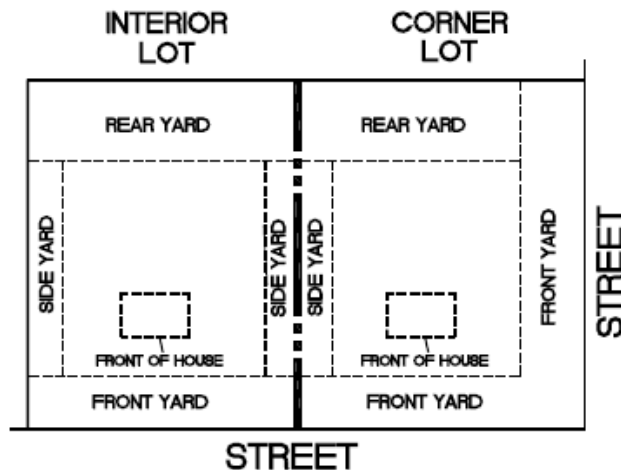
**Yard.** An open space on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard, or the depth of a rear yard, 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 side yard 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. . (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. . (See Front, Side, and Rear Yard Illustration Below)

**Yard, Side.** A yard between the building and the adjacent sideline of the lot which separates it from another lot, extending from the front lot line to the rear yard. (See Front, Side, and Rear Yard Illustration Below)

**Front, Rear and Side Yard Illustration**



**Zone of Contribution.** The entire area around a well or well field that contributes water to the well or wellfield.

**Zoning Administrator.** The individual(s) appointed by the Board of County Commissioners and designated to administer and enforce the zoning ordinance.

**ARTICLE 27  
CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS**

**Section 2701. 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. All concentrated animal feeding operations shall comply with the regulations as outlined herein.

**Section 2702. Animal Units Equivalent to Animal Species:**

Roberts 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 (CAFO) 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 2702.1 relate to inventory rather than annual production

**Table 2702.1  
Number of Animals to Define Classes of Concentrated Animal Feeding Operations**

| Animal Species  | Class A CAFO<br>(Over 2,000<br>Animal Units) | Class B CAFO<br>(1,000-1,999<br>Animal Units) | Class C CAFO<br>(50 to 499 Units<br>– Zone A<br>Shallow Aquifer) | Class D CAFO<br>(50 to 999<br>Units – No<br>Aquifer) | Animal Unit<br>Equivalency<br>Ratio |
|---|--|---|--|--|-------------------------------------|
|   | Animal numbers<br>equal to or more<br>than:  | Animal<br>numbers equal<br>to:                | Animal numbers<br>equal to:                                      | Animal<br>numbers equal<br>to:                       |                                     |
| Cattle other than mature dairy cows or veal calves <sup>1,2</sup>               | 2,000  | 1,000 to 1,999                                | 50 to 499  | 50 to 999  | 1.0                                 |
| Mature Dairy Cattle (milked or dry)   | 1,400  | 700 to 1,399                                  | 35 to 349  | 35 to 699  | 1.43                                |
| Swine (weighing over 55 lbs. )  | 5,000  | 2,500 to 4,999                                | 125 to 1,249   | 125 to 2,499   | 0.4                                 |
| Swine (weighing less than 55 lbs. )   | 20,000                                       | 10,000 to 19,999                              | 500 to 9,999   | 500 to 9,999   | 0.1                                 |
| Horses  | 1,000  | 500 to 999                                    | 25 to 249  | 25 to 499  | 2.0                                 |
| Sheep or lambs  | 20,000                                       | 10,000 to 19,999                              | 1,000 to 4,999   | 1000 to 9,999  | 0.1                                 |
| Turkeys   | 110,000                                      | 55,000 to 109,999                             | 2,775 to 27,499  | 2,775 to 54,999                                      | 0.018                               |
| Chickens, other than laying hens using other than liquid manure handling system | 250,000                                      | 125,000 to 249,999                            | 6,250 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                             | 4,100 to 40,999  | 4,100 to 81,999                                      | .0122                               |
| Laying Hens & Broilers using liquid manure handling system                      | 60,000                                       | 30,000 to 59,999                              | 1,500 to 14,999  | 1,500 to 29,999                                      | .0333                               |
| Ducks Using liquid manure Handling system                                       | 10,000                                       | 5,000 to 9,999                                | 250 to 2,499   | 250 to 4,999   | 0.2                                 |
| Ducks using other than liquid manure handling system)                           | 60,000                                       | 30,000 to 59,999                              | 1,500 to 14,999  | 1,500 to 29,999                                      | .0333                               |
| Geese   | 60,000                                       | 30,000 to 59,999                              | 1,500 to 14,999  | 1,500 to 29,999                                      | .0333                               |

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 Article 11 Aquifer Protection District.



**Section 2703. Classes of Concentrated Animal Feeding Operations**

For the purpose of these regulations, CAFOs are divided into the following classes:

| <b><u>CLASS OF CAFO</u></b> | <b><u>NUMBER OF ANIMAL UNITS</u></b> |                               |
|-----------------------------|--------------------------------------|-------------------------------|
| Class A                     | 2,000 or more                        |                               |
| Class B                     | 1,000 to 1,999                       |                               |
| Class C                     | 50 to 499                            | (Over Zone A Shallow Aquifer) |
| Class D                     | 50 to 999                            |                               |

**Section 2704. Concentrated Animal Feeding Operation Permit Requirements**

Owners of Class A, Class B, Class C, and Class D CAFOs are required to complete where applicable, a building permit, permitted and/or conditional use permit application whenever any of the following occurs:

1. A new CAFO is proposed where one does not exist.
2. An expansion of a CAFO 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 CAFO, without a county-issued permit, that existed prior to January 1, 2019, which would result in the creation of either a Class A, B, C, or D CAFO
4. In the event there is a change in ownership of a Class A or B CAFO, 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. A change in ownership of any CAFO with a history of pollution documented by the County Zoning Office or State of South Dakota.
6. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
7. A signed complaint has been received by the County Zoning Administrator 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.
8. Notwithstanding 2704.4 (above) a change in ownership of a Class A or Class B concentrated animal feeding operation which does not have a previously issued county-permit.

## **Section 2705. Concentrated Animal Feeding Operation Control Requirements**

### **1. Compliance with South Dakota Department of Environment and Natural Resources.**

- a. All CAFOs shall be constructed, located, or operated so as to not create a significant contribution of pollution as determined by the South Dakota Department of Environment and Natural Resources.

### **2. State General Permit**

Classes A and B CAFOs shall obtain a State General Permit. A County permit for a CAFO 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 Zoning Administrator and/or the Board of Adjustment to require an applicant to submit plans for a Class C or Class D CAFO to be reviewed to determine general compliance with standards adopted for a State General Permit

### **3. Nutrient Management Plan.**

- a. The applicant shall develop, maintain, and follow a nutrient management plan, per the requirements below, to ensure safe disposal of manure and process wastewater and protection of surface and ground water.
- b. New Class A, B, and C CAFOs are required to have a nutrient management plan.
- c. Nutrient management plan(s) for Class A and Class B CAFOs shall be reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.
- d. The nutrient management plan(s) for Class C CAFOs shall be developed by a Certified Crop Advisor and meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standards and all other applicable South Dakota Department of Environment & Natural Resources and Roberts County regulations.
- e. The applicant must maintain records to show compliance with the approved nutrient management plan.
- f. The applicant must comply with Manure Application Setbacks found in Table 2705.2.
- g. Documentation of land spreading agreements shall be available upon request by the County.

#### 4. Manure Management and Operation Plan

- a. New Class A, B, C, and D (with more than eight hundred (800) animal units) CAFOs are required to have a Manure Management and Operation Plan.
- b. The Manure Management and Operation Plan for Class A, Class B CAFOs shall be reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved Manure Management and Operation Plan.
- c. Manure Management and Operation Plans for Class C & D (with more than eight hundred (800) animal units) shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable SDDENR and Roberts County Zoning Standards.
- d. Manure Management and Operation Plan must include:
  1. The location and specifics of proposed manure management facilities.
  2. The operation procedures and maintenance of manure management facilities.
  3. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. Manure management treatment facilities will require inspection by an engineer.
  4. Manure shall not be stored longer than two (2) years.
  5. Manure management containment structures shall provide for a minimum design volume of three hundred sixty-five (365) days of storage. In addition, open outdoor storage shall include minimum storage for direct precipitation and/or runoff from a 25-year, 24-hour storm.
  6. Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.
  7. The applicant will provide information regarding how manure from the CAFO 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.
- e. As a condition of the permit, the Zoning Administrator and/or the Board of Adjustment may require the applicant to participate in environmental training.

## 5. Management Plan for Fly and Odor Control

- a. New Class A, B, C, and D Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The Zoning Administrator and/or ~~County~~ Board of Adjustment will review the need for control measures on a site-specific basis. The following procedures to control flies and odors shall be considered in a management control plan:
  - i. Operational plans for manure collection, storage treatment and how said plans will be updated and implemented.
  - ii. Methods to be utilized to dispose of dead animals shall be included.
  - iii. Location of existing and proposed tree/shrub plantings.
- b. The County recommends the following Best Management Practices in the development of a fly and odor management plan:
  - i. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.
  - ii. Store solid manure in containment areas having good drainage to minimize odor production.
  - iii. Remove manure from open pens as frequently as possible to minimize odor production.
  - iv. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.
  - v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.
- c. 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 self-contained 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. Suggested Setbacks and Separation Distance for New Classes A, B, C, and D Concentrated Animal Feeding Operations and those existing, non-permitted CAFOS Expanding into a Class A, B, C, or D CAFO after January 1, 2019 See Table 2705.1.

**Table 2705.1.**  
**Suggested Minimum Separation Distances and Setbacks <sup>1,4</sup>**

| Number of Animal Units  | Under 500 Animal Units | 500 to 999 Animal Units | 1,000 to 1,999 Animal Units | 2,000 to 6,999 Animal Units | Over 7,000 Animal Units |
|---|------------------------|-------------------------|-----------------------------|-----------------------------|-------------------------|
| <b>Established Residences<sup>2</sup></b>                                   | 1,320 feet             | 2,640 feet              | 2,640 feet                  | 3,960 feet                  | 5,280 feet              |
| <b>Churches, Businesses and Commercially Zoned Areas</b>                    | 1,320 feet             | 2,640 feet              | 2,640 feet                  | 3,960 feet                  | 5,280 feet              |
| <b>Incorporated Municipality Limits<sup>3</sup></b>                         | 1,320 feet             | 2,640 feet              | 5,280 feet                  | 5,280 feet                  | 5,280 feet              |
| <b>Established Private Water Well<sup>5</sup></b>                           | 1,320 feet             | 1,320 feet              | 1,760 feet                  | 2,640 feet                  | 2,640 feet              |
| <b>Existing Public Water Well<sup>5,6</sup></b>                             | 1,000 feet             | 1,000 feet              | 1,000 feet                  | 1,000 feet                  | 2,640 feet              |
| <b>Lakes and Streams classified as Fisheries as identified by the State</b> | 200 feet               | 200 feet                | 500 feet                    | 500 feet                    | 500 feet                |
| <b>Federal, State &amp; County Road ROW</b>                                 |                        |                         |                             |                             |                         |
| <b>Confinement Building</b>   | 200 feet               | 200 feet                | 300 feet                    | 300 feet                    | 300 feet                |
| <b>Open Lot</b>   | 50 feet                | 50 feet                 | 50 feet                     | 50 feet                     | 50 feet                 |
| <b>Township Road ROW</b>  |                        |                         |                             |                             |                         |
| <b>Confinement Building</b>   | 150 feet               | 150 feet                | 150 feet                    | 150 feet                    | 150 feet                |
| <b>Open Lot</b>   | 50 feet                | 50 feet                 | 50 feet                     | 50 feet                     | 50 feet                 |

- 1 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.
- 2 Established residences do not include any residence established after November 1, 2001 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.
- 3 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
- 4 The Board of Adjustment may utilize Section 2705.7 and 2705.8 to increase or decrease the required setback.
- 5 Setback does not apply to the wells of the CAFO operator.
- 6 Established private water wells refer to wells used as a source of potable water for human consumption one (1) year prior to application date for the proposed CAFO.

7. Exemptions to Suggested Separation and/or Setback Distance Requirements

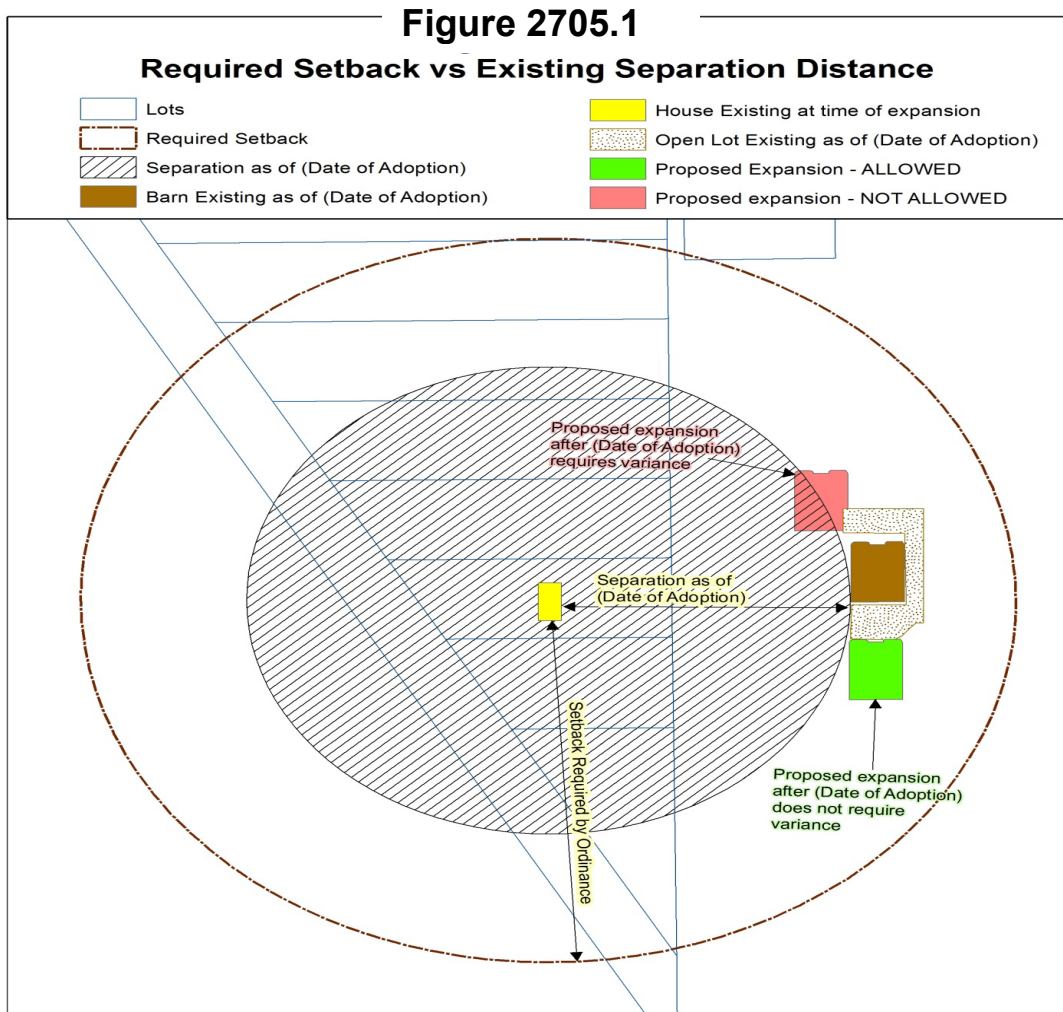
- a. A concentrated animal feeding operation that satisfies any of the criteria below shall be exempt from the applicable separation or setback distance with no variance required by the Board of Adjustment.

- b. A Concentrated Animal Feeding Operation which is expanded or constructed less than the suggested setback from a right-of-way (ROW) provided approval of the applicable road authority is submitted to the Zoning Administrator 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. All Concentrated Animal Feeding Operations in operation prior to January 1, 2019 which do not comply with the suggested minimum setback/separation 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 the suggested separation distance:
  - i. Example 1: A Class D CAFO expands to a Class A or B CAFO
  - ii. Example 2: A Class B CAFO expands to a Class A CAFO.
  - iii. Example 3: A Class A CAFO expands by 10% of the number of animal units

Provided, that the expansion does not further encroach the setback/separation distance existing on January 1, 2019. See Figure 2705.1.

- d. A Concentrated Animal Feeding Operation structure which is expanded or constructed, if the title holder of the land benefiting from the suggested distance separation requirement executes a written waiver with the title holder of the land where the structure 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 benefitting from the distance separation requirement is the residence, commercial enterprise, individual or individuals, governmental entity, religious institution, or educational institution from which separation is recommend. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
- e. A Concentrated Animal Feeding Operation constructed or expanded closer than the suggested separation distance within the corporate limits of an incorporated community, if the incorporated community approves a written waiver.
- f. A Concentrated Animal Feeding Operation structure which existed prior to the creation of residence, educational institution, commercial enterprise, religious institution, incorporated community, if the residence, educational institution, commercial enterprise or religious institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the concentrated animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.

- g. Any Concentrated Animal Feeding Operation in operation as of January 1, 2019 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 2705.1.



**8. Additional Setback and Separation Distance Requirements for Class A, B, C, and D 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 Increase Suggested Setbacks and Separation Distances

- i. 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 three thousand (3,000) animal units currently exists within one (1) mile of the proposed Concentrated Animal Feeding Operation 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 or other instrument accepted by the Board of Adjustment to determine the need to increase the suggested setback and/or separation requirements.

- ii. Due to topography and prevailing wind direction, and/or concentration of animal units, an additional setback and separation distance is appropriate to safeguard air or water quality. The South Dakota Odor Footprint Tool or other instrument accepted by the Board of Adjustment may be utilized to determine the need to increase the suggested setback and/or separation requirements.

- iii. Siting of A Concentrated Animal Feeding Operation is in excess of five thousand (5,000) animal units.

In the event the Board determines that the siting of a CAFO, where one did not previously exist, with more than five thousand (5,000) animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint or other instrument accepted by the Board of Adjustment to determine the need to increase the suggested setback and/or separation requirements.

- iv. Review of past management practices and proposed improvements to manure handling facilities.

b. Considerations to Decrease Suggested Setbacks and Separation Distances

- i. The Board of Adjustment may reduce suggested 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) The South Dakota Odor Footprint Tool or other comparable instrument accepted by the Board of Adjustment may be utilized to determine the need to decrease suggested setback and/or separation distances.



(b) 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.

i. 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 suggested setback and separation distances.

ii. Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected

iii. By limiting the proposed expansion to specific number of animal units no adverse impacts are expected.

**9. Manure Application Setbacks**

a. Table 2705.2 provides the following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

**Table 2705.2**  
**COUNTY MANURE APPLICATION SETBACKS**

| CATEGORY  | SURFACE APPLIED  | INCORPORATED OR INJECTED  |
|---|--|---------------------------|
| Lakes, Rivers and Streams Classified as Fisheries       | 300 feet*  | 100 feet*                 |
| Streams and Lakes Classified as Drinking Water Supplies | 1,000 feet   | 300 feet                  |
| Public Roads  | 25 feet (surface) from right-of-way<br>300 feet (irrigation) from right-of-way | 10 feet from right-of-way |
| Area of 10 or More Residences                           | 300 feet (surface)/ 1,000 feet (irrigation)                                    | 300 feet                  |
| Public Wells  | 1,000 feet   | 1,000 feet                |
| Established Private Water Well                          | 250 feet   | 250 feet                  |
| A Residence Other Than the Operator                     | 300 feet (surface)/ 1,000 feet (irrigation)                                    | 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

b. The County Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.

- c. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.

10. Standards for Conditional Uses

- a. The Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation 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, documented by the Environmental Protection Agency, the South Dakota Department of Environment and Natural Resources, or similar applicable agency in other states, in 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 the Board of Adjustment. The letter of assurances will be prepared by the Zoning Administrator and/or Board of Adjustment and signed by both the applicant and the Board of Adjustment's designee. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and associated letter of assurances. 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 timeline for compliance. If compliance is not met, the permit shall be revoked, and the permit holder ordered to cease operations.
11. 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)/Applicant(s) name, address and telephone number.
  - b. Legal descriptions of site and site plan.
  - c. Number and type of animals.
  - d. Preliminary Nutrient Management Plan, if required.
  - e. Preliminary manure management and operation plan, if required.
  - f. Preliminary management plan for fly and odor control.

- g. Information on ability to meet suggested setbacks and separation distances-
- h. 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 Environment & 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.
- i. Documentation of notice to public water supply officials.
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. Documentation of notice to whomever maintains the access road (township, county and state).
- l. Any other information as contained in the application and requested by the Zoning Administrator.