

## **SECTION 1.1 TITLE**

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

## **SECTION 1.2 PURPOSE AND INTENT**

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

## **SECTION 1.3 AUTHORITY**

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

## **SECTION 1.4 JURISDICTION**

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

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

## **SECTION 1.5 NON-RESTRICTION OF FARMING**

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

## **SECTION 1.6 DISCLAIMER**

This ordinance shall not create liability on the part of Stutsman County, any officer or employee

thereof, or the Federal Insurance Administration for any damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

## **SECTION 1.7 SEPARABILITY**

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

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

## **SECTION 1.8 DEFINITION OF TERMS**

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

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

### **Abutting**

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

### **Accessory**

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

### **Accessory use or structure**

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

### **Agriculture**

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

### **Agricultural building or structure**

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

### **Airport**

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

### **Amendment**

Any change, revision or modification of either the text of this ordinance or the

official zoning map.

**Animal hospital or clinic**

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

**Area of special flood hazard**

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

**Base flood**

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

**Board of Adjustment and Appeals**

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

**Building**

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

**Building heights**

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

**Campground**

Any parcel of land containing three or more lots intended for occupancy by travel trailers or tents.

**Cemetery**

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

**Conditional use**

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

**County**

The county of Stutsman, North Dakota

**Crops**

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

**Development**

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

**Dwelling**

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

**Easement**

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

**Family**

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

**Farm**

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

**Feedlot**

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

**Flood or flooding**

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

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

**Foreign substance**

Substance not normally occurring in a particular place or situation.

**Frontage road**

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

**Home occupation**

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

**Housing unit**

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

**Junk and/or salvage yard**

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

**Kennel, commercial**

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

**Livestock**

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

**Livestock sales arena**

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

**Lot**

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

**Lot of record**

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

**Mobile home**

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

**Mobile home court**

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

**Non-conforming uses and buildings**

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

**Off-street parking**

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

**Park**

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

**Ranch**

Same as “farm”.

**Recreational Vehicle**

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

**Right of way**

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

**Sanitary landfill**

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

**Sign**

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

**Slaughterhouse**

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

consumption.

**Street**

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

**Structure**

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

**Substantial Improvement**

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

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

**Trailer Park**

Any parcel of land containing three or more lots intended for occupancy by travel trailers.

**Travel Trailer**

Any portable unit designed to be used as a temporary dwelling for travel or recreational purposes. The term travel trailer includes the following:

- a. An independent travel trailer, which is a travel trailer containing toilet and lavatory facilities.
- b. A dependent travel trailer, which is a travel trailer containing either toilet or lavatory facilities or having neither facility.

**Utilities**

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

**Variance**

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

**SECTION 2.1 ACCESSORY USES**

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

**SECTION 2.2 HOME OCCUPATIONS**

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

## **SECTION 2.3 MOBILE HOMES AND MOBILE HOME COURTS**

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

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

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

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

- c. provide an additional easement width sufficient to accommodate a four foot wide pedestrian walkway on one side of the street;
  - d. all streets and walkways shall be hard surfaced;
  - e. be accessible at all times to emergency vehicles.
9. All entrances, exits and streets shall be lighted by electricity. At least one sixty watt light shall be provided for each one hundred lineal feet of street.

## **SECTION 2.4 SEWAGE DISPOSAL**

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

All soil absorption systems shall adhere to the following restrictions:

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

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

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

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

## **SECTION 2.5 STRUCTURES IN FLOOD PRONE AND FLOOD HAZARD AREAS**

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

### **Description**

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

### **Methods of Reducing Flood Losses**

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

### **Permit Review**

All building permit applications shall be reviewed by the County Planning and Zoning Commission to determine if the proposed development adversely affects the flood carrying capacity of a flood prone area to assure that all development sites are reasonably safe from flooding. All applications shall also be reviewed to determine if all necessary permits have been obtained from those Federal, State or Local agencies from which prior approval is required. For the purposes of this ordinance, “adversely affects” means damage to adjacent properties because of rises in flood stages attributed to physical changes of the channel and the adjacent over-bank areas.

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

### **General Standards**

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

- 1. Anchoring**
  - a. All new construction and substantial improvements shall be anchored to prevent flotation collapse or lateral movement of the structure.
- 2. Construction Materials and Methods**
  - a. All new construction and substantial improvements shall be constructed using methods and materials that minimize flood damage.
- 3. Utilities**
  - a. All new and replacement water supply systems and sanitary sewage

systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

- b. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

**4. Subdivision Proposal**

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

**SECTION 2.6 GEOPHYSICAL EXPLORATION REQUIREMENTS**

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

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

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

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

**SECTION 2.7 NON-CONFORMING USES AND BUILDINGS**

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

continuation of non-conforming uses shall be allowed, except as elsewhere provided in this chapter.

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

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

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

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

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

## **SECTION 2.8 SIGNS**

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

## **SECTION 2.9 ANIMAL FEEDING OPERATIONS**

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

### **2.9.1 GENERAL PROVISIONS**

#### **2.9.1A Definitions**

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

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

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

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

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

**“Animal wintering operation”** means the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 150 days and that are not retained for breeding purposes.

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

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

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

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

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

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

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

**“Farming”** - see Agriculture

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

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

**“Ground Water”** means water below the land surface in a geological unit in which soil pores are

filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

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

**“Livestock”** means any animal raised for food, raw materials or pleasure, including but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.

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

**“Manure”** means fecal material and urine from livestock, as well as animal-housing wash water, bedding material, rainwater or snow melt that comes in contact with fecal material or urine.

**“Operator”** means an individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more *animal feeding operations* or *animal wintering operations*.

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

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

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

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

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

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

**“Waters of the state”** means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

### **2.9.1B Equivalent Animal Numbers**

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

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		500 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 mature dairy cow	1.33	375 hd	750 hd	1500 hd	3750 hd
1 dairy cow, non-mature	1	500	1,000	2,000	5,000
1 weaned beef animal	0.75	666	1,333	2,667	6,667
1 cow-calf pair	1	500	1,000	2,000	5,000
1 swine, > 55 lbs	0.4	1,250	2,500	5,000	12,500
1 weaned swine, < 55 lbs	0.1	5,000	10,000	20,000	50,000
1 horse	2	250	500	1,000	2,500
1 sheep or weaned lamb	0.1	5,000	10,000	20,000	50,000
1 turkey	0.0182	27,500	55,000	110,000	275,000
1 chicken	0.01	50,000	100,000	200,000	500,000
1 duck or goose	0.2	2,500	5,000	10,000	25,000
*Any weaned livestock not listed in the table above equals 1.0 animal unit per each one thousand pounds, whether single or combined animal weight.					

### **2.9.1C Environmental Protection**

The *operator* of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The *operator* of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each *operator* shall comply with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.

### **2.9.1E ENFORCEMENT**

#### **2.9.1E(1) County Zoning Administrator**

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

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

#### **2.9.1E(1) County Board**

The County Board has responsibility for decisions on zoning. Although the Board may use the Planning and Zoning Commission or the Zoning Administrator to administer files, investigate complaints, devise draft policies, and/or recommend stop work orders; final decisions on matters of zoning are matters for the discretion of the County Board; not delegation.

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

**2.9.1F Penalty**

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

**2.9.1G Severability**

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

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

**2.9.2 SETBACK REQUIREMENTS**

**2.9.2A Odor Setbacks**

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

<b>Setback Distances for <i>Animal Feeding Operations</i></b>		
<b>Number of Animal Units</b>	<b>Hog Operations</b>	<b>Other Animal Operations</b>
fewer than 300	none	none
300 - 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)

1001 - 2,000	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 - 5,000	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

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

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

### **2.9.3 CONDITIONAL USES**

#### **2.9.3A Permit Procedures**

##### **Applicability**

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

3. A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 300 animal units is a conditional (or special) use of land.
4. An existing *animal feeding operation* that expands to handle more than 300 animal units is a conditional (or special) use of land.

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

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

##### **Procedure**

5. Application for a conditional use (or special use) permit shall be submitted to the Zoning\_Administrator for tentative approval. The conditional use (or special use)

- permit application shall be available for public inspection at the Office of the Zoning Administrator for fourteen (14) days prior to the Public Hearing.
6. The Zoning Administrator shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new *animal feeding operation* or the expansion of an existing animal feeding operation. This notification must occur within 21 days of receiving the application. Along with the application, the applicant shall provide the names and addresses of all landowners to be notified.
  7. Upon receipt of the Special Use Permit application, the County Planning and Zoning Commission shall hold at least one (1) Public Hearing in a location to be prescribed by the Planning and Zoning Commission. At least fourteen (14) days in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the County and any other such paper as deemed necessary by the Zoning Administrator. All townships within the setback requirements shall be notified by U.S. mail as to the time and place of the Public Hearing.
  8. The County Planning and Zoning Commission shall report its findings to the Board of County Commissioners.
  9. The Board of County Commissioners shall make a decision on the application within sixty (60) days from the date of receiving the completed conditional use permit application.
  10. The conditional (or special) use permit will become final following the granting of a permit by the Department of Health.
  11. A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within thirty-six (36) months, or the permit shall lapse, and the operator must re-apply.
  12. No construction shall take place until the permit has been issued by the North Dakota Department of Health.

### **2.9.3B Fees**

Refer to Stutsman County Fee Schedule for current conditional use permit fees.

### **2.9.3C Application Requirements**

1. The application for a conditional use (or special use) permit to operate a facility for an *animal feeding operation* shall include a petition. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line.
2. Owners name, address and telephone number.
3. Legal description of the site

4. Number and type of animals
5. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
6. A copy of the application submitted to the Department of Health
7. Other information as required in the application and/or requested by the Zoning Administrator or the Planning and Zoning Commission.

### **2.9.3D                      Miscellaneous**

- (1) The Planning and Zoning Commission may request information relating to an animal feeding operation not contained in these regulations.
- (2) Any and all cost to implement any additional conditions as set forth by the Planning and Zoning Commission shall be borne by the owner of the facility.
- (3) When considering an application, the Planning and Zoning Commission will take into consideration current and past violations relating to animal feeding operations that the applicant or operator has or has had an interest in.
- (4) All State and Federal regulations shall be adhered to.

## **2.10            WIND TURBINE ZONING**

### **2.10.1            Purpose**

This ordinance provides a framework for siting, construction, and operation of a wind energy facility in the County that will preserve the safety and well being of the residents and facilitate equitable and orderly development.

### **2.10.2            Regulatory Framework**

A wind energy facility may only be constructed in the County if the applicant first obtains a permit and complies with the conditions of this ordinance.

### **2.10.3            Applicability**

The requirements of this ordinance apply to a wind energy facility, or any portion of one, erected

in this county after the effective date of this ordinance if the facility contains any wind turbine rated at 100 kilowatts or more nameplate capacity.

#### **2.10.4 Definitions**

**“adjoining land”** is real property that has a different owner than the host property and is either, contiguous to the host property at any point or segment, or is separated from the host property by an intervening fee simple interest that is less than 2RD.

**“airstrip”** is a takeoff and landing area for fixed wing aircraft, whether publicly or privately owned, that was given an FAA numerical designation sometime before 1 March 2009.

**“applicant”** is a person who filed an application for a conditional use permit.

**“commencement of commercial operations”** is the date of substantial construction of the wind project and power is sent to the power grid or destination.

**“facility owner”** means the person(s) having an equity interest in the wind energy facility.

**“feeder lines”** are power lines between a wind energy facility’s collector stations or substations and the region’s high voltage transmission lines.

**“gross weight”** means the weight of a vehicle without a load plus the weight of any load on it.

**“host property”** is the very lot on which a wind turbine is located. A wind energy facility may contain several host properties. The fact that adjoining properties having various respective owners are covered by related options, leases, or easements to a single facility owner does not cause the various land owners to be a single host property. Each parcel containing a turbine is a host property even if an abutting property belonging to another party contains a turbine belonging to the same facility owner.

**“hub height”** means the distance measured from the surface of the tower foundation to the height of the axis of the wind turbine hub.

**“MET tower”** means a meteorological structure used to collect data on wind and or weather conditions.

**“occupied structure”** is man made shelter in which people either live, meet, conduct business, or gather, in addition it includes but is not limited to a residence, dwelling, apartment house, condominium, residential subdivision platted and recorded under NDCC 11-33.2 its predecessor or successor law, a townsite, addition or subdivision platted and recorded under NDCC 40-50.1 its predecessor or successor law, or residential setting; any structure open to the public for business that regularly conducts business including but not limited to a hotel, motel, campground, mall, school, hospital, church, public library, store, airstrip, manufacturing facility,

or sport venue; or other structure that is either legally inhabited, in use or under substantial construction (e.g. surface has been improved in preparation for construction) at the time the permit application is submitted for use as one of the above.

**“operator”** means the person responsible for the day-to-day operation and maintenance of a wind energy facility. A facility owner may contract with or hire a person to operate it.

**“permittee”** is the person holding the conditional use permit. Permittee may include the subsidiaries, agents, subcontractors, independent contractors, and employees of the person holding the permit; i.e. for purposes of liability for road damage caused in erection or maintenance.

**"person"** means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

**“public road”** means every way or place generally open to vehicle travel, even though it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance. 57-43.1-01. A section line is a public road. 24-07-03.

**“RD”** is an abbreviation for “rotor diameter” which is the distance of a line segment that bisects the center of the hub and terminates at the circle that encompasses the tips of each rotor blade that are farthest from the hub. For example, “2RD” means a distance equal to two times the rotor diameter or four times the radius and on a turbine with rotor blades 70 meters (229.6 feet) long (measured from the center of the hub) the rotor diameter will be 140 meters (459.2 feet).

**“site”** is a contiguous tract or group of parcels for which one operator and/or facility owner or a group acting in concert has option agreements, easements, and/or leases acquired to operate a turbine, wind energy facility or accessory thereto.

**“site perimeter”** is the outside boundary of the contiguous parcels all having either an option, easement, and/or lease agreement for a wind energy facility accessory to the same facility owner.

**“turbine height”** means the distance measured from the ground level surface of the tower foundation to the highest point of the turbine rotor plane.

A **“wind turbine”** [also known herein as turbine] captures kinetic energy from the wind to drive an electrical generator. Its typical components include blades, tower, accelerator platform or nacelle body.

**“wind energy facility”** means an electric generating facility, the main mechanical or electrical purpose of which is to supply electricity. It consists of one or more wind turbine and other accessory structures and buildings, including substations, meteorological towers, electrical

infrastructure, transmission lines and other appurtenant structures and facilities.

### **2.10.5 County Zoning Administrator**

Wind turbine zoning shall be administered by the County Board with supervisory assistance from the County Zoning and Planning Commission, the County Zoning Administrator, and supplemental assistance from other county departments. The Zoning Administrator shall have the following duties.

- (A) Conduct preliminary administrative review of each permit application, variance request, and other information as required by this Ordinance and forward recommendations for disposition to County Zoning and Planning Commission or the County Board.
- (B) Schedule meetings and hearings that are required by law or by this ordinance, providing notice to the board members, the press, and the party who sought the hearing.
- (C) If there is cause to believe work is being done or a condition exists that is contrary to the provisions of this Ordinance, the Zoning Administrator shall in his discretion decide whether to investigate personally or with the assistance of the Sheriff's office and whether to recommend to the County Planning and Zoning Commission that a stop work order be issued. Any stop work order shall be served upon the owner and/or operator in accord with the provisions of Rule 4 of the North Dakota Rules of Civil Procedure, service upon the permittee's named agent for service of process is satisfactory.
- (D) Mail notice of authorization to proceed to the owner and/or operator after the County Planning and Zoning Commission has determined that a violation of this Ordinance, for which a stop work order was issued, has been remedied.
- (E) Conduct in depth appraisal of applications for conditional use or variances to ensure they satisfy the criteria for the benefit sought.
- (F) Mail any permit issued by the Planning and Zoning Commission to the facility owner.
- (G) Maintain records and permits as required by this Ordinance. Any records required to be maintained by the State shall be provided by the Zoning Administrator upon request.
- (H) Provide open records to requesters concerning this Ordinance in accord with the open records law.
- (I) Inspect wind energy facilities to insure compliance with the standards of this Ordinance. The Zoning Administrator is to rely on the Sheriff's office and its trained investigators for detailed investigations. The Zoning Administrator should consider requesting the Sheriff's assistance if there is cause to believe there is a violation of this ordinance that may require issue of a stop work notice.

### **2.10.6 Conditional Use Permit Availability by Zone**

A wind energy facility or part of one will be conditionally permitted or not permitted based on the generating capacity and land use district as established in the table below

zoning district	not permitted	conditional use permitted
agricultural (A)		yes
rural residential zone (RR)		yes
residential community zone (RC)		yes
commercial zone (C)		yes
industrial zone (I)		yes
recreational/open space zone (R/O)		yes

**2.10.7 Conditional Use Permit Application Process**

Work may commence to construct a wind energy facility only after a county conditional use permit has been issued by the County Board. This does not preclude wind monitoring, soil testing, or survey work prior to obtaining a permit, however, even prior to applying for or receiving a conditional use permit for a wind energy facility, MET towers must be marked with high visibility balls and flags and painted according to this ordinance.

A permit application must be submitted to the County Zoning Administrator, at the Stutsman County Auditor’s office. Each application must be signed by a representative of the prospective permittee who is authorized to contractually bind the person. An application must include the following.

- (A) A check or money order for the full amount of permit fees calculated at the rate of \$500 per turbine.
- (B) The name, business address and phone number of the person in whose name the permit is to be issued and if the authorized agent for service of process is different than the permit holder, the name and North Dakota address of the agent of the person authorized to receive service of process on the person’s behalf.
- (C) Evidence of the applicant’s capacity to contractually bind the person seeking the permit and authority to make binding representations on the person’s behalf to municipalities for purposes of zoning, siting, and construction of a wind energy facility.
- (D) A schedule for the proposed start and completion of construction of the facility which includes the applicants proposal for final repairs to public roads.

- (E) The applicant shall include in the application information describing the applicant's property rights within the boundaries of the proposed site.
- (F) A road agreement approved of and executed by both the permittee and Stutsman County and/or its townships affected by the project, shall be in place prior to the permittee beginning construction of the project. The road agreement will ensure the permittee will protect and maintain county and township roads. The agreement will contain provisions requiring the permittee to dedicate, bind, commit and /or pledge collateral, surety, escrow, and/or other pecuniary security for road maintenance and repair. The type of financial arrangement and the amount must be approved by the county. The road agreement will provide for pre and post inspections by an engineer approved of by Stutsman County at the permittee's expense. It will require repairs be made as needed throughout the construction process and completed within one calendar year from the date of commencement of commercial operations of the project.
- (G) A USGS topographical map of the wind energy facility and 1,320 feet of adjoining land, non-participating land, contiguous with any proposed host property. The following shall be clearly marked on the map:
  - (1) each existing: wind turbine, wind energy facility fixture, regardless of ownership, accessory structure or building, including substation, meteorological tower, electrical infrastructure, and collector line or transmission line;
  - (2) each of the applicant's proposed improvements for the wind energy facility or accessory structure or building, including each wind turbine, MET tower, electrical line, and access road;
  - (3) each occupied structure, improvement, public road, private road, utility line, public facility;
  - (4) all section lines and any boundaries between abutting parcels, tracts, or lots owned by different parties;
  - (5) boundaries of any easement for a section line, public road, highway, that is within 5RD of any envisioned or probable wind turbine site;
  - (6) boundaries of any filed lease, easement, or option for wind energy facilities, whether they benefit the applicant, the applicant's probable operator, or an unrelated party;
  - (7) the site boundary;
  - (8) each public or private airstrip with FAA identification number, see [http://www.faa.gov/airports\\_airtraffic/airports/airport\\_safety/airportdata\\_5010/](http://www.faa.gov/airports_airtraffic/airports/airport_safety/airportdata_5010/);
  - (9) natural terrain features; and
  - (10) either noted on the map and/or via a key, the names of the property owners inside the site and of the property owners for adjoining land.

### **2.10.8 Public Hearing**

After receipt of the application, the Zoning Commission will review the application and will hold at least an initial public hearing on the application within 45 days of receiving the application.

The Zoning Administrator shall publish notice of the meeting in the official newspaper of the County at least 14 days prior to the hearing.

### **2.10.9 Deliberation and Decision**

If the Zoning Commission finds that the application satisfies the application criteria and is satisfied the prospective permittee will satisfy the conditions in this ordinance, then it shall issue a conditional use permit within 15 days of making that finding. The County Board stands as the Board of Adjustment and Appeals.

### **2.10.10 Demonstration of Compliance**

The Permit issued pursuant to this ordinance is conditioned on the Permittee's final demonstration of compliance with the requirements of the ordinance following completion of construction of the facility. Within 90 days of facility construction completion, the Permittee shall submit to the Zoning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to 2.10.7 and demonstrating actual compliance with the requirements and conditions of the Permit. Once granted, a conditional use permit may be revoked due to a violation of or failure to comply with a condition in this ordinance and or a condition or obligation in the road agreement.

### **2.10.11 Appearance, Lighting, Sound, Agricultural Operations, Roads, and Power Lines**

- (1) Wind turbines shall be painted a non-reflective coating and in a non-obtrusive color.
- (2) Turbines shall not display any advertising.
- (3) Each turbine will be marked with an identification number large enough to assist identification of the turbine number in an emergency.
- (4) Turbines are to be lighted to the extent advised by the FAA in FAA Advisory Circulars 47 CFR §§ 17.21-17.58 or their successors.
- (5) At wind energy facilities, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations, or the landscape. In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, access roads should be built parallel or perpendicular to existing roads, not diagonally across fields for mere convenience of the shortest route to a turbine.
- (6) The Permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the Wind Energy Facility's life, unless otherwise negotiated with the affected landowner. When the Permittee installs a gate where electric fences are present, the Permittee shall provide for continuity in the electric fence circuit.
- (7) The Permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property, unless the Permittee either first obtains a waiver from the private land owner and the Permittee provides clear and convincing evidence to the Planning and Zoning Commission that satisfies the Permittee's heavy burden of proving there are either geographic and/or geologic

conditions present that make underground location impossible, impractical or infeasible, in which case a variance would be granted. Similarly, where the Permittee obtains a waiver from the landowner and can show by clear and convincing evidence presented to the Planning and Zoning Commission that the physics of conductivity will cause such a power loss due to transmitting over such a long distance underground, a variance will be granted. Use of the public right of way must be in compliance with the associated governing body's criteria for use. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. Feeder lines are excepted from the requirements in this paragraph.

- (8) The Permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or the Permittee may place feeder lines on private property. A change of routes may be made as long as the feeder remains on public right of way and approval has been obtained from the government responsible for the affected right-of-way. When placing a feeder on private property, the Permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.
- (9) MET towers 100 feet or more tall must be marked in a way that satisfies FAA advice set out in FAA Advisory Circulars 47 CFR §§ 17.21-17.58 or their successors. <http://wireless.fcc.gov/antenna/documentation/faadocs/7460-1K.pdf> The drafters of this ordinance understand perfectly well that the FAA only requires painting for towers 200' or taller. Those who erect, maintain, own or operate a MET tower in Stutsman County that is 100 feet or taller must apply the advice, methods and guidance in the FAA circulars to any tower 100 feet or higher. Neither an environmental statement nor assessment is required. In lieu of lighting, using the following combination of balls, flags, and sleeves is allowed.
  - (a) One high visibility cable ball at least 21" (53cm) in diameter on each outer guy-wire placed at about half the height of the MET tower;
  - (b) four high visibility flags at least 24" x 12" (78cm x 40cm) on each outer guy-wire placed at intervals that segment the guy wire evenly;
  - (c) high visibility sleeves, one per each anchor and one installed at 26 feet or (7.93m) height on each of the guy wires.
- (10) This ordinance adopts EPA guidelines on noise levels. The guidelines are contained in the EPA publication, *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare With an Adequate Margin Of Safety*. Operation of the wind energy facility must not cause any EPA level for activity interference or hearing loss to be exceeded either inside or within 50 feet of an occupied structure.

### **2.10.12 Setbacks**

These setbacks apply to all wind turbines in a wind energy facility.

Setbacks are measured from the vertical or nearly vertical surface of the wind turbine's tower at ground level to the closest near vertical surface of the occupied or unoccupied structure, improvement, or the nearest point of a boundary, bridge, line, or the center line of the improved

surface of a road or airstrip.

- (1) Each wind turbine must be set back at least 5RD from any **occupied structure**.
- (2) Each wind turbine must be set back at least 1.1 times the turbine height from any: public road or bridge; rail line; above ground electrical or communication line. Turbines must be set back at least 1.1 times the turbine height from each antenna, tower, unoccupied structure, or improvement with an estimated value over \$25,000. The Planning and Zoning Commission can estimate the value without appraisal, but interested parties may timely submit an appraisal.
- (3) Each wind turbine must be set back at least 2RD from the boundary between the host property and any property that adjoins the host property. Public roads are excepted from this 2RD setback requirement but have an applicable setback above.

#### **2.10.12A Variance to Setback**

A Variance to a setback related to private property may be granted if the Permittee and the affected party sign a waiver agreement.

The Planning and Zoning Commission may issue a variance from a set back requirement regarding an occupied structure if that structure has not been used as an occupied structure in a year or more prior to submission of the permit application or request for variance. The act of providing this particular example of one reason a variance to a setback can be issued does not limit the Commission to issuing variances for only that reason.

#### **2.10.12B Notice of hearing on application for variance to a setback**

It is the obligation of the party seeking the variance to the setback requirement to serve notice of the initial hearing on the application, in accord with the ND Rules of Civil Procedure, to all property owners land located inside the setback area sought to be diminished. Proof of service must be filed with the Zoning Commission prior to the hearing. The Zoning Commission can authorize notice by publication according to the Rules of Civil Procedure.

#### **2.10.12C Waiver of Setback**

Where the provisions for variances on wind turbines differs from the general variance provision in section 4.5 of this ordinance, this wind turbine's special provision governs for wind turbine issues.

A permit applicant, permittee, or host property owner may apply for a variance from a setback requirement involving an occupied structure, unoccupied structure, improvement, antenna, tower, road, or bridge.

#### **2.10.12D Contents of setback waiver**

The party seeking the variance from the setback must attempt to obtain from the effected property owner and should provide to the Planning and Zoning Commission a waiver executed by each affected owner sought to be removed from the applicable setback protection. The waiver should be for a period of time equal to or greater than the greatest period of time granted to the operator in the lease, easement, option or the greatest combination thereof given by the host property owner.

The setback waiver signed by the effected property owner must contain a notice to the property owner of the setback required by this ordinance, describe how the proposed wind turbine location is not in compliance with the setback, and clearly state that consent is granted for the wind turbine or accessory to be closer to the owner's property than allowed by the ordinance. The waiver must also contain the following notice.

*A wind turbine absorbs energy from a stream of wind. Once the stream of wind passes through the rotors of a turbine, it loses energy, becomes disarrayed, and until the wake is calmed and the stream reinvigorated, is less useful to another turbine set up down wind from the first. Wind wakes can extend more than 5 rotor diameters down wind from a turbine. So, if your neighbor has a turbine up wind from you and within 5 rotor diameters of your boundary, it will probably be unfeasible for you to place a turbine on your property close to the boundary in the wake of your neighbor's turbine. To protect you from having a neighbor and a power company place a turbine so close to your property that it saps the potency of the wind before it arrives over your land, Stutsman County passed a setback requiring all turbines to be placed at least two rotor diameters (2RD) from any property boundary. You may waive that setback protection. You may want to strike an agreement with a neighbor and a power company that gives you a part of the proceeds of the turbine in exchange for allowing your neighbor to place the turbine less than 2RD from your property. You may wish to charge the neighbor or the power company for your waiver. You probably ought to contact a private attorney before you sign a setback waiver.*

#### **2.10.12E Required Dignities of Valid Variance**

A setback variance is only valid if granted by duly passed motion of the Planning and Zoning Commission, issued in writing, and signed by either the chairman of the Planning and Zoning Commission or the Zoning Administrator.

#### **2.10.13 Minimum Ground Clearance**

The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

#### **2.10.14 Restoration of Property**

Within one hundred and eighty (180) days of termination or abandonment of leases or easements for a wind energy facility in the County, the Permittee shall cause, at its expense, removal of all structures to a depth of three feet below preconstruction grade.

### **2.10.15 Road Protection**

The permittee is responsible for abiding by the State and local overweight load permitting process. See NDCC chapter 39-12 and Stutsman County Highway Department (701) 252-9040. A conditional use permit issued under this ordinance to erect a wind energy facility does not negate a hauler's obligation to obtain an overweight load permit prior to hauling.

Any road damage caused by the permittee, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the permittee's expense so as to return each road to as good or better condition, as determined by the Stutsman County Highway Superintendent based on the pre and post inspections required pursuant to Section 2.10.7(F) of this ordinance and, as a guide for design and construction practices, standards set out in the NDDOT's Standard Specifications for Road and Bridge Construction. (<http://www.dot.nd.gov/dotnet/supplspecs/StandardSpecs.aspx>).—

### **2.10.16 Transfer of Wind Energy Facility Siting Permit**

In the event of a change in ownership or controlling interest in a wind energy facility and the transfer of the Permit, any successors and assigns of the original Permittee must agree to abide by and comply with the requirements and conditions of the Permit for the duration of operation of a wind energy facility permitted in the County, or give notice of intent to not honor it and forfeit the permit and its rights. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a wind energy facility, the Permittee shall notify the County Zoning Administrator aka County Auditor. If the new entity has a different agent for service of process in the state, then the new agent's address and name need to be provided at the same time. A change of ownership that results in either inability, unwillingness, or failure to abide by the conditions of this ordinance can be a basis for revocation of the permit.

## **2.11 CREW HOUSING ZONING**

### **2.11.1 Definitions**

As used in this Ordinance:

- (1) "Crew camp" means a conglomerate of portable modular quarters (PMQ) and their appurtenances, erected, co-located, and/or assembled by an owner or operator offered to others for purchase or at a fee as temporary sleeping rooms,

regardless of whether meals are provided on site. A crew camp's PMQs are not constructed on nor permanently affixed to either a concrete block or cement foundation with a footing extending below the frost line.

(2) A "crew camp permit" is a revocable conditional authorization issued by the Stutsman County Board of Commissioners to the holder allowing construction and/or operation of a crew camp.

(3) "Occupied structure" as used in this crew camp section of the ordinance means a structure in which people live on a permanent basis. It includes but is not limited to a residence, dwelling, apartment house, condominium, residential subdivision platted and recorded under NDCC 11-33.2 its predecessor or successor law, a town site, addition or subdivision platted and recorded under NDCC 40-50.1 its predecessor or successor law. It includes a lot that is being developed for use as a structure in which people will live on a permanent basis that is under construction (e.g. surface has been improved in preparation for construction) at the time the application for the crew camp permit is submitted to the county zoning administrator.

(4) "Portable modular quarters" (PMQ) means a structure or container that is used as a sleeping room or dwelling, that can stand alone or be integrated into a series, which when prefabricated is towed to or carried to the site, or when not prefabricated is assembled on site, but regardless of where it is manufactured or assembled it is not designed as a permanent single family dwelling or a permanent multiple family dwelling and when in use it is not placed on nor permanently affixed to a foundation with a footing that extends below the frost line.

(5) "Utility service" means supply of water, sewage, electric or other power, that is located externally to the structure and is capable of serving more than one structure or a conglomerate of structures.

### **2.11.2 Crew Camp Permit**

(1) Possession of a crew camp permit does not authorize the holder to construct or operate a crew camp anywhere in a township the holder pleases. A township may limit its relinquishment of zoning authority over crew camps so as to retain authority to specify in which zoning district(s) crew camps are a permitted use or a conditional use.

(2) The Crew Camp Permit is issued by the Stutsman County Board of Commissioners. The Board may rely on the Stutsman County Planning and Zoning Commission, the Stutsman County Zoning Officer and other County officers or bodies for administration and recommendations related to crew camp permits.

(3) A crew camp permit does not exempt the holder from constructing, maintaining, and operating the crew camp in accordance with applicable law, rules, codes, and/or regulations; nor from obtaining building permits or regulatory inspections.

(4) A crew camp permit authorizes construction and operation of a crew camp

not to exceed the design approved. After the permit is issued, any modification of the crew camp that would increase the bed capacity must first be approved by the Stutsman County Board of Commissioners. Failure to gain prior approval is a violation of this Ordinance.

(5) A crew camp permit is issued for 24 months. After the initial issue of a 24 month permit, the permit may renewed by the County Board a limit of two times with each renewal having a duration of 24 months. A holder must apply for renewal 90 days or more prior to the expiration of its permit. Failure to apply 90 or more days before expiration is grounds for denial of the request to renew or other sanction available under this Ordinance or remedy available by law. When, in the process of reviewing a request for renewal the County Board determines the holder is failing or has in the past failed to satisfy the obligations imposed by this ordinance, including but not limited to the obligation to abide by applicable law, code and regulation, the County Board may deny the request for renewal. No crew camp permit may be renewed more than twice. No crew camp may be permitted to construct and operate a total exceeding 72 months.

(6) Transfer of the permit must be approved by the Stutsman County Zoning and Planning Commission. In order for the Commission to authorize transfer, the transferee must exhibit to the Commission that the transferee has satisfied or will soon satisfy all the applicable responsibilities of this Ordinance. The Commission may approve transfer of the Permit prior to satisfaction of the obligations if the Commission reasonable ascertains the transferee is well prepared to satisfy all requirements in an acceptable amount of time. Should a transfer be approved on the understanding that shortcomings will be remedied promptly, failure of the transferee to promptly remedy the shortcomings is grounds for termination, suspension, or other administrative under this Ordinance or action under the law in general.

### **2.11.3.1 Application Procedure**

- (1) The application for a Crew Camp Permit must be submitted to the Stutsman County Zoning Officer who will conduct a preliminary review and if satisfied the major obligations imposed by this Ordinance seem to have been satisfied the Zoning Officer will forward it to the Stutsman County Planning and Zoning Commission for review.
- (2) A report of inspection documenting the preconstruction condition of the proposed crew camp site, adjoining properties, and the roads servicing the proposed crew camp will be made by the Zoning Administrator with assistance from the Stutsman County Highway Department if needed. This report shall serve as a basis to which the property shall be restored to following decommissioning of the crew housing facility. In the event that the property owner requests that improvements remain intact, approval must be granted according to local zoning ordinances prior to the decommissioning process.
- (3) The Planning and Zoning Commission will hold at least one public

meeting on the application. The Planning and Zoning Commission will eventually make a recommendation for approval, denial, or any other appropriate action to the Stutsman County Board of Commissioners. An application will be approved only after the County Board of Commissioners is satisfied all the conditions precedent in this ordinance have been satisfied.

### **2.11.3.2 Application Contents**

An application for a crew camp permit must be signed by the owner of the land, the lessor of the property, or an authorized representative and shall include the following information.

- (1) The legal description of the property on which the crew camp will be located.
- (2) A copy of the current lease for any real property involved.
- (3) A copy of all required permits, or approval, including but not limited to those issued by the North Dakota State Health Department, Stutsman County Rural Water District, and Central Valley Health District including fresh water.
- (4) Plans drawn to scale showing, PMQs, structures, setbacks, utilities, drainage, ingress and egress, parking, screens, buffers, fencing, emergency service roads, names of streets, the number assigned to each structure and each PMQ, and the occupancy capacity of each PMQ and each common room.
  - A. Plans must describe a facility numbering system for all structures that clearly identifies each structure and all roads in the facility for purposes of emergency responses. PMQs shall be numbered from low to high in proximity to the main entrance that is clearly and easily identified on the side of each structure using reflective lettering and/or numbering.
- (5) A description of the how the PMQs, the common areas, and the appurtenant structures will be manufactured/constructed, and if anchored or affixed to the earth, how.
- (6) A statement of the total number of beds the facility will contain.
  - A. A breakdown of the types of PMQs.
  - B. Floor plans for the various PMQs and the common areas.
  - C. A summary of square footage of the entire facility's structures and PMQs.
- (7) A site security plan that includes the following
  - A. A statement of permission to enter and inspect the facilities at reasonable times for purposes of determining number of beds and compliance with this ordinance with permission being given to Stutsman County, its officials, employees, and designees including but not limited to

the sheriff and deputies, the zoning officer, the county board members, zoning and planning committee members, the state's attorney, and the county auditor

B. A method of controlling entrance to the crew camp which includes construction and maintenance of a contiguous perimeter fence that is six feet high.

C. A method for accounting for all residents and staff on premises at any given time by name.

(8) A list of crew camp rules and regulations including the following.

A. Storage or possession of a firearm or a dangerous weapon as defined at NDCC § 62.1-01-01 or its successor, in a PMQ or other part of the residential area is prohibited. Storage or possession of a firearm on the crew camp property is prohibited except when the firearm is lawfully possessed, locked inside or locked to a private motor vehicle in a parking lot, and the person possessing the firearm is lawfully in the area. See NDCC § 62.1-02-13. Possession of secured firearm--Prohibition by employer prohibited.

B. Alcohol consumption or possession on the premises is prohibited.

C. Any resident or employee who is convicted of committing any criminal offense on the crew camp premises or a felony regardless of the location of the offense must be immediately and permanently ejected, and/or evicted and in the case of an employee terminated.

D. The camp will not tolerate criminal or disorderly conduct.

(9) A statements describing adequate methods of providing these utilities and services.

A. Potable water supply.

B. Power supply. If a camp is to be supplied with electricity through generators, the plan must describe how they will be housed or otherwise sound proofed.

C. Effluent management, particularly sewage and grey water handling.

D. Refuse disposal.

E. Fire and emergency evacuation.

(10) The applicant's name, address, phone number, and email address. When the applicant is a corporation or other business association, the applicant shall submit the names of the officers and directors of the corporation and satisfactory proof of the authority of the signatory to the application to bind the corporation as well as the name and address in the State of North Dakota for the agent for service of process.

(11) The on site manager's name, address, phone number, and email address as well as the same for an alternate emergency point of contact.

(12) Plans for site recovery, including the following.

A. What will be done with the PMQs, the common areas, and

supporting structures and appurtenances.

B. How the improvements will be removed.

#### **2.11.4 Unsuitable Applicant or Premises**

The Stutsman County Board of Commissioners may at its discretion deny an application for a crew camp permit, or renewal thereof, when, the applicant's character or experience is insufficient or if the premises itself is geologically, ecologically, or practically unfit for a crew camp.

#### **2.11.5 Prohibited Housing Types**

Use of recreational vehicles or mobile homes as PMQs in a crew camp is prohibited.

##### **2.11.6.1 Prohibited Activities**

- (1) Storage or possession of a firearm or a dangerous weapon as defined at NDCC § 62.1-01-01 or its successor, in a PMQ or other part of the residential area is prohibited. Storage or possession of a firearm on the crew camp property is prohibited except when the firearm is lawfully possessed, locked inside or locked to a private motor vehicle in a parking lot, and the person possessing the firearm is lawfully in the area. See NDCC § 62.1-02-13. Possession of secured firearm-Prohibition by employer prohibited.
- (2) Alcohol consumption or possession on the premises is prohibited.
- (3) All residents and employees are prohibited from being convicted of any criminal offense on the crew camp premises or a felony regardless of the location of the offense.
- (4) Parking vehicles between the PMQs is prohibited.
- (5) Pets are prohibited.
- (6) Allowing garbage, junk, litter, debris, unused construction materials, or refuse to accumulate or remain on site is prohibited. Storage of equipment or materials that are not directly related to the crew camp's purpose of housing workers is prohibited.
- (7) Falsifying any statement or portion of the application or failing to provide material information in the application that is mandated by the application procedure are prohibited acts and omissions.
- (8) Violation of any law, statute, code, rule, or regulation regarding operation and maintenance of a facility such as this, including but not limited to those having to do with crime, health, sanitation, taxes, labor, and employment is prohibited.
- (9) Conducting business on the premises, or allowing it to be conducted in a manner that causes a nuisance, public or private, see NDCC 42-01, or in a manner that constitutes a crime is prohibited.

- (10) Failure of the holder, it's officers or directors to maintain good standing is prohibited. Misdemeanor or felony conviction of the holder, or any of its officers or directors for conduct taking place on the crew camp premises or directly related to the holder's capacity to conduct affairs of the nature of a crew camp is prohibited.
- (11) The holder must remain solvent. Filing for bankruptcy by the holder is prohibited.
- (12) Transfer of responsibility for conduct of the operation, of the real property or lease providing the basis for the operation, or substitution of a substantial portion of officers, directors, or shareholders of the holding corporation without first gaining the County Board of Commissioner's authorization to transfer the permit is prohibited.
- (13) Failure to keep either the bond or the insurance policy required by this Ordinance in effect at the full amount required by this Ordinance is prohibited. Failure to replenish, replace, or otherwise reacquire a bond at the full amount required by this Ordinance, including but not limited to after all or a part of the bond has been assessed, seized, or otherwise collected by action of Stutsman County is prohibited.
- (14) Adding to the total number of beds specified in the crew camp application without prior approval or authorization of the County Board is prohibited.
- (15) Failure to pay on time taxes, fees, Workforce Safety and Insurance premiums, or employees is prohibited.
- (16) Failure to keep the service road open to 25 feet is prohibited.

#### **2.11.6.2 Mandated Conditions**

- (1) A crew camp must have a perimeter fence that is six feet high. All PMQs, emergency service streets, and appurtenant facilities such as resident parking, common areas, recreational areas, laundry, food preparation, dining, maintenance, and storage facilities must be contained within the perimeter fence.
- (2) A crew camp's perimeter fence must be set back 1320 feet from every other property owner's occupied structure(s). A crew camp perimeter fence may be set back less than 1320 feet when the applicant/holder has obtained waivers from any landowner directly affected and the applicant/holder provides them to the County Board who then duly approves the exception. In the case of a platted subdivision and/or auditor's lot, the 1320 foot setback must be from the exterior property line of the platted subdivision and/or auditor's lot to the nearest point on the perimeter fence.
- (3) The building intensity inside the perimeter fence must be at least 3 square feet of open space for every 1 square foot of structure. For purposes of this calculation paved areas such as a parking lot, a covered picnic pavilion, a tennis court or a basketball court will not be considered a structure.
- (4) At least one off street parking spot must be provided for every bed in the facility as well as one for every employee. Parking stalls must be at least 8'6"

wide and 18' long. Crew and employee parking must be contained inside the perimeter fence. In addition, another area must be provided for trailers and oversized vehicles.

(5) All PMQs and common areas will be within 200 feet of an emergency service street or parking area served by a road that is at least 25 feet wide. The 25 foot road must be kept passable, and clear of debris and obstructions.

(6) The holder must implement and maintain a numbering system for all structures and PMQs that includes a durable easily readable reflective plate being affixed to each PMQ. The numbering scheme must comply with the requirements specified in section, "2.11.3.2 Application Contents" and the number plates must be kept clean and free of obstructions.

(7) The permit holder must maintain the premises and conduct the operation in accordance with the assertions, indications, and limits set out in its application, including but not limited to:

- A. Maintaining ownership or a leasehold interest in the property.
- B. Complying with all applicable federal, state, and local laws, rules, regulations, and codes.
- C. Constructing and maintaining the premises and buildings as indicated in the plans and in a clean and orderly manner.
- D. Allow inspection by Stutsman County and its designees.
- E. Operate the camp in accordance with:
  - (i) the site security plan;
  - (ii) camp rules and regulations; and
  - (iii) the description of methods of providing services and utilities.
- G. Recover the site to pre construction and pre operation condition.

(8) The holder of the crew camp permit is responsible for satisfying all obligations imposed by the Century Code on an owner of "temporary work camp housing" including but not limited to the obligations of site recovery set out in NDCC 54-21.3-04.3(3) and its successor versions.

(9) When this Ordinance establishes a higher standard of care for the holder than one set out by state statute, or other applicable law, code, or regulation, the holder is legally bound to fulfill the higher standard in this Ordinance.

### **2.11.6.3 Surety Bond**

Initial issue, retention, and/or any subsequent renewal of a crew camp permit is conditioned on the applicant/holder providing documentary proof that it has acquired and holds a surety bond in the amount of \$1,000,000 payable to Stutsman County. The bond must be structured to require payment from the surety to Stutsman County for any failure of the applicant/holder to uphold an obligation whether mandated or prohibited, set out in this ordinance or other law. The bond must assure the applicant/holder will conduct its construction and operation in conformity with this Ordinance and that the holder of a

crew camp permit will satisfactorily restore the site prior to the expiration of the temporary crew camp permit. The holder of the crew camp permit must keep in place this \$1,000,000 bond at all time from the initial issuance of the permit, through operation, during any and all renewals of the crew camp permit, and through final County approval of restoration.

#### **2.11.6.4 Liability Insurance**

Initial issue, retention, and/or any subsequent renewal of a crew camp permit is conditioned on the applicant/holder obtaining and keeping in place at all time from issuance of the permit through any renewal of the permit and the County's approval of site recovery a \$2,000,000 general premises and activities liability insurance policy. This policy is distinct from and in addition to the previously mentioned surety bond.

#### **2.11.6.5 Administration Fee**

An annual \$300 per bed administrative zoning fee must be paid by the permit holder to Stutsman County and is due at the time the permit is issued. The annual fee must be paid to the Stutsman County Treasurer within 12 months of the initial issuance of the crew camp permit and submitted at the time any application for renewal is advanced. The administrative fee does not relieve the holder/applicant or owner of the land from the obligation to pay property tax on the earth but does relieve the holder/applicant or owner from paying tax on the improvements on the land made for the purposes of the crew camp operation and only so long as there is a crew camp permit.

#### **2.11.7 Revocation, Suspension, and Administrative Sanctions**

(1) Obligations of the holder, prohibited conduct, and conditions are expressed throughout this Ordinance. In some instances a statement to the effect that failure to fulfill the obligation or commission of the prohibited act is grounds for termination is included in the same paragraph as the obligation or prohibition. Whether or not that warning is specified in close proximity to the obligation or prohibition, failure to accomplish any obligation expressed in this Ordinance or commission of any conduct prohibited under this Ordinance constitutes grounds for termination or any other applicable dispositional alternative specified in this Ordinance including Appendix II. Failure to satisfy or implement either the conditions listed in the "Prohibited Activities" section 2.11.6.1 or the "Mandated Conditions" section 2.11.6.2, are grounds for termination, suspension, or sanction, but they are not the exclusive grounds. Failure to comply with any obligation in this ordinance constitutes grounds for revocation, suspension, and/or administrative action.

(2) Upon cause and due process as specified in Appendix II of this Ordinance, the County Board of Commissioners may in addition to other legal options provided by the law of the State of North Dakota impose an administrative

sanction on the holder, and/or suspend or revoke the crew camp permit. The \$10,000 ceiling on administrative sanctions specified in Appendix II is hereby expressly increased to \$50,000 for purposes of crew camp violations.

(3) When any permit is revoked or suspended for any reason, no portion of the permit fee shall be returned to the applicant.

(4) The surety bond must remain in place until the site is recovered, even if the permit is revoked, suspended, expires, or is not renewed.

### **SECTION 3.1 ZONING DISTRICTS ESTABLISHED**

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

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

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

### **SECTION 3.2 AGRICULTURAL DISTRICT (A)**

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

#### **Permitted Uses**

1. All types of farming and ranching operations including the raising of livestock and the raising, harvesting and selling of crops, forest products, dairy products, poultry and poultry products;
2. Truck gardening, apiaries, greenhouses, fur farming and the sale of only those garden, apiary, greenhouse and fur products which have been grown on the premises;

3. Public and private conservation/recreation areas;
4. Churches, cemeteries, public, private and parochial schools, subject to the setback requirements detailed below;
5. Animal hospitals or clinics;
6. Single-family non-farm residences on lots being subject to the requirements detailed in the A Zoning District Regulations presented below;
7. Community halls(publicly owned);
8. Communication towers, lines and equipment;
9. Commercial surface and subsurface mineral extraction, including sand, gravel, fill, and preparation activities, used in the construction or maintenance of public roads.

### Conditional Uses

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

1. Livestock sales arenas, livestock feedlots and slaughterhouses as previously defined, provided that: no livestock sales arenas, feedlot or slaughterhouse shall be located within 2,640 feet of any natural surface water body that contains water on an average of more than two months of any given year;
2. Commercial dog kennels;
3. Commercial grain elevators;
4. Water treatment facilities, sewage lagoons and sediment ponds, provided that: written proof that all proposed water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative;
5. Sanitary landfills, solid waste disposal facilities and hazardous waste deposition and/or storage sites, provided that: solid waste disposal facilities as regulated by this section shall include all facilities for the incineration or disposal of solid waste or solid waste residue which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. Hazardous waste deposition and/or storage facilities as regulated by this section shall include all facilities for the disposal or storage of hazardous waste which are required to be permitted under statute or rule by the North Dakota Department of Health and Consolidated Laboratories. Written proof that all proposed sanitary landfills solid waste disposal facilities and hazardous waste deposition and/or storage sites meet or exceed the approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative. A solid waste disposal facility or a hazardous waste deposition and/or storage site may be allowed in any "A" Agricultural Zone as a conditional use provided:
  - a. It is located at least one-half (½) mile from any residence or residentially

zoned area unless written approval is obtained from the owner of any residence within this area.

- b. It is continuously licensed and approved by the State Health Department as to location and operation.
  - c. There is no substantive evidence that the facility will endanger the public health or the environment.
  - d. The Conditional Use Permit will be valid for a period of time set by the Board of County Commissioners. For the permit to be approved sixty percent (60%) of all property owners within one-half (1/2) mile of the proposed location must approve of the proposed facility.
6. Oil and/or gas production, extraction and drilling provided that: any lubricants, anti-corrosives or other foreign substances used in or resulting from the drilling of oil and/or gas wells which are not consumed in the actual drilling process shall not be disposed of at nor near the drilling site. Said substances shall be disposed of in an existing approved sanitary landfill or retained by the driller. Any water emerging from sub-glacial-drift aquifers during drilling and/or extraction of oil and/or gas shall not be applied to surrounding land nor allowed to enter surface waters;
  7. Governmental administrative, maintenance and research facilities;
  8. Commercial surface and subsurface mineral extraction not used for public road projects.
  9. Airports
  10. Campgrounds, seasonal recreational camps, commercial stables, gun clubs, and recreational resorts;
  11. Wrecking, junk, and salvage yards;

#### A Zone District Regulations

1. Single family non-farm residences shall be located on lots of not less than five acres and no more than one such lot or residence may be situated on any legal quarter-quarter section located in the A Zone;
2. Minimum setback of non-farm structure shall be 100 feet from any public road right-of-way and 50 feet from any lot line of any lot of record;
3. Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1<sup>st</sup> of any year shall be 100 feet from any public right-of-way.
4. For commercial surface and subsurface mineral extraction, including sand, gravel, fill, and preparation activities, the following regulations are required prior to issuance of a zoning permit:
  - It is required to have all road haul agreements in place with the appropriate jurisdictions, if required by those jurisdictions.
  - Dust control measures must be used around structures that are legally inhabited or in use at the time the permit application is submitted.
  - Minimum setback of one half (1/2) mile from any structures that are legally inhabited or in use at the time the permit application is submitted. For any structures within the 1/2 mile setback, a waiver from the property owner(s) and/or leaseholder(s) will be required.

## **SECTION 3.3 RURAL RESIDENTIAL (RR) ZONE**

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

### Permitted Uses

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

### Conditional Uses

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

### RR Zone District Regulations

1. The minimum size of a RR District shall be 10 acres;
2. Minimum lot size shall be 20,000 square feet for lots served by public water or sewer and 1 acre for lots not served by public water or sewer;
3. Minimum setback of any structure shall be: 100 feet from any right-of-way & 50 feet from any lot line;
4. Any structure exceeding 35 feet in height shall require a Conditional Use Permit, with the exception of metal towers such as windmills and antennas;
5. The maximum intensity of buildings or other structures on any lot shall be 30% of the lot area;
6. Any two family residential structures shall include off-street parking space for at least two full size automobiles;

7. Points of ingress and egress from any public road shall be limited to one per 1/4 mile in or from any RR Zone properties. A frontage road shall be constructed as necessary to allow access to public roads via the allowable points of ingress and egress;
8. Minimum setback of any non-farm vegetation exceeding 48 inches in height which is left standing after November 1<sup>st</sup> of any year shall be 100 feet from any public right-of-way.

## **SECTION 3.4 RESIDENTIAL COMMUNITY ZONE (R-C)**

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

### **Permitted Uses**

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

### **Conditional Uses**

1. Campgrounds;
2. Keeping of livestock on lots of 30,000 square feet or more;
3. Water treatment facilities, sewage lagoons and sediment ponds provided that: written proof that all proposed water treatment facilities, sewage lagoons and sediment ponds meet or exceed the approval criteria set forth by any or all North Dakota State agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative.

### **R/C Zone District Regulations**

1. The minimum size of an R/C District shall be 40 acres;
2. Minimum lot size shall be 5,000 square feet for lots served by public water or sewer and 20,000 square feet for lots not served by public water or sewer;
3. Minimum setback of any structure shall be: 25 feet from any public right-of-way, 10 feet from any lot line;
4. Any structure exceeding 35 feet in height shall require a Conditional Use Permit with the exception of metal towers such as windmills and antennas;

5. The maximum intensity of buildings or other structures on any lot shall be 40% of the lot area;
6. Any two or more family residential structures shall include off-street parking space for at least one full-size automobile per housing unit.

### **SECTION 3.5 COMMERCIAL (C) ZONE:**

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

#### **Permitted Uses**

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

#### **Conditional Uses**

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

### C Zone District Regulations

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

## **SECTION 3.6 INDUSTRIAL (I) ZONE**

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

### Permitted Uses

1. Agriculture;
2. Processing of food, fiber, agricultural products, petroleum and mineral resources;
3. Manufacturing and fabrication enterprises;
4. Railroad yards, including maintenance, storage, repair facilities, and offices;
5. Communication towers, lines, equipment, maintenance facilities, and offices;
6. Water treatment facilities, sewage lagoons and sediment ponds, provided that: written proof that all water treatment facilities, sewage lagoons and sediment ponds meet or exceed that approval criteria set forth by any and all North Dakota state agencies or officials shall be required prior to approval of a Conditional Use Permit for such use. Said written proof shall be signed by the acting agency director or official or his/her authorized representative;
7. Rock, sand or gravel excavation, crushing and handling;
8. Truck and freight terminals, warehousing, bulk terminals involving dry, liquid and gaseous substances;
9. Concrete and concrete product plants.

### Conditional Uses

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

#### I Zone District Regulations

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

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

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

#### Permitted Uses

1. Agriculture;
2. Harvesting of natural crops;
3. Raising of game animals, fowl and fish;
4. Public parks, recreation areas, playgrounds, picnic areas and natural preserves;
5. Flood water management structures;
6. Historical structures and monuments;

7. Structures and facilities used directly for the administration and/or management of lands in the R/O district.

#### Conditional Uses

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

### **SECTION 4.1 DESIGNATION OF ADMINISTRATIVE OFFICIALS**

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

### **SECTION 4.2 BOARD OF ADJUSTMENT AND APPEALS**

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

### **SECTION 4.3 DETERMINATION OF ZONE BOUNDARIES**

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

1. Where such boundaries are indicated as approximately following street lines, alley lines or lot lines, such lines shall be construed to be such boundaries.
2. In the case of unsubdivided property and where a zone boundary divides a lot, the location of such boundaries, unless the same are indicated by dimensions, shall be determined by the use of the scale appearing on such zoning map.
3. Where a public street or alley is officially vacated, the zoning regulation applicable to abutting property on each side of the center line shall apply up to the center line of such vacated street or alley on each respective side thereof;

4. Areas of dedicated streets or alleys and railroad right-of-ways, other than those designated on the zoning map as being classified in one of the zones provided in this Article, shall be deemed to be unclassified.

#### **SECTION 4.4 BUILDING PERMIT REQUIRED**

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

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

Refer to Stutsman County Fee Schedule for current building permit fees.

#### **SECTION 4.5 VARIANCE PROCEDURE**

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

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

Refer to Stutsman County Fee Schedule for current variance fees.

## **SECTION 4.6 CONDITIONAL USE PERMIT PURPOSE, REQUIREMENT and PROCEDURES**

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

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

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

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

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

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

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

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

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

Refer to Stutsman County Fee Schedule for current conditional use permit fees.

## **SECTION 4.7 AMENDMENTS**

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

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

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

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

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

Publication of amendment - Effective date. Following public hearing, the Board of County Commissioners may adopt the proposed amendments thereto, with such changes as it may deem advisable. Upon adoption of any amendment, the County Auditor shall file a certified copy thereof with the County Recorder. Immediately after the adoption of any amendment, the County Auditor shall cause notice of the same to be published for two successive weeks in the official newspaper of the county and in such other newspapers published in the county as the Board of County Commissioners may deem necessary. Said notice shall describe the nature, scope and purpose of the adopted amendment and shall state the times at which it will be available to the public for inspection and copying at the office of the County Auditor. If petition for a separate hearing is filed pursuant to Section 11-33-10, the amendment shall not take effect until the Board of County Commissioners have affirmed such amendment in accordance with the procedures of Section 11-33-10, NDCC, as noted below:

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

Refer to Stutsman County Fee Schedule for current zoning amendment fees.

## **SECTION 4.8 PENALTIES FOR VIOLATIONS**

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

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

11-33-17. Violation of zoning regulations and restrictions - remedies. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or if any building, structure or land is used in violation of this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies may institute any appropriate action or proceedings.

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

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

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

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

## **SECTION 4.9 CERTIFICATE OF COMPLIANCE**

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

## **SECTION 5.0 FLOOD DAMAGE PREVENTION ORDINANCE**

### **5.1 Statutory Authorization**

The Legislature of the State of North Dakota has in North Dakota Century Code Chapters 11-33, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the Board of County Commissioners of Stutsman County, North Dakota does ordain as

follows:

## **5.2 Findings of Fact**

(1) The flood hazard areas of Stutsman County are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety and general welfare.

(2) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

## **5.3 Statement of Purpose**

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding, and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in special flood hazard areas;
- (6) To help maintain a stable tax base by providing for the second use and development of special flood hazard areas so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in a special flood hazard area; and,
- (8) To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

## **5.4 Methods of Reducing Flood Losses**

In order to accomplish its purposes, this ordinance includes 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 5.5 DEFINITIONS**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**"Appeal"** means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.

**"Base flood or 100-year flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Base Flood Elevation" (BFE)** means the height of the base flood or 100-year flood usually in feet above mean sea level.

**"Basement"** means any area of the building having its floor subgrade (below ground level) on all sides.

**"Best Available Data" (BAD)** means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).

**"Conveyance or hydraulic conveyance"** means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.

**"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

**"Flood Insurance Rate Map" (FIRM)** means the official map issued by the Federal Emergency

Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

**"Flood Insurance Study" (FIS)** means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.

**"Flood" or "flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.

**"Flood proofing" (Dry)** means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

**"Floodway or regulatory floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**"Lowest floor"** means the lowest floor of a structure including the basement.

**"Manufactured home"** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle", but does include "mobile home".

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

**"New construction"** means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

**"Reasonably safe from flooding"** means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**"Recreational vehicle"** means a vehicle which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck;
- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
- (e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles

**"Special Flood Hazard Area" (SFHA)** means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.

**"Start of construction"** includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

**"Structure"** means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

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

**"Substantial improvement"** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- 1) Before the improvement or repair is started; or
- 2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "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:

- (1) 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
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**"Variance"** means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

## **SECTION 5.6 GENERAL PROVISIONS**

### **5.6.1 Lands to Which This Ordinance Applies**

This ordinance shall apply to all special flood hazard areas within the jurisdiction of Stutsman County.

### **5.6.2 Basis for Establishing the Special Flood Hazard Areas**

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled “The Flood Insurance Study for Stutsman County, dated May 24, 2011,” with an accompanying Flood Insurance Rate Map and all subsequent revisions thereto is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the Stutsman County Emergency Management Office located at 205 6<sup>th</sup> Street SE, Jamestown, ND 58401.

### **5.6.3 Compliance**

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

### **5.6.4 Greater Restrictions**

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

### **5.6.5 Interpretation**

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

### **5.6.6 Warning and Disclaimer of Liability**

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

## **SECTION 5.7 ADMINISTRATION**

### **5.7.1 Establishment of Development Permit**

A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 3.2. Application for a development permit shall be made on forms furnished by floodplain 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 materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level, of the lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.2-2; and,
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

### **5.7.2 Designation of the Floodplain Administrator**

The Stutsman County Emergency Management Office is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

### **5.7.3 Duties and Responsibilities of the Floodplain Administrator**

Duties of the floodplain administrator shall include, but not be limited to:

#### **5.7.3A Permit Review**

- (1) Review all development permits to determine that the permit requirements of this

ordinance have been satisfied.

- (2) 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.
- (3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.3(1) are met.

### **5.7.3B Use of Other Base Flood Data**

When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available (known as best available data) from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Section 5.2, SPECIFIC STANDARDS.

### **5.7.3C Information to be Obtained and Maintained**

- (1) 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.
- (2) For all new or substantially improved floodproofed structures:
  - (i) obtain and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed;
  - (ii) maintain the flood proofing certifications required in Section 4.1(3).
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

### **5.7.3D Alteration of Watercourses**

The floodplain administrator shall:

- (1) Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,
- (3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

### **5.7.3E Interpretation of Flood Insurance Rate Map (FIRM) Boundaries**

Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.4.

## **5.7.4 VARIANCE PROCEDURE**

### **5.7.4A Appeal Board**

- (1) The Stutsman County Planning and Zoning Commission as established by Board of County Commissioners shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The Stutsman County Planning and Zoning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the Stutsman County Planning and Zoning Commission, or any taxpayer, may appeal such decision to the Southeast Judicial District Court, provided in NDCC 11-33-12.
- (4) In passing upon such applications, the Stutsman County Planning and Zoning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:
  - (i) the danger that materials may be swept onto other lands to the injury of others;
  - (ii) the danger to life and property due to flooding or erosion damage;
  - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- (iv) the importance of the services provided by the proposed facility to the community;
  - (v) the necessity to the facility of a waterfront location, where applicable;
  - (vi) the availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
  - (vii) the compatibility of the proposed use with existing and anticipated development;
  - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.4-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of Section 4.4-1(4) and the purposes of this ordinance, the Stutsman County Planning and Zoning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

**5.7.4B Conditions for Variances**

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of

structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

- (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
  - (i) a showing of good and sufficient cause;
  - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
  - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 4.4-1(4), or conflict with existing local laws or ordinances.
- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

## **SECTION 6.0 PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **6.0.1 GENERAL STANDARDS**

In all special flood hazard areas the following standards are required:

#### **6.0.2 Anchoring**

- (1) All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

### **6.0.3 Construction Materials and Methods**

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) 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.

### **6.0.4 Utilities**

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (2) 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,
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### **6.0.5 Subdivision Proposals**

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

## **6.1 SPECIFIC STANDARDS**

In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS or Section

4.3-2, Use of Other Base Flood Data, the following provisions are required:

**6.1.1 Residential Construction**

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation.

**6.1.2 Nonresidential Construction**

Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:

- (1) Be flood proofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 4.3-3(2).

**6.1.3 Manufactured Homes**

- (1) Manufactured homes shall be anchored in accordance with Section 5.1-1(2).
- (2) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to at least one foot above the base flood elevation, and is securely anchored to an adequately anchored foundation system.

**6.2 FLOODWAYS**

Located within the special flood hazard areas established in Section 3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base

flood discharge.

- (2) If Section 5.3(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION.

### **6.3 PENALTIES FOR VIOLATIONS**

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
- (2) Nothing herein contained shall prevent the Board of County Commissioners from taking such other lawful action as is necessary to prevent or remedy any violation.

## APPENDIX I

### Geophysical Exploration Requirements

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

Some of the more important provisions of this chapter include:

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

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

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

North Dakota Geological Survey  
University Station Grand Forks ND

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

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

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

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

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

by the mineral developer the court shall also award reasonable attorneys fees and any court costs in addition to the damage award.

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

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

## **Well Spacing**

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

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

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

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

## APPENDIX II

### HEARING PROCESS

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

information on the case considered by any Board Member should be published to both parties sufficiently prior to any hearing to allow reasonable time for rebuttal. The County Board may, by motion passed by a majority of the Board at an open meeting, instruct the Stutsman County Sheriff to investigate one or more specific issues. The results of that investigation will be submitted to the Board, the owner and/or operator, the County Zoning Administrator, and the State's Attorney in a written report. Every party with standing must be given a reasonable time to submit written rebuttal to any material disclosed to him.

- E. Upon probable cause to believe there has been a violation of this zoning ordinance or a regulation promulgated pursuant to this ordinance, the County Board may issue a notice to stop work and/or a notice of termination. Stop work orders are reserved for situations constituting a clear and present danger of substantial damage to the environment, property, or humans but do not allow time for a hearing. Any violation under this Ordinance or subordinate regulation may be addressed with a notice of termination.
- F. Decisions on whether to issue a stop work order and/or a notice of termination are preliminary decisions that would usually be made in a summary proceeding at a regularly scheduled or a special meeting of the County Board during which only the County Board's representative or associates would address the Board. At this summary proceeding, whether the operator or owner will be allowed to address the Board is up to the Chairman of the County Board. According to North Dakota Century Code section 44-04-20(2), if time and circumstances allow for listing the item in the agenda for the County Board meeting, the public notice will contain a reference to a preliminary determination regarding issuance of a stop work order or notice of termination of the conditional (or special) use permit.
- G. NOTICE OF TERMINATION. After the County Board makes a preliminary determination to issue a stop work order and/or a notice of termination, the County Zoning Administrator shall provide a written notice to the owner and if there is an operator, then to the operator in addition to the owner. Notice will specify whether the Board issued a stop work order, a notice of intent to terminate, or both, as the case may be. The notice will contain the following.
  - (1) Specific notice of the allegations including listing each and every condition or obligation of the Ordinance alleged to have been violated.
  - (2) Provision of specific notice that if the owner and/or operator wants a hearing on the allegation(s), the owner and/or operator must deliver a written request for a hearing to the County Zoning Administrator's office within 40 days of service of the County Board's notice.
  - (3) Provision of notice that failure to deliver a written request for a hearing to the County Zoning Administrator's office within 40 days of service of the notice of intent to terminate or the stop work order to the owner or operator (whichever is

accomplished first) constitutes waiver of the right to a hearing and admission of the allegations in the pre-termination notice.

- (4) Provision of notice of opportunity to cure for those violations which are amenable to cure and/or specification of any alleged violation that is not subject to cure. If there is an allegation of a violation that is amendable to cure, then the owner and/or operator will be informed that the owner and/or operator has 30 days from the date of the notice of the violation to cure the alleged violation(s). If there is an allegation of a violation that is amenable to cure, the owner and/or operator will be notified that the owner and/or operator has 40 days from the date on the notice of termination to file a request for a hearing.
- (5) Provision of notice that in cases of stop work orders, the owner and/or operator must immediately stop every portion of the operation that results in the alleged violation. The window for the opportunity to cure does not provide a window within which to continue operations that result in the alleged violation of the ordinance. The window of opportunity to cure creates a time frame within which the owner and/or operator can devise and implement a plan to ensure that when operations resume, the violation will not re-occur.
- (6) Provision of notice that all materials the owner and/or operator wishes the Board to consider must be presented to the Board with the owner and/or operator's initial response to the stop work order or notice of termination including but not limited to a list of witnesses by name, address and phone number and a summary of their testimony; and a list of exhibits and copies thereof.
- (7) Provision of notice that no material will be considered by the Board at the hearing on the stop work order or the termination if the material has not been disclosed in the owner and/or operator's initial reply to the notice of termination. Provision of notice that although the Chairman of the Board may allow leave to amend initial responses, there is not guarantee leave to amend will be granted.

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

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

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

#### I. SETTING DATE FOR HEARING OR FINAL DISPOSITION

- (1) If the parties served fail to deliver a written request for a hearing to the County Zoning Administrator within 40 days of the date of service of the stop work order and/or notice of termination, there will be no hearing on the issue of whether the violations were committed. The violations are deemed admitted by the failure to timely file a request for a hearing. Once the date for filing a request for hearing has passed, the County Zoning Administrator shall schedule the case for disposition at the next regularly scheduled meeting of the County Board. If the Chairman of the County Board determines the nature of the violation necessitates final disposition sooner than the next regularly scheduled County Board, the Chairman may direct the Auditor to schedule a special meeting of the County Board.
  
- (2) If the parties served deliver a request for a hearing to the Auditor within 40 days of the date on the notice of termination, the County Zoning Administrator will promptly furnish a copy of the owner and/or operator's response to each County Board member and the State's Attorney. The State's Attorney may, within 5 days of the owner and/or operator's filing of a response and in accord with the provisions of subparagraph C above, request leave of the Chairman of the County Board to amend the list of witnesses or list of exhibits. The Chairman will provide written notice of the decision granting or denying leave to amend to all County Board members, the Auditor, the State's Attorney, and the owner and/or operator. If leave to amend is granted the Chairman will specify a deadline for filing the amendments. If the State's Attorney does file amendments within the time allotted by the Chair, the owner and/or operator may in turn request leave to amend. If the owner and/or operator requests leave to amend, the Chair of the County Board will rule on the request and publish the ruling to each member of the County Board, the State's Attorney, and the owner and/or operator. If the owner and/or operator's request to amend is granted the Chairman's ruling must specify a date by which the amendments must be filed. Failure of either party to file amendments in time will result in exclusion of any material not timely filed. After each party has had one opportunity for leave to amend, no further requests for leave to amend will be entertained. No undisclosed witness, exhibit, or statement will be considered at the hearing. Within ten days of the Chair's last deadline for amendment, the County Zoning Administrator will schedule the allegations for hearing before the County Board.

J. HEARING ON ALLEGATIONS.

The hearing will be held at an open meeting of the County Board and recorded on audio tape. The Chairman of the County Board will preside over the hearing. The County Board may move to retain a private attorney from County funds to act as Referee at the hearing instead of the Chairman. If an attorney is hired to referee, the Referee's rulings on the admission of evidence will not be final. The State's Attorney or his designee will represent the County Board. The Permittee may be represented by

counsel or represent him or herself. The burden of proving the allegations is on the County Board. The standard of proof is a preponderance of the evidence. The Chairman (or the Referee) will control the admission of testimony and exhibits. The Chairman may limit the State's Attorney and the owner and/or operator to a reasonable amount of time, witnesses, and exhibits on the basis of relevance and accumulation. The Chairman may allow opening and closing statements. The Chairman may request guidance from the State's Attorney regarding procedure and admission of evidence.

K. FINDINGS.

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

L. DISPOSITIONAL ALTERNATIVES

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

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

the severity of the infraction, the intent of the owner/operator, prior proven violations, damages, ability to remedy, cost of investigation and prosecution of the violation, general deterrence, and specific deterrence.

## **Permit Fee Schedule**

Application for Building Permit:

<u>Valuation of work to be done</u>	<u>Fee</u>
Under \$2,000	No Fee
\$2,001 - \$25,000	\$25
\$25,001 - \$100,000	\$50
Over \$100,000	\$100
Application for Conditional Use Permit	\$100
Application for Zoning Amendment	\$100
Application for Variance	\$100

\*\*\*Refer to Stutsman County Zoning Ordinance for Wind Energy & Crew Camp conditional use permit fees.