

**McHenry County
North Dakota
Zoning Regulations**



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**PREAMBLE
AN ORDINANCE ESTABLISHING
COMPREHENSIVE ZONING REGULATIONS
FOR McHENRY COUNTY**

The intent is to:

Promote the health, safety, moral and general welfare of the county residents and the orderly development of lands within the county;

Preserve and maintain agricultural lands for farm use;

Encourage nonfarm growth to locate within existing communities or within the immediate environs of communities;

Promote a healthy and visually attractive environment;

Promote the development of utility corridors which utilize the least productive agricultural land;

Discourage development which places an excessive financial burden on County government.

THIS ORDINANCE IS HEREBY ADOPTED EFFECTIVE THIS 20th DAY OF March, 2000.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 4th DAY OF April, 2006.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 19th DAY OF August, 2011.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 26th DAY OF August, 2011.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 7th DAY OF February, 2012.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 23rd DAY OF August, 2012.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 7th DAY OF May, 2013.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 4th DAY OF June, 2013.

THIS ORDINANCE IS HEREBY AMENDED EFFECTIVE THIS 5th DAY OF January, 2016

Harry E. Bergstad

Harry E. Bergstad, Chairman
McHenry County Commission

Darlene Carpenter

Darlene Carpenter, County Auditor
McHenry County

**ZONING REGULATIONS
McHENRY COUNTY, NORTH DAKOTA**

ARTICLE 1 - INTRODUCTION

SECTION 1. TITLE: This resolution shall be known, cited, and referred to as the "Zoning Regulations of McHenry County, North Dakota."

SECTION 2. PURPOSE: These regulations have been made in accordance with a comprehensive plan prepared for McHenry County and are designed to promote the health, safety, morals, public convenience, general prosperity, and public welfare of McHenry County.

SECTION 3. REPEAL: All other zoning regulations and amendments thereto adopted under the authority of Chapter 11-33 of the North Dakota Century Code are hereby repealed.

SECTION 4. AUTHORITY: These regulations are adopted under the authority granted by Chapter 11-33 of the North Dakota Century Code.

SECTION 5. SEVERABILITY: Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 6. EFFECTIVE DATE: These regulations shall be in full force and effective from and after its passage and approval.

ARTICLE 2 - GENERAL PROVISIONS

SECTION 1. JURISDICTION: These zoning regulations shall apply to all areas within the civil boundaries of McHenry County North Dakota; with the following exceptions:

1. Those areas within the civil boundaries of organized cities and those areas where cities have applied some measure of their extraterritorial zoning authority (but not including the cities of Upham, Balfour, Voltaire which have indicated a desire for the County Zoning Commission to apply zoning regulations within their civil boundaries.)
2. Those areas within the civil boundaries of an organized township that has exercised their zoning authority, including Norwich, North Prairie, Gilmore, and Pratt Townships.

SECTION 2. COMPLIANCE: Except hereinafter provided, no building structure or land shall be used, occupied, erected, constructed, moved, reconstructed or structurally altered except in conformity with all of the regulations for the district in which it is located.

SECTION 3. AGRICULTURE EXEMPTED: Nothing in this ordinance shall be applied for the purpose of preventing or restricting the use of land or buildings for agricultural or any of the normal incidents of agriculture.

SECTION 4. INTERPRETATION: In the interpretation and application of these regulations, these provisions shall be held to be the minimum requirements adopted for the promotion of the public health, safety and welfare. Where these regulations impose a greater restriction on land, buildings or structures than is imposed or required by existing provisions of law, ordinance, contract, deed, or resolution, the provisions of these regulations shall control.

SECTION 5. NONCONFORMING USES:

1. Lawful nonconforming uses of land or buildings existing at the date of adoption of these regulations may continue provided no structural alterations, except for normal maintenance, are made and such nonconforming uses shall not be extended to occupy a greater area of land than occupied at the date of adoption of these regulations.
2. No building or structure where a nonconforming use has been discontinued for a period of two years or has changed to a permitted use shall again be devoted to a nonconforming use.
3. A nonconforming structure destroyed or damaged less than fifty percent of its fair market value may be reconstructed within one year of such casualty. If damaged more than fifty percent of its fair market value, such building shall be reconstructed in conformance with these regulations.
4. The provisions of this section shall not be applicable to conditional uses or any made nonconforming by a change or amendment in district regulations.

SECTION 6. MINERAL EXPLORATION AND MINERAL EXTRACTION:

1. All large scale (greater than 500 yards per year) mineral exploration and mineral extraction activities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Zoning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provision for the following has been made:
 - A. The activities will not result in undue damage or injury to roads, bridges, right-of-ways in the County or to any public or private property.
 - B. Evidence of a reclamation agreement with the surface owner.
 - a. Reclamation of project shall be finished within one (1) year, of the completion of the mineral exploration and/or extraction activities.
 - C. Evidence of compliance with all County, State and Federal regulations. (copies of permits)
 - D. Evidence that the activity is one hundred fifty (150) feet from all section lines, property lines, water sources and the centerlines of all township, county, state and federal roads.
 - E. All Conditional Use Permits issued for Mineral Extraction shall be valid for 3 years from the date issued and must be renewed prior to expiration date.
 - F. Any permits not renewed by the expiration date will, be treated as a new permit and require a public hearing.
 - G. Any mineral extraction area that has been vacated for 3 or more years will be deemed abandoned and the operator must re-apply for a permit before renewing the excavation operation.
 - H. Portable concrete, Crushing, and Asphalt plants shall only be permitted for a specific period of time and not an open ended permit.

SECTION 7. SANITARY REGULATIONS: All residential, commercial or industrial structures shall conform to the North Dakota health regulations as they refer to wells, irrigation, septic and sanitary systems.

SECTION 8. WASTE DISPOSAL SITES:

1. At a minimum the following described waste disposal sites shall comply with all applicable state, federal, local laws, rules and regulations. In addition, the Zoning Commission and/or County Commission may require compliance to other conditions.
2. Private Waste Disposal Sites - A solid waste disposal site used exclusively by and only for the landowner or tenant engaged in farming. Sites shall be limited to one per landowner and used only for refuse generated from personal farming operations, in addition these sites must comply with Farm Service Agency (FSA) regulations.
 - A. Private waste disposal sites shall avoid low and steep areas and be a minimum of two hundred fifty (250) feet away from waterways.
3. Commercial Waste Disposal Sites - A solid waste disposal site or facility permitted pursuant to the laws of the State of North Dakota. Waste which is transported to a disposal site shall be by a waste hauler licensed by the State of North Dakota.
 - A. The site, operation, or facility must meet or exceed all applicable federal, state and local laws, rules, and regulations.
 - B. The site, operation, or facility shall be limited to inert solid waste and municipal solid waste. Waste that is deemed hazardous in nature or exerts hazardous characteristics or nuclear waste, sewage sludge and incinerator ash are not permitted.
 - C. All areas for cell, excavation or waste filling operations shall maintain a minimum setback of 150 feet from all property lines.
 - D. No fires shall be permitted, except by permission of the County Commission. Any smoldering flame or spontaneous combustion at the site shall be immediately extinguished.
 - E. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on the site, except on areas where active filling operations are taking place.
 - F. Entrance to the site shall be controlled at all times to prevent improper dumping on the site.
 - G. For facilities that manage municipal solid waste, a chain link fence six (6) feet high shall be installed along the boundaries of the area developed or the area of active filling operations and provided with gates of the same construction as the fence.
 - H. For other facilities, other than a municipal solid waste site, a four-wire barbed wire fence, suitable to restrain livestock, shall be placed around the boundary of the permitted site.
 - I. Provisions, approved by the County Commission, shall be made for the management of surface and storm water falling on or crossing the site at all times, during and after the completion of the operations. Surface and storm water management also shall comply with all applicable federal, state, and local laws, rules, and regulations. These provisions shall be accomplished through the use of a professional engineer that is registered by the State of North Dakota.
 - J. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply or quality of ground water.
 - K. Operators of a commercial waste disposal facility or site may have an environmental inspector on site. Provisions shall be made for the cost to be paid by the operator to the State Health Department or County as may be negotiated with the State Health Department or County.
 - L. Facilities other than ones that manage municipal solid waste would be required to have non sudden and sudden liability insurance and closure and post closure insurance payable to the State Health Department and upon conditions set by State Health Department.

SECTION 9. SIGN REGULATIONS: Signs of all types shall comply with the regulations set forth in this Section. A zoning permit shall be obtained prior to erection of any sign.

1. TRAFFIC HAZARDS

- A. No sign shall be erected in such a manner as to obstruct free and clear vision, or at any location where, by reason of position, shape or color it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device, or which makes use of the words "stop", "look", "danger" or other word, phrase or symbol in such manner to interfere with or mislead or confuse motorists or pedestrians.
- B. Light source for illuminated signs shall not be of such brightness as to constitute a hazard to pedestrian or vehicular traffic.
- C. No rotating beam, beacon, or flashing illumination resembling an official traffic control or emergency light shall be used in connection with any sign display, nor shall any illuminated device designed to attract attention of users of the street, be permitted unless it is an integral and functional part of the sign as herein defined.

2. EXEMPTED SIGNS: The following signs are not subject to the provisions of this Section:

- A. Governmental signs for control of traffic and other regulatory purposes, street signs, warning signs, railroad crossings signs and temporary signs of Public utility companies for the purpose of safety.
- B. Flags, emblems and insignia of any governmental agency.
- C. Commemorative plaques place by recognized historical agencies.
- D. Temporary private or political advertisement (House for Sale, Yard Sale, Fundraisers etc.)
- E. Church signs.

3. PROHIBITED SIGNS: No signs shall be attached or otherwise applied to trees, utility poles, trash receptacles, newspaper vending machines or boxes, or any other unapproved supporting structure or otherwise placed in the public right-of-way except as specifically permitted by this Section.

4. SIGN RESPONSIBILITY, MAINTENANCE AND REMOVAL

- A. Owner's Responsibility:
 - a. The owner of any sign and the owner of the premises on which it is located shall be responsible for keeping it in good repair and in proper state of preservation.
 - b. The owner of any sign and the owner of the premises on which it is located shall be responsible for the removal of such sign if and when it is abandoned or becomes no longer functional.
- B. Enforcement:
 - a. In the case of non-compliance with the provisions of (1)(a) and (1)(b) above, the Zoning Commission shall notify, in writing, the owner of the abandoned or non-functional sign in question or the owner of the premises on which such sign is located. If such order is not complied with within thirty (30) days after the date of such order, the Zoning Commission shall remove such sign at the expense of the owner of the real estate.

5. LOCATION OF SIGNS

- A. No part of any sign shall project beyond the property or street or road right-of-way line.
- B. No sign shall be located in a required front yard except accessory identification signs, as follows:
 - a. Bulletin boards and warning and directional signs, which shall be located no less than ten (10) feet from the street right-of-way line if in a required front yard.
 - b. Identification signs which are an integral part of a permitted gateway structure at the entrance to a subdivision, group housing development or industrial park.
 - c. Free standing identification signs for commercial establishments, complying with other requirements thereof.
 - d. Temporary real estate or construction signs, no less than six (6) feet from the street right-of-way line.

6. MAXIMUM HEIGHT OF ACCESSORY SIGNS: The maximum height of accessory signs and the minimum clearance beneath them, where applicable, shall be as set forth hereunder.

- A. No wall sign shall project above the top of the wall on which it is located.
- B. No projecting sign shall extend more than fifty (50) percent of the vertical height of the sign above the top of the building on which it is located.
- C. Free Standing signs located within one hundred (100) feet of the intersection of street curb lines shall have a minimum vertical clearance of twelve (12) feet beneath them.
- D. Roof Signs shall not exceed the maximum permitted height of buildings in the zoning district in which they are located and shall not exceed twenty-five (25) feet higher than the roof of the building to which the sign is attached at the point of mounting.
- E. Awnings, canopies, marquees or signs attached thereto shall maintain a minimum of eight (8) feet clearance above grade.

7. ILLUMINATION: Where illuminated signs are permitted, such signs shall be effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of all streets and roads so that such rays are not of intensity or brilliance as to cause glare or to impair the vision of the driver or any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle.

SECTION 10. ANIMAL FEEDING OPERATIONS:

- 1. All new or expanded animal feeding operations that exceed 300 animal units shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Zoning Commission and/or County Commission.
- 2. No conditional use permit shall be issued unless satisfactory provisions for the following have been made:
 - A. Evidence of compliance with applicable state laws and rules, including the laws and rules administered by the North Dakota Department of Health and any permits granted by that department.
 - B. Water Resource Setback Requirements – the operator of a new or expanded animal feeding operation that has more than 300 animal units (see Equivalent Animal Unit Numbers table) shall not locate or establish that operation:

- a. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface water intakes of public water systems, source water protection areas include all or portions of the surface water that supplies the water for the public water system, including all or portions of the surface water's shoreline.
 - b. Within 1,200 feet of a private ground water well which is not owned by the animal feeding operator or within 1,500 feet of a public ground water well which does not have a delineated source water protection area.
 - c. Within 1,000 feet of surface water which is not included in source water protection area.
- C. Odor Setback Requirements
- a. The operator of a new animal feeding operation shall not locate that operation within the extraterritorial zoning jurisdiction of an incorporated city.
 - b. 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 for odor are listed in the following table. An owner of property who is any operator of the animal feeding operation may locate the owner's residence or business within the setbacks.
 - c. The operator of a new animal feeding operation shall locate the site of that operation from existing residences, businesses, churches, schools, public parks, including areas of property that are zoned residential so as to exceed the corresponding odor setback.
- D. The application for a conditional use permit to operate a facility for an animal feeding operation shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled plan shall be prepared by a registered land surveyor, civil engineer or other person having comparable experience or qualifications. The site plan shall include:
- a. Proposed number of animal units.
 - b. Total acreage of the site of the facility.
 - c. Existing and proposed roads and access ways within and adjacent to the site of the facility.
 - d. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
 - e. A copy of the permit application submitted by the applicant to the North Dakota Department of Health.

Equivalent Animal Numbers

Livestock Type	Animal Unit Equivalent	Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0000	150	500	1,000	2,500
1 dairy cow	1.3300	225	750	1,500	3,750
1 mature beef	1.0000	300	1,000	2,000	5,000
1 beef feeder – finishing	1.0000	300	1,000	2,000	5,000
1 beef feeder - backgrounding	0.7500	400	1,333	2,667	6,667
1 mature bison	1.0000	300	1,000	2,000	5,000
1 bison feeder	1.0000	300	1,000	2,000	5,000
1 swine > 55 lbs	0.4000	750	2,500	5,000	12,500
1 goose/duck	0.2000	1,500	5,000	10,000	25,000
1 sheep	0.1000	3,000	10,000	20,000	50,000
1 swine – nursery	0.1000	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.0100	30,000	100,000	200,000	500,000

Odor Setback Distances for Animal Feeding Operations

Number of Animal Units	Hog Operations	Other Animal Operations
0 - 1,000	0.50 miles	0.50 miles
1,001 - 2,000	0.75 miles	0.50 miles
2,001 - 5,000	1.00 miles	0.75 miles
5,001 or more	1.50 miles	1.00 miles

SECTION 11. WIND ENERGY FACILITIES:

1. Definitions.

"Wind energy facility" shall mean one or more wind turbine(s) rated at a combined five hundred (150) kilowatts nameplate capacity or larger.

2. Application and Hearing Requirements.

- A. A Conditional Use Permit is required to construct a wind energy facility in the county. The application, notice, public hearing, Zoning Commission recommendation, and County Commission determination requirements for a Conditional Use Permit for a wind energy facility shall be the same as those set forth for a Conditional Use Permit in Article 4, Sections 4.2 through 4.5 of this ordinance, except that the application shall be submitted by the person or entity that will construct the wind energy facility.
- B. The Conditional Use Permit may be issued for a specified period of time with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the Permit and periodic review may be required to determine if the Conditional Use Permit should remain in effect.
- C. An application fee of \$1,000 plus \$300 per proposed tower must be submitted with an application for a Conditional Use Permit.

3. General requirements.

- A. The applicant must provide a local contact authorized by the applicant to receive and respond to all notices, demands, complaints, concerns or other requests. Local contact information must include the name of the local representative, a local phone number, and a physical address. Said contact information must be filed with the county planner prior to commencement of construction of the wind energy facility.
- B. Wind turbines and related towers shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
- C. Each wind tower shall be marked with a visible identification number to assist with provision of emergency services, and the applicant shall file with the local fire and sheriff departments, a wind energy facility map identifying wind turbine locations and numbers.
- D. Wind turbines shall not be artificially lighted except to the extent required by the Federal Aviation Administration (FAA) or other applicable governmental regulatory authority.
- E. The design of buildings and related structures at wind energy facility sites shall, to the extent reasonably possible, use materials, colors, textures and location that will blend the wind energy facility into the natural setting and existing environment.
- F. Unless otherwise negotiated with the affected landowner, the applicant shall promptly repair or replace all fences and gates removed or damaged during all phases of the wind energy facility's life and provide continuity of electric fence circuits.
- G. Road repair (public roads). Unless otherwise negotiated with the affected parties, any road damage caused by the applicant, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the applicant's expense so that the road is returned to the condition that existed prior to construction of the wind energy facility to the extent reasonably practicable. If it is reasonably foreseeable that continued trips will make prompt repair to this standard unreasonable, intermediary measures must be taken by the applicant, if approved by the political subdivision in charge of the road, to ensure the public road remains passable and useable as has been the tradition in the community. Final repairs to these standards must be made promptly after the completion of the construction of the wind energy facility.
- H. Road repair (private roads). Unless otherwise negotiated with the affected landowner, the applicant shall promptly repair any damaged private roads, driveways, or lanes to the condition that existed prior to construction of the wind energy facility to the extent reasonably practicable.
- I. Prior to construction, the applicant shall make satisfactory arrangements (including obtaining permits) for road use, access road intersections, driveways, and maintenance and repair of damages with the governmental entity with authority over each road. The applicant shall notify the county planner of such arrangements on request.
- J. Unless otherwise agreed to by the appropriate governing body, the applicant is responsible for complying with the state and local overweight load permitting process set forth in N.D.C.C. Ch. 39-12. A Conditional Use Permit issued under this ordinance to erect a wind energy facility does not negate a hauler's obligation to obtain overweight load permits for hauling.
- K. If a decommissioning plan must be prepared and submitted to the North Dakota Public Service Commission pursuant to N.D.A.C. § 69-09-09-06, a copy of said plan shall be provided by the applicant to the county commission upon request.
- L. Unless otherwise negotiated with the affected landowner, the applicant understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed wind energy facility.
- M. Applicant understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the wind energy facility.

- N. The applicant shall notify the county planner of any extraordinary event within five (5) business days of the occurrence of the event. Extraordinary events include, but shall not be limited to, fires, tower collapse, thrown blade, or injured wind turbine facility worker or private person. The applicant shall, within one hundred eighty (180) calendar days of the occurrence, submit a report to the county planner describing the cause of the occurrence and the steps taken to avoid future occurrences.
- O. If the applicant places electrical lines, known as collector lines, and communication cables underground when located on private property, the cables shall be placed at a minimum depth of forty-eight (48) inches below the surface.
- P. Feeder lines.
 - a. Feeder lines may be placed on public rights-of-way only if approved or if the required permits have been obtained from the governmental unit responsible for the affected right-of-way.
 - b. Any guy wires on the structures for feeder lines shall be marked with safety shields.
 - c. All underground feeder lines must be placed at a depth of at a minimum depth of forty-eight (48) inches below the surface.
- Q. The applicant shall be responsible for compliance with all federal, state, and local laws applicable to the generation, storage, transportation, clean up, and disposal of hazardous wastes generated during any phase of the project's life.
- R. Any changes in the location or character of wind energy facilities and structures may be authorized in writing by the county administratively, and does not require a separate public hearing or Board approval.

4. Setback requirements.

- A. The horizontal distance between the center of a turbine monopole and any occupied dwelling that is owned by a property owner not participating in the Project shall not be less than one thousand three hundred (1300) feet. The horizontal distance between the center of a turbine monopole and any occupied dwelling that is owned by a property owner that is participating in the Project shall not be less than five hundred (500) feet. The setback distance may be reduced by written agreement with the property owner.
- B. Each wind turbine shall be set back not less than 1.1 times the turbine tip height from interstate or state roadway right-of-way.
- C. Each wind turbine shall be set back not less than 1.1 times the turbine tip height from the edge of any improved county or township roadway.
- D. Each wind turbine shall be set back not less than one hundred fifty (150) feet from the centerline of an unimproved county or township road.
- E. Each wind turbine shall be set back not less than 1.1 times the turbine tip height from railroad right-of-way or an overhead transmission line.

5. 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.

6. Restoration of property.

The applicant shall, as soon as practical following construction of the Project, considering the weather and preferences of the affected landowners, restore the area affected by any construction activities to the condition that existed immediately before construction began to the extent reasonably practicable. The time period to complete restoration shall be no longer than twelve (12) months after completion of construction of the Project. Restoration shall be compatible with the safe operation, maintenance, and inspection of the wind energy facility.

7. Transfer of permit.

Prior to any change in ownership or assignment of a controlling interest of any entity owning a wind energy facility permitted in the county, including any assignment or transfer of a controlling interest to any corporation, partnership, or other entity controlled by or a subsidiary or affiliate of the wind energy facility, permitted in the county, an application shall be submitted to the county zoning commission, requesting transfer of the wind energy facility Conditional Use Permit. Approval of such transfer shall be conditioned upon explicit agreement by the new owner to abide by the provisions of the Conditional Use Permit. The application shall also include the new applicant's local agent and contact information. A change of ownership that results in inability, unwillingness, or failure to abide by the conditions of this ordinance can be a basis for revocation of the Conditional Use Permit.

SECTION 12. MOBILE HOME PARKS: The following regulations shall be applied to the construction of mobile home parks in any zoning district that is allowed by conditional use permit.

1. DIMENSIONAL STANDARDS:

- A. The park shall contain a minimum of 5 acres of land.
- B. Each mobile home shall be placed on a lot at least 60 feet wide with a minimum area of 6,000 square feet.

2. SETBACKS:

- A. Each unit shall have a minimum front yard setback of 25 feet within the park and 150 feet from township and county roads and 250 feet from state and federal roads outside the park.
- B. Each unit shall have a minimum side yard of 10 feet and a minimum rear yard of 10 feet.

3. REQUIREMENTS:

- A. A site plan showing the following conditions:
 - a. parking
 - b. driveways
 - c. walkways
 - d. blocks
 - e. lots
 - f. playground and park area
 - g. accessory buildings to be used for all park residents
 - h. such other data as may be requested by the Zoning Commission
- B. Rezoning and subdivision of land must be met, if applicable.
- C. The park shall have a minimum setback of 100 feet from sensitive areas such as the national shoreline of streams, rivers, lakes, reservoirs, or other water areas.
- D. Approval of the County Commission for access to County roads.

- E. An area of the park may be allocated for open space and recreational facilities.
- F. Each unit shall be placed on a stand which provides a firm foundation for anchoring purposes to avoid accidental movement and overturning.
- G. All lots in the park shall be accessible at all times to emergency vehicles.
- H. Where the park is served by private streets, those streets shall conform to the design standards recommended by the County Commission.
- I. Evidence of compliance with the rules and regulations of North Dakota State Health Department and North Dakota State Laboratories Department. Such evidence must be provided to the County Auditor before a permit will be issued.
- J. All units in the park shall be served by underground utilities unless waived by the County Commission.
- K. There shall be two off street parking spaces per unit.

SECTION 13. RV PARK, TEMPORARY HOUSING FACILITY, MAN CAMP, CONSTRUCTION CAMP, OR CREW HOUSING FACILITY:

- A. RV Parks, Temporary Housing Facility, Man/Construction/Crew Camps shall be located adjacent to a maintained public or private road.
- B. Site Plan Approval Required. A site plan with supporting documents must be submitted for review and approval to the Zoning Commission. The plan shall be drawn to scale, and shall provide the following information:
 - a. Dimensions, orientation and vicinity of the parcel;
 - b. Location, size, number, of RV parking spaces, construction and types of proposed housing;
 - c. Traffic access to park/ camp and parking;
 - d. Location and types of recreational facilities;
 - e. Approved culinary water system and sewage and solid waste disposal;
 - f. Storm water runoff, and method for control of storm water;
 - g. Location of fire protection and medical facilities;(for Temp Housing Facility, Man/Construction/Crew Camps)
 - h. Such other data as may be requested by the Zoning Commission.
- C. In addition to the site plan, the applicant must also provide information showing how, by whom, and when the required services and facilities will be provided. All services and facilities will be provided at applicant's expense. Letters of approval for the culinary water and sewage facilities from the First District Health Unit shall be required and a copy provided to the County Auditor.
- D. A conditional use permit for temporary housing camps will be in effect for one year. The continued compliance of the conditional use permit may be reviewed by the Zoning Commission every month. An applicant may request renewal of the Conditional Use Permit at the end of the permit period. The following services and facilities must be provided in a temporary housing camp:
 - a. Culinary water and sewage and solid water disposal facilities approved by the First District Health Unit;
 - b. Adequate access of the site and parking;

- c. Maintenance of the site;
 - d. All lots must be accessible at all times to emergency vehicles;
 - e. Electrical services.
- E. All mobile homes placed at a temporary housing camp shall be subject to the following conditions:
- a. Each mobile home shall be placed on a lot at least 60 feet wide with a minimum area of 6,000 square feet.
 - b. Each unit shall be placed on a stand which provides a firm foundation for anchoring purposes to avoid accidental movement and overturning.
 - c. All lots shall be accessible at all times to emergency vehicles.
 - d. Each unit shall have a minimum front yard setback of 25 feet within the temporary housing camp and 150 feet from township and county road and 250 feet from state and federal roads.
 - e. Each unit shall have a minimum side yard of 10 feet and a minimum rear yard of 10 feet.
 - f. Evidence of compliance with the rules and regulations of North Dakota State Health Department and North Dakota State Laboratories Department. Such evidence must be provided to the County Auditor before a permit will be issued.
 - g. All units shall be served by underground utilities unless waived by the County Commission.
- F. All skid shacks placed at a temporary housing camp shall be subject to the following conditions:
- a. Front setback 24 feet minimum from front of property line.
 - b. Rear setback 10 feet from a commercial or agricultural lot or 30 feet setback if adjoining a Residential District.
 - c. Side setback 10 feet.
 - d. There must be a minimum of fourteen (14) feet between skid units or any other structures on the property. No parking will be allowed between units.
 - e. Minimum Lot Dimensions:
 - 1. Yards:
 - a) Front — None
 - b) Rear — 10 feet except where adjoining a Residential District, then same as Residential District.
 - c) Lot Size — No minimum.
 - 2. Setbacks — 150 feet from center of a township or county road and 250 feet from the center of any state or federal road.
 - f. Maximum Dimensional Standards
 - 1. Building Height — 45 feet
- G. All RV's placed at a temporary housing camp shall be subject to the following conditions:
- a. Each RV shall be placed on a lot at least 60 feet long and 30 feet wide.
 - b. Each unit shall have a minimum setback of 150 feet from township and county road and 250 feet from state and federal roads.
- H. The applicant shall provide a written plan and agreement together with a bond, setting forth how the temporary housing camp will be dismantled, and the area restored to an unoccupied condition. The bonds for a temporary housing camp are set forth as follows:

- a. 0 to 50 person camp = \$25000.00
 - b. 51 to 100 person camp = \$35000.00
 - c. 101 to 250 person camp = \$50,000.00
 - d. 251 to 500 person camp = \$100,000.00
 - e. 501 to 1200 person camp = \$250,000.00
- f. The temporary housing camp bond will be forfeited to the County if the temporary housing camp is not dismantled and the area restored to its unoccupied condition as set out in the written plan and agreement provided to the County. The temporary housing camp bond will also be forfeited if any of the following occur:
- 1. The Sheriff's department or other law enforcement receives or services 10 complaints due to noise, fighting, unruly behavior, or other acts prohibited by the North Dakota Century Code within a 3 month period of time at the location of the temporary housing camp.
 - 2. The Sheriff's department or other law enforcement receives or services 3 complaints due to noise, fighting, unruly behavior, or other acts prohibited by the North Dakota Century Code for any single individual at the temporary housing camp, and said individual is permitted to remain at or in the temporary housing camp by the applicant.
 - 3. The temporary housing camp fails to appropriately dispose of refuse.
 - 4. The temporary housing camp exceeds the number of individuals which the conditional use permit was approved for.
- I. Temporary housing camps shall be subject to real property taxation or crew housing permit fees as set forth by McHenry County as follows:
- a. \$1.50/sq.ft. up to \$35.00/month/unit
 - b. McHenry County shall receive 100% of the fees.
- J. In the event the applicant fails to provide the services and facilities required, the temporary housing camp may be closed and ordered to vacate. These remedies are in addition to the remedies provided in this title for failure to comply with the applicable zoning requirements.

ARTICLE 3 – DISTRICTS AND BOUNDARIES

SECTION 1. ESTABLISHMENT OF DISTRICTS: In order to effectively carry out the provisions of these regulations, the land covered by the jurisdiction of these regulations shall be divided into the following zoning districts:

“AG”	Agricultural District
“RR”	Rural Residential District
“CO”	Commercial District
“IN”	Industrial District
“REC”	Recreational District
“RES”	Residential District

SECTION 2. ZONING MAP: The location and boundaries of the zoning districts are hereby established as shown on the maps attached and made a part of this ordinance. The maps shall be kept on file with the county auditor and shall be regularly updated to show any change in the zoning boundary lines resulting from amendments.

SECTION 3. INTERPRETATION OF BOUNDARIES: The following rules shall apply to the boundaries of the zoning districts on the zoning district map.

1. Where zoning district boundaries follow streets, highways, roads, railroad lines, or extensions thereof, such boundary lines shall be centerline of those streets, highways, roads, railroad lines, or extensions thereof.
2. Zoning district boundaries indicated as approximately following platted lot lines or other property lines shall be construed to follow such lines or extensions thereof.
3. Zoning district boundaries which do not follow streets, highways, roads, railroad lines, property lines, or lot lines, or extensions thereof shall be determined by the use of a scale or dimensions appearing on the map.

SECTION 4. AGRICULTURAL DISTRICT (AG):

1. INTENT AND PURPOSE - This district is established for the purpose of preserving and protecting agricultural uses and other natural land uses in the County.
2. PERMITTED USES - The following uses shall be permitted in this district:
 - A. Agriculture and agriculture related buildings and farm dwellings, provided such used are maintained in connection with a farm or farming operation where the primary source of the operator’s income is derived from farming.
 - B. Park and outdoor recreational facilities and related buildings for outdoor recreation
 - C. Single-family non-farm dwellings (subject to the Residential Guidelines of this Section)
 - D. Churches and similar places of worship and parish home
 - E. Greenhouses, nurseries, and garden centers
 - F. Hobby farms, whether or not there is a dwelling on the same site or contiguous to the site. If there is a dwelling (either farm or non-farm) associated with the site it is subject to the Residential Guidelines of this Section.
3. CONDITIONAL USES - The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.

- A. Mineral Extraction and Exploration (including sand and gravel) subject to the requirements of Article 2, Section 6 of these regulations.
 - B. National Wildlife Refuges and Waterfowl Management Areas
 - C. Multiple family, non-farm dwellings.
 - D. Mobile home parks and subject to the requirements of Article 2, Section 12 of these regulations.
 - E. RV parks, temporary housing facilities, man camps, construction camps and crew housing facilities are subject to the requirements of Article 2, Section 13 of these regulations.
 - F. Animal Feeding Operations are subject to the requirements of Article 2, Section 10 of these regulations.
 - G. Radio, Cellular Phone or TV towers, transmission lines, substations and pipelines.
 - H. Commercial grain elevators
 - I. Retail agricultural chemical and fertilizer outlets
 - J. Cemetery
 - K. Junk yards and automobile salvage operations, provided all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than 8 feet in height.
 - L. Private waste disposal sites subject to the requirements of Article 2, Section 8 of these regulations.
 - M. Concrete and asphalt plants subject to the requirements of Article 2 Section 6 of these regulations.
 - N. Wind Energy Facilities are subject to the requirements of Article 2 Section 11 of these regulations.
 - O. Signs are subject to the requirements of Article 2 Section 9 of these regulations.
4. PROHIBITED USES - Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. SHELTER BELTS - No shelterbelts or major tree plantings shall be established closer than 115 feet for planting on the windward side (generally north and west) and 99 feet for planting on the south and east. This is to be measured from all section lines and the centerline of all improved and unimproved roads. (No zoning permit required if tree planting is conducted by McHenry County Soil Conservation Districts.)
6. RESIDENTIAL DEVELOPMENT - The following regulations shall be applied to the construction of individual non-farm dwelling units (The terms of lot size shall exclude the immediate family of the surface owner.):
- A. Lot Size - Not less than two (2) acres
 - B. Lot Density - Not more than one non-farm dwelling per 40 acres, unless a conditional use permit is issued for a "Mobile Home Park" or "Temporary Housing Camp".
 - C. Lot Location - The development and location of all lots related to non-farms shall abut an existing improved road. (An improved road is one, which is gravel or hard surfaced and is regularly maintained in good driving condition.)

- D. Building and Structure Setbacks - one hundred fifty (150) feet from all section lines and the centerline of all township and county roads; or 250 feet from the centerline of all state and federal highways. A setback of 20 feet from all property lines. If both sides of the property line are owned by the same individual, this setback requirement does not apply.

SECTION 5. RURAL RESIDENTIAL (RR):

1. INTENT AND PURPOSE - This district is established for the purpose of providing for and guiding the development of any rural subdivisions and for preserving and protecting the character of residential areas in unincorporated villages in McHenry County.
2. PERMITTED USES - The following uses shall be permitted in this district:
 - A. All single family dwellings
 - B. Multiple family dwellings.
 - C. Parks and outdoor recreational facilities and related buildings for outdoor recreation.
 - D. Churches and facilities related to religious activities.
 - E. Public and parochial schools.
 - F. Utility facilities necessary to serve the area.
3. CONDITIONAL USES: The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - A. Mobile home parks and subject to the requirements of Article 2, Section 12 of these regulations.
 - B. Home occupations.
 - C. Signs are subject to the requirements of Article 2 Section 9 of these regulations.
4. PROHIBITED USES: Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. DIMENSIONAL STANDARDS:
 - A. Lot size - not less than 21,780 square feet, one half (1/2) acre if served by a sewer collection system common to other adjoining users; not less than 87,120 square feet, two (2) acres, if the sewer is drained into an onsite user owned drainage field.

If multiple family dwellings will be part of the subdivision development it shall have a lot size not less than 130,680 square feet, three (3) acres, if the sewer is drained into an onsite user owned drainage field.
 - B. Setbacks:
 - a. Front yard - 20 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.
 - b. Side yard - 6 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.
 - c. Rear yard - 20 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.
 - C. Lot coverage by buildings: Not more than fifty percent of the lot shall be covered by the principal building and all accessory buildings.

SECTION 6. COMMERCIAL DISTRICT (CO)

1. **INTENT AND PURPOSE:** This district is established for the purpose of allowing commercial areas adjacent to highways and for the grouping together of retail and service businesses in areas to best serve the needs of persons traveling in the country, and to also provide area residents convenient access to those entities.
2. **PERMITTED USES:** Generally any commercial retail or service business which may include but is not limited to the following:
 - A. Automobile/truck sales, supply, service, and repair.
 - B. Service stations, bulk fuel sales.
 - C. Grocery and convenience stores.
 - D. Farm implement sales, supply, service, and repair.
 - E. Motels, hotels or lodging establishments.
 - F. Public buildings and churches.
 - G. Parks and playgrounds.
 - H. Restaurants, lounges, and liquor stores.
 - I. Banks and other savings and lending institutions.
 - J. Apparel, department, clothing, toy, variety, furniture, hardware and other retail establishments.
 - K. Medical, dental, health and veterinary clinics.
3. **CONDITIONAL USES:** The following uses shall be considered conditional uses and may be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - A. Commercial grain elevators.
 - B. Retail agriculture chemical and fertilizer outlets.
 - C. Welding shops.
 - D. Wholesale supply, warehouse storage facilities and property storage units.
 - E. Storage facilities for building materials, such as lumber, steel, concrete blocks or pipe; provided that these materials are either:
 - a. Enclosed by a wall or fence not less than five (5) feet high, or
 - b. Stored in an enclosed structure.
 - F. RV parks, temporary housing facilities, man camps, construction camps and crew housing facilities are subject to the requirements of Article 2, Section 13 of these regulations.
 - G. Signs are subject to the requirements of Article 2 Section 9 of these regulations.
4. **PROHIBITED USES:** Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.

5. DIMENSIONAL STANDARDS:

- A. Lot size - not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than two (2) acres if the sewer is drained into an onsite user owned drainage field.
- B. Setbacks - If the property abuts a federal, state, county or township road, building setbacks shall be a minimum of 100 feet from the centerline of that road. Side and rear set back 6 feet from property line.
- C. Lot coverage by buildings - No requirements other than those may exist with regard to fire protection.

SECTION 7. INDUSTRIAL DISTRICT (IN)

1. **INTENT AND PURPOSE:** This district is intended to provide areas for industrial development and those land uses which are generally not compatible with agricultural, commercial or residential land uses.
2. **PERMITTED USES:** The following uses shall be permitted in this district.
 - A. All Commercial (CO) District permitted uses and conditional uses.
 - B. Airports, railroads, essential public utilities, and public service installations.
 - C. Radio or television transmitting stations.
 - D. Overhead, above grade and underground storage facilities for oil, gas, flammable liquids and gases, as approved by Fire Code regulations.
 - E. Manufacturing industries.
 - F. Processing industries consisting of agricultural products and foodstuffs.
 - G. Concrete mixing and concrete products manufacturing plants.
3. **CONDITIONAL USES:** The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with this ordinance.
 - A. Petroleum or petroleum products refining.
 - B. Junk yard, auto wrecking yard or salvage yard provided that all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than eight (8) feet in height.
 - C. Adult entertainment center provided it is at least 500 feet from any other zoning district boundary.
 - D. Commercial bulk storage of chemicals.
 - E. Commercial waste disposal sites subject to the requirements of Article 2, Subsection 8 of these regulations.
 - F. Signs are subject to the requirements of Article 2 Section 9 of these regulations.
4. **PROHIBITED USES:** Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. **DIMENSIONAL STANDARDS:**
 - A. Lot size - not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than two (2) acres if the sewer is drained into an onsite user owned drainage field.
 - B. Setbacks - If the property abuts a federal, state, county or township road, building setbacks shall be a minimum of 100 feet from the centerline of that road. Side and rear set back 6 feet from property line.
 - C. Lot coverage by buildings - No requirements other than those may exist with regard to fire protection.

SECTION 8. RECREATIONAL DISTRICT (RE)

1. INTENT AND PURPOSE: This district is intended to provide areas for rural recreational development and those land uses associated with rural vacation or seasonal residential developments and recreational vehicle parks for short-term or seasonal parking.
2. PERMITTED USES: The following uses shall be permitted in this district.
 - A. General farm operations.
 - B. Single family lake cabins and cottages intended for seasonal use.
 - C. Golf courses, miniature golf and driving tees operated for commercial purposes.
 - D. Parks, picnic shelters, playgrounds, or community buildings.
 - E. Utility facilities necessary to serve the area.
 - F. Customary accessory uses and structures located on the same tract with the principle use, including barns, sheds, barbecue ovens, fireplaces, private boat docks (located on streams, rivers, lakes, reservoirs or other water areas) and similar uses.
 - G. CONDITIONAL USES: The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - a. Commercial lake resort.
 - b. Commercial boat, docks, sales, rental, construction and repair and sale of bait and fishing equipment, fuel and other commercial recreational activities.
 - c. Commercial campgrounds (tent and/or recreational vehicle).
 - d. Camps and campgrounds operated by nonprofit, charitable or religious institutions.
 - f. Commercial retail operations, such as grocery, eating, drinking and fuel businesses.
 - g. Signs are subject to the requirements of Article 2 Section 9 of these regulations.
 - h. Sport shooting ranges
4. PROHIBITED USES: Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. DIMENSIONAL STANDARDS:
 - A. Lot size - not less than 5,000 square feet if served by a sewer collection system; not less than two (2) acres if the sewer is drained into an onsite user owned drainage field.
 - B. Setbacks:
 - a. Front yard - 20 feet from lotline, 50 feet from any shoreline with the exception of boathouses, ramps, docks or retaining walls or 100 feet from the centerline if abutting a federal, state, county or township road.
 - b. Side yard - 6 feet from lotline, 50 feet from any shoreline with the exception of boathouses, ramps, docks or retaining walls or 100 feet from the centerline if abutting a federal, state, county or township road.
 - c. Rear yard - 20 feet from lotline, 50 feet from any shoreline with the exception of

boathouses, ramps, docks or retaining walls or 100 feet from the centerline if abutting a federal, state, county or township road.

- C. Lot coverage by buildings: Not more than fifty percent of the lot shall be covered by the principal building and all accessory buildings.

SECTION 9. SUBDIVISION REGULATIONS

1. **INTENT AND PURPOSE:** These subdivision regulations are adopted in order to safeguard the best interests of McHenry County in accordance with its Comprehensive Plan, and to assist the developer in harmonizing his interests with those of the County.
Additionally;
 - A. To protect and provide for the public health, safety, and general welfare of the County
 - B. To insure the orderly development of the county and its unincorporated planning area.
 - C. To provide for proper arrangement of streets in relation to other existing and planned streets.
 - D. To provide for adequate and convenient open spaces for traffic, utilities, firefighting, Recreation, light and air.
 - E. To facilitate adequate provisions for access, placement of public non-profit and for profit utilities, schools, and public open spaces.
 - F. To avoid development of unsuitable areas because of soil, drainage, flooding, steep terrain and other physical limitations.
 - G. To facilitate subdivision of larger parcels into smaller parcels and lots.
 - H. To implement the Comprehensive Plan of the county.
2. **COMPLIANCE REQUIRED:** No plat of a subdivision or re-subdivision of land within McHenry County zoning jurisdiction shall be filed or recorded until it has been approved by the McHenry County Zoning Commission and recommended to the McHenry County Board of Commissioners for approval.
3. **PENALTY, INJUNCTION, CIVIL ACTION:** Any owner, or the agent of any owner, of land located within the territory of a subdivision that is subject to the approval by the Zoning Commission and the McHenry County Board of Commissioners who transfers, sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of a plat of a subdivision, or by any other use thereof, before such plat has been approved by the Zoning Commission and the McHenry County Board of Commissioners and recorded in the McHenry County Recorder's Office shall forfeit and pay the maximum penalty allowed by law for each lot transferred or sold or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. McHenry County may enjoin such transfer, sale, or agreement by an action for injunction, or it may recover the penalty by a civil action.
4. **LOCATION AND ELEVATION OF LAKES, RIVERS, OR STREAMS:** Notification of floodplain. Whenever land, subject to regulation under this Section, abutting upon any lake, river, or stream is subdivided, the developer must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.
5. **DEFINITIONS:** For the purpose of this Resolution the following definitions have the meaning given them solely for the purposes of implementation of this Resolution.

APPLICANT: The owner, owner's agent or person having legal control, ownership and/or interest in land for which the provisions of this Resolution are being considered or reviewed.

BLOCK: An area of land within a subdivision which is entirely bounded by streets or by a combination of streets, railroad right-of-way, or public parks, the exterior boundary or boundaries of the subdivision, or the shoreline of the above with a lake, stream, or river.

BUFFER YARD: A strip of land utilized to screen or partially screen a use or property from another use or property or to shield or mitigate noise, lights, or other impacts.

BUILDABLE LAND: Land having a size and configuration capable of supporting principal and accessory buildings, with an approved domestic waste water treatment system and potable water system.

BUILDING: Any structure having a roof which may provide shelter or enclosure of persons, animals, chattel, or property of any kind.

BUILDING LINE: A line parallel to the street right-of-way line at its closest point to any story level of a building and representing the minimum distance which all or part of the building is set back from said right-of-way line.

CERTIFICATE OF SURVEY: A land survey prepared by a land surveyor registered in the State of North Dakota with a certification that the information on the land survey is accurate. **Common Open Space:** Any open space including parks, nature areas, playgrounds, trails and recreational buildings and structures owned in common by a group of property owners.

CONVEYANCE SYSTEM: Any path, including but not limited to, ditches, streams, overland flow channels, and storm sewer systems, traveled by water as it passes through the watershed.

COUNTY ENGINEER: The County Engineer or an engineer employed by the County.

COUNTY COMMISSION: The McHenry County Board of Commissioners.

CUL-DE-SAC: (See Street).

DEVELOPER: A person who submits an application for the purpose of land subdivision as defined herein. The developer may be the owner or authorized agent of the owner of the land to be subdivided.

EASEMENT: The right to use the land of another owner for a specified use. An easement may be granted for the purpose of constructing and maintaining walkways, roadways, individual sewage treatment systems, utilities, drainage, driveway, or other uses.

FILTER STRIP: A linear strip of land along a lake, wetland, river, creek, or storm water ponding area where vegetation is established and maintain as a means to slow the velocity of storm water drainage and to filter sediment and pollutants from the storm water.

FINANCIAL GUARANTEE: A financial security consistent with Chapter 9 of this Resolution, posted with the County with the approval of a plat, guaranteeing compliance with the approved plat, construction plans, and conditions of approval set forth by the Township and/or County.

FLOODPLAIN RELATED:

FLOOD: A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

FLOODPLAIN: The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

REGIONAL FLOOD: A flood which is representative of large floods known to have occurred generally in North Dakota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

REGULATORY FLOOD PROTECTION ELEVATION: The Regulatory Flood Protection Elevation shall be an elevation no lower than one (1) foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

FARMSTEAD, ACTIVE: An established and habitable rural residence which was constructed prior to the adoption date of this resolution.

FRONTAGE: That boundary of a lot which abuts a publicly maintained road.

IMPROVED LOT: Any building, structure, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment. Certain lot improvements may require financial guarantees under the provisions of this Resolution.

PUBLIC: Any drainage facility, street, parkway, park, lot improvement or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which Township or County responsibility is established.

LAND DISTURBANCE: Any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of the site preparation, grading, building construction or any other construction activity.

LAND USE PLAN: The McHenry County Comprehensive Plan / Zoning Regulations, as amended.

LOT, CORNER: A lot situated at the junction of, and abutting on two (2) or more intersecting streets. On a corner lot, both streets shall be deemed front lines for the application of this Resolution.

LOT DEPTH: The mean horizontal distance between the front lot line and the rear lot line of a lot.

LOT LINE: A property line bounding a lot except that where any portion of a lot extends into the public right-of-way, the lot line shall be deemed to be the boundary of said public right-of-way.

LOT, THROUGH: A lot which has a pair of opposite lot lines abutting two (2) substantially parallel streets, and which is not a corner lot. On a through lot, both streets shall be deemed front lines for the application of this Resolution.

LOT WIDTH: The horizontal distance between the side lot lines of a lot measured at the building setback line, location of the principal building and, if applicable, ordinary high water level. For corner lots, lot width shall be determined by measuring the horizontal distance between a side lot line and the applicable opposite front lot line.

METES AND BOUNDS: A method of property description by means of their direction and distance from an identifiable point of beginning.

MINIMUM SUBDIVISION DESIGN STANDARDS: The guides, principles and specifications for the preparation of subdivision plans indicating among other things, the minimum and maximum dimensions of the various elements set forth in the plat.

OUTLOT: A parcel of land shown on a subdivision plat as an outlot, and designated alphanumerically, (for example -Outlot A.) Outlots are used to designate one of the following: land that is part of the subdivision but is to be subdivided into lots and blocks at a later date; land that is to be used for a specific purpose as designated in a developer's agreement or other agreement between the County and the developer; or for a public purpose and for which no building permit shall be issued.

OWNER: Any individual, firm, association, partnership, corporation, trust or any other legal entity having proprietary interest in the land.

PLAT: The final map or drawing on which the developer's plan or subdivision is presented to the Zoning Board for approval and which, if approved, will be submitted to the Office of the County Recorder for filing.

PROTECTIVE COVENANT: A restriction of the use placed upon the property by a present or former owner and recorded in the Office of the County Recorder. The County will not be responsible to enforce private protective covenants.

REGISTERED LAND SURVEY: A survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of Registered Land Survey Number.

REGISTERED LAND SURVEYOR: A land surveyor licensed and registered in the State of North Dakota.

RE-SUBDIVISION: A change in an approved or recorded subdivision plat if such change affects any street layout on such map or area reserved for public use, or any lot line or if it affects any map, or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

RIGHT-OF-WAY: A strip of land occupied or intended to be occupied by a street, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use. The usage of the term right-of-way for land platting purposes shall mean that every right-of-way hereafter established and shown on a plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Right-of-way intended for streets, water main, sanitary sewers, storm drains, or any other use involving maintenance by a public agency shall be dedicated to public use by the recording of the plat on which such right-of-way is established.

ROAD RIGHT-OF-WAY WIDTH: The horizontal distance between the outside edges of a road right-of-way.

SETBACK: The minimum horizontal distance between a structure, individual sewage treatment system, road, highway, property line, or other facility.

STREET: A right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets.

PRINCIPAL ARTERIAL: Streets which include all interstate freeways and other roadways which provides for the longest trips. The emphasis is on mobility rather than land access.

MINOR ARTERIAL: A street system which serves medium to short trips and provides access to the principal arterial. They interconnect concentrations of commercial or industrial land uses and connect cities and towns of the region to each other and to similar places outside the region. The emphasis is still on mobility rather than land access.

COLLECTOR: A street which provides connection between neighborhoods and from neighborhoods to minor business concentrations. Mobility and land access are equally important.

LOCAL: Those that remain, serving the shortest trips and providing access to adjacent property.

CUL-DE-SAC: A local street having one end open to traffic and the other end permanently terminated by a vehicular turn-around.

SERVICE OR FRONTAGE: A local street which is parallel and adjacent to a highway or an arterial street and which provides access to abutting properties and protection from through traffic.

STREET WIDTH: The width of the improved surface of the street as measured at right angles or radially to the centerline of the street from curb face to curb face, or on a street without curbs from the outside edge of the improved shoulder to outside edge of improved shoulder.

SUBDIVISION: The division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development.

SUBDIVISION, STANDARD: The creation of one or more lots under the provisions of this Resolution that does not meet the definition of a minor subdivision.

SUBDIVISION, MINOR: Where a proposed subdivision does not entail the establishment of any required

street or road easements, nor does it require any utility easements, nor does the subdivision require any grading or re-contouring of the land surface, then said subdivision may be defined as a minor subdivision and may follow the guidelines of these regulations developed for minor subdivision.

ZONING REGULATION: The McHenry County Zoning Regulation, as may be amended.

6. PREMATURE SUBDIVISIONS: Any plat and/or development deemed premature pursuant to the criteria listed below shall be denied by the Zoning Commission.
- A. Condition Establishing Premature Subdivisions: A subdivision may be deemed premature should any of the provisions which follow exist:
- a. Lack of Adequate Drainage. A condition of inadequate drainage shall be deemed to exist if:
 - 1. Surface or subsurface water retention and runoff is such that it constitutes a hazard resulting in flooding, loss of life, property damage, or other losses.
 - 2. The proposed subdivision will cause pollution of water bodies or damage to other natural resources.
 - 3. The proposed site grading and development will cause damage from erosion, sedimentation, or slope instability.
 - 4. The proposed subdivision fails to comply with the storm water management requirements of the McHenry County Water Resource Board and the State Water Commission.
 - a. Factors to be considered in making these determinations may include:
 - 1. Average rainfall for the area; area drainage patterns
 - 2. The relationship of the land to floodplains the nature of soils and sub-soils and their ability to adequately support surface water runoff and waste disposal systems
 - 3. The slope and stability of the land.
 - b. Lack of Adequate Potable Water Supply. A proposed subdivision shall be deemed to lack an adequate potable water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.
 - c. Lack of Adequate Roads or Highways to Serve the Subdivision. A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - 1. County or local roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and paved surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or seriously aggravate an already hazardous condition, and when said roads are inadequate for the intended use.
 - 2. The traffic generated by the proposed subdivision would create or contribute to unsafe conditions on highways existing at the time of the application.

- d. Lack of Adequate Waste Disposal Systems. A proposed subdivision shall be deemed to lack adequate waste disposal systems if there is inadequate on-site sewer capacity potential to support the subdivision if developed to the maximum permissible density per First District Health Unit.
 - e. Inconsistency with McHenry County Comprehensive Plan / Zoning Regulations. A proposed subdivision shall be deemed inconsistent with the McHenry County Comprehensive Plan / Zoning Regulations when the subdivision is inconsistent with the purposes, objectives and/or recommendations of the adopted McHenry County Comprehensive Plan / Zoning Regulations, as may be amended.
 - f. Public Service Capacity. The County, Township or School District lacks necessary public service capacity when services such as recreational facilities, schools, police and fire protection and other public facilities, which must be provided at public expense, cannot reasonably be provided for within the next two (2) years.
- B. BURDEN OF EVIDENCE: The burden shall be upon the applicant to show evidence that the proposed subdivision or development is not premature.
7. SKETCH PLAN: Developers shall prepare, at the discretion of the Zoning Commission, a sketch plan depicting a subdivision proposal. The sketch plan, and accompanying information, shall serve as the basis for discussions between the developer and the Zoning Commission. It is intended to provide the developer with an advisory review of the subdivision without incurring major costs.
- A. Prior to the filing of an application for conditional approval of the preliminary plat, the developer shall submit sketch plans for review by the Zoning Commission.
 - B. Data required for Sketch Plan
 - a. Name and address of developer/owner.
 - b. Date of plan preparation.
 - c. Scale of plan.
 - d. North arrow indication.
 - e. Legal description.
 - f. Property location map illustrating the site location relative to adjoining properties and streets
 - g. Scaled drawing (engineering scale only) illustrating property boundaries.
 - h. Scaled drawing of the proposed subdivision sketch plan including street patterns and lot layout related to the natural features of the site, and adjoining properties.
 - i. Lot sizes.
 - j. Natural Features. A generalized drawing of natural features showing wetlands, and drainage ways.
 - k. Any required zoning changes.
 - l. Proposed timing and staging of development.
 - m. Setbacks from USAF Facilities, Wind Towers if applicable
 - n. Storm Water Management Plan
 - o. Any additional information as required by the Zoning Commission.

1. Property abutting lake, river or stream
2. Water supply- Rural water or Private well
3. Sewage system type- Public or Private
4. Utilities: power, phone, gas
5. Where access is off a State Highway, written approval for the access, including culvert size, from the State Highway Department shall be submitted with the plat.
6. Where access is off a County or Township Road, written approval from the County Water Resource Board and/or County Highway Department as to culvert size for all private drives as well as the public access shall be submitted with the plat. Access spacing from a County or township road shall be consistent with the standards set forth in the McHenry County Zoning Regulations and McHenry County Comprehensive Plan.
7. Within 1 mile of USAF facilities and easement of cable routes
91st Missile Wing Cable Affairs 701-723-6053
1200' Restrictive Easement
8. Wind Tower 1000' Restrictive Easement
9. School District
10. Proposed protective covenants
11. Proposed deed restrictions
12. Proposed establishment of homeowners association

C. Once it has been determined by the Zoning Commission that the plans and data submitted by the developer do meet the requirements of these regulations, the developer may prepare the Preliminary Plat.

8. **PRELIMINARY PLAT:** After the completion of the sketch plan process the owner or developer shall file with the Zoning Commission an application for conditional plat approval. The platting stage is the point in the process that all information pertinent to the proposed development is furnished by the developer for review by the Zoning Commission, affected Township Board, affected Cities under joint zoning jurisdiction with the County, any other applicable agencies, and the public. The information provides a basis for conditional approval or denial of the application. The information submitted in the application shall address both existing conditions and changes that will occur during and after development. The plat is a plan of how property will be subdivided and developed. Additional information or modifications may be required and requested by Zoning Commission, affected Township Board, affected Cities under joint zoning jurisdiction with the County during the review process. In certain cases some information required by these standards may not be appropriate or may need to be modified in order to provide an adequate basis for making a decision. The detail of information required for a one lot plat shall be determined by the Zoning Commission

A. Preliminary Plat Content: The following data requirements and supporting documentation are necessary for conditional approval of a Preliminary Plat.

- a. Name of Subdivision
- b. Location by Section, Township, Range
- c. Total acreage of land to be subdivided
- d. North arrow, scale of one to two hundred (1"=200') - This requirement may be waved for

large tract subdivisions by the Zoning Commission.

- e. Contour at vertical intervals of not more than two(2) feet.
- f. Contour line denoting the present shoreline, water elevation, and the date of the survey.
- g. Waterways, watercourses, wetlands, and one hundred (100) year flood elevations, as designated by the State Water Commission or Flood Insurance Rate Maps (FIRM), shall be so designated on the plat and the mean sea level of the one hundred (100) year flood, if available, shall be denoted on the plat to datum as referenced on FIRM map.
- h. Boundary lines, bearing and distance of adjacent tracts or lots surrounding subdivision and owner's name.
- i. Existing streets both public and private on and adjacent to the subdivision, name, right-of-way width and location any established easement by whomever; type of street, width, and elevation of surfacing; any legally established centerline elevations, walks, curbs, gutters, culverts, etc
- j. Location and size of all existing and abandoned drainage, storm water, and agricultural tiles; individual sewage treatment systems, wells, and utilities, including poles located on the property and to a distance of two hundred (200) feet beyond the property.
- k. Proposed lot lines with dimensions, lot numbers, block numbers, and gross acreage of each lot in the subdivision.
- l. Proposed streets and name, right-of-way width and location; type, width, and elevation of surfacing; any legally established centerline elevations, walks, curbs, gutters, culverts, etc.
- m. Proposed sites, if any, to be reserved or dedicated for parks, playgrounds, or other public uses or set aside for use of property owners within the subdivision.
- n. All easements ie. utilities, wind tower, USAF facility, storm water drainage and water retention, show location, width and purpose.

B. Supporting Documents:

- a. Name, address, and phone number of the owner, developer, engineer, surveyor, or other principal involved in the development of the plat.
- b. List of adjacent property owners name and addresses within 1/2 mile of subdivision
- c. Proof of ownership or legal interest in the property in order to make application.
- d. Existing zoning or any zoning changes needed, or reference to any zoning or similar land use actions that have already occurred that are pertinent to the proposed development.
- e. Letter from First District Health Unit with all associated documents that the land on which subdivision is built meets all state requirements for individual water wells, sewage treatment or a designed public system.
- f. Where access is off a State Highway, written approval for the access, including culvert size, from the State Highway Department.
- g. Where access is off a County or Township Road, written approval from the County Water Resource Board and/or County Highway Department as to culvert size for all private drives as well as the public access streets.
- f. Letters from rural fire district and school district that it can handle the possible influx of people and buildings.

- g. Letters of Agreement from Power, Telephone, Rural Water, or Municipalities agreeing to service the subdivision.
- h. If applicable the following are required:
 - 1. Letters from USAF, Wind Tower company stating that subdivision does not encroach on restrictive easements
 - 2. Protective Covenants: a draft copy of protective covenants whereby the developer proposes to regulate land use in the subdivision and otherwise protect the proposed development.
 - 3. Homeowner Association: a draft of Homeowner Association Policy and rules.
- i. Storm Water Management Plan

9. STANDARD SUBDIVISION PROCEDURE:

- A. Pre-application Meeting/Sketch Plan. Prior to submittal of a plat application, the property owner shall submit a sketch plan and meet with Zoning Commission to discuss the subdivision application in accordance with Section 9 item 7 of this Regulation.
- B. The person applying for conditional approval of preliminary plat shall submit to the Zoning Commission a complete application and all other information required no later than four (4) weeks prior to a regularly scheduled Zoning Commission meeting. The application shall address the informational requirements and issues identified through the sketch plan review procedure.
- C. A complete preliminary plat application shall include:
 - a. A graphic and written description of the information requirements outlined in Section 9 item 8 of this Regulation.
 - b. Supporting information described by the Zoning Commission during the sketch plan review and pre-application meeting.
 - c. Applications must be accompanied by a fee
- D. The Zoning Commission shall forward copies of the Preliminary Plat, supporting documents and a request that the information sent be reviewed to make are commendation on the application for approval or denial with reasons, to the following agencies:
 - a. Board of Township Supervisors in affected Township (by Certified mail)
 - b. City Planning Board (if subdivision is located within 2nd 1/2 mile of Joint Jurisdiction) (by Certified mail)
 - c. The county's designated engineer
 - d. McHenry County Water Resource Board
 - e. First District Health Unit. (if required)
 - f. McHenry County State's Attorney (if required)
- E. The application shall be reviewed by Township Board and City under the joint jurisdiction with the County. A written recommendation by Certified mail for application approval or denial from the Township Board or City under the joint jurisdiction with the County, may be forwarded to the County Auditor. The Township and/or City's recommendations received by the Auditor will be forwarded to the Zoning Commission for their consideration of the application at a public hearing.
- F. Following a review of the Preliminary Plat and other material submitted for conformity to the

subdivision regulations and negotiations with the developer on changes deemed advisable and the kind and extent of improvements to be made by him, the Zoning Commission shall, within in forty days, act on the Preliminary Plat, as submitted, or modified, and if approved, the Zoning Commission shall express its approval as Conditional Approval and state the conditions of such approval, if any, or if disapproved, shall express its disapproval and its reason therefore.

- G. A public hearing on the application shall be held by the Zoning Commission. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county. In unincorporated areas, the adjacent property owners of record within one hundred fifty (150) feet of the subject property shall be notified in writing by the applicant of the plat application. Where the subject site adjoins an incorporated area, the applicant shall mail written notification of the application to the adjacent property owners within the incorporated area located within two hundred (200) feet of the subject site. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made.
- H. The applicant, or his agent, shall appear before the Zoning Commission in order to answer questions concerning the proposed plat.
- I. The Zoning Commission shall have the authority to request additional information from the applicant concerning a plat. Said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this Resolution. Failure of the applicant to supply all necessary supportive information may be grounds for denial of the request.
- J. The Zoning Board shall take action on the application with a recommended motion of approval or denial to the Mc Henry County Commissioners in a reasonable timeframe, but in no case prior to receipt of approval from the perspective Board of Township Supervisors, the City or the passage of 60 days from the date of notification to the township and or city, whichever occurs first, pursuant to North Dakota Century Code 11-33.2-12(2).
- K. The applicant or his agent shall be notified by mail of the decision of the McHenry County Commissioners. If Preliminary Plat is denied, the letter shall state the reasons for denial.

10. FINAL PLAT: The final plat shall cover the area which is realistically designated for transfer or sale of lots.

- A. Final Plat Content: The final plat shall conform to all provisions of this code and conditions set forth by the County Commission.
 - a. Name of subdivision
 - b. Location by section, township and range, or other legal description.
 - c. Names of owners and surveyor or other professional person preparing the plat.
 - d. Date, graphic scale and North point.
 - e. Boundary line of subdivision based on an accurate traverse, showing distances and bearings.
 - f. Exact location, width and name of all streets within and adjoining the subdivision, and the exact location of all alleys and crosswalks.
 - g. True bearing and distances to the nearest established street lines or official monuments, which shall be accurately described on the plat.
 - h. City, township, county or section lines accurately tied to the boundary lines of the subdivision by bearing and distance.
 - i. Radii, internal angles, points of curvature, tangent bearings and lengths of all arcs.

- j. All easements; rights-of-way provided for public services, utilities, drainage and restrictive.
 - k. All lot numbers and lot lines, with accurate dimensions in feet and hundredths.
 - l. Accurate location of all monuments, type of material and size.
 - m. Accurate outlines and legal descriptions of any areas (not including streets, alleys or public utility easements) to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed covenant for common use of all property owners.
 - n. Contour line denoting the present shoreline, water elevation, and the date of the survey. (if required)
 - o. Waterways, watercourses, wetlands, and one hundred (100) year flood elevations, as designated by the State Water Commission or Flood Insurance Rate Maps (FIRM), shall be so designated on the plat and the mean sea level of the one hundred (100) year flood, if available, shall be denoted on the plat to datum as referenced on FIRM map. (if required)
 - p. Certification by registered surveyor to the effect that the plat represents a survey made by him/her, and that the monuments shown thereon exist as located and that all dimensional and geodetic details are correct.
 - q. Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines and other improvements and of streets and other public areas.
- B. Attached to Plat:
- a. A certificate by the County's designated engineer or Land Use Administrator certifying that the developer has complied with applicable county rules and regulations relating to improvements not on plat attached thereto.
 - b. Protective covenants in form for recording not on plat attached thereto.
 - c. Other data: such other certificates, affidavits, endorsements, or deductions as may be required by the Zoning Commission in the enforcements of these regulations not on plat attached thereto.
- C. Procedure:
- a. The Final Plat shall be submitted to the Zoning Commission within two months after approval of the Preliminary Plat; otherwise, such approval will become null and void unless an extension of time is applied for and granted by the Zoning Commission.
 - b. The Zoning Commission shall forward the approved Final Plat to the Board of County Commissioners for final approval and signatures.
 - c. If the Board of County Commissioners does not receive, by registered mail, a recommendation by the Board of Township Supervisors within sixty days after notification, it may take final action on the applications for plat approval. The recommendations by either County Zoning Commission or the Board of Township Supervisors shall not be binding of the County Commission.
 - d. The Final Plat shall not be approved by the Board of County Commissioners until the signature of the County's designated engineer accompanies the Final Plat.
 - e. Upon approval of the Final Plat by the Board of County Commissioners, the developer shall file with Zoning Commission for distribution to the appropriate agencies a sufficient number of copies of the plat as approved by the Board of County Commissioners. The number of copies shall be in the amount determined by the Zoning Commission to be necessary.

- f. The developer shall file the Final Plat with the McHenry County Recorder's Office and file a certified copy of the Final Plat with the McHenry County Auditor.

11. **MINIMUM DESIGN STANDARDS:** For the health, safety and welfare of the citizens of McHenry County, certain design standards have been adopted. It is clearly noted, however, that McHenry County will not accept responsibility for the construction, repair or maintenance, including snow removal upon any roads, streets, alleys, or other public way pertaining to any subdivisions. Before any future subdivision is approved, the developer will be required by (subdivision improvement) agreement and covenant running with the land to accept responsibility for the layout and construction of all public roads, alleys, and streets within the subdivision, according to county specifications, and to be further responsible for the maintenance thereof including snow removal. The covenant and agreement shall be placed of record to give notice to all subsequent owners of land within the subdivision shall apply to all subdivisions.

A. **Design Standards Conformance:** The developer shall prepare the preliminary and final plat in conformance with the standard set forth herein.

B. **Lot Design:**

- a. Lot size - not less than 21,780 square feet (1/2) acre if served by a sewer collection system common to other adjoining users; not less than 87,120 square feet, two (2) acres, if the sewer is drained into an onsite user owned drainage field.
- b. If a Multiple family dwellings will be part of the subdivision development it shall have a lot size not less than 130,680 square feet, three (3) acres, if the sewer is drained into an onsite user owned drainage field.
- c. Residential lots abutting major streets shall have extra depth of at least twenty (20) feet to allow for proper setbacks.
- d. Residential corner lots shall have an extra width of ten (10) feet to permit adequate building setbacks from the side streets.
- e. All lots shall front a public street.
- f. Side lot lines shall be substantially at right angles.
- g. Double frontage lots shall be avoided except where essential to provide separation of development from arterial streets.
- h. Depth and width of lots reserved or laid out for commercial or industrial uses shall be adequate to provide for off-street parking and service facilities required by the type of use a development and the provisions of the appropriate zoning district.

C. **Street Design:**

- a. The arrangement, character, classification, extent, width, grade, and location of all streets shall be designed in relation to existing and planned streets, topographic conditions, existing natural features, public convenience and safety and the proposed uses of land served by such streets.
- b. Where a subdivision abuts or contains an existing or proposed arterial street, the Zoning Commission may require: marginal access streets, reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with rear service alleys, or such other treatment as may be necessary for local traffic.
- c. Where a subdivision borders on or contains railroad right-of-way or limited access highway right-of-way, the Zoning Commission may require a street approximately parallel to and on each side of such right-of-way. Said streets shall be so located that the intervening land can be used for park purposes in residential districts, or commercial or industrial purposes in appropriate districts. The distance shall be determined with due consideration of

requirements for approach grades and future grade separations

- d. Street with centerline offsets of less than one hundred fifty (150) feet shall be avoided.
- e. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on Arterial/collector streets.
- f. When connecting street lines deflect from each other at any one point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to insure a sight distance of not less than four hundred (400) feet for local and collector streets, and of such greater radii as the Zoning Commission shall determine for special cases.
- g. Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at less than eighty (80) degrees.
- h. Intersections of more than two (2) streets at a point shall not be permitted.
- i. Curb radii on all block corners shall be ten (10) feet and a five (5) foot radius shall be used at intersections of streets and alleys.
- j. All built roads within and around a subdivision shall be centered on the roadway right-of-way
- k. Street type and right-of-way widths shall be as listed below, however, greater widths may be needed dependent upon terrain:
 - 1. Arterial Street: 125' Minimum - road width 44', drainage 20', utilities 20'
 - 2. Collector Street: 80' Minimum - road width 26', drainage 15', utilities 15'
 - 3. Local Street 66' Minimum - road width 26', drainage and utilities 20'
 - 4. Cul-de-Sac Street 66' Minimum- road width 26', drainage and utilities 20' 60' radius with drainage and utilities of 20'
 - 5. Alleys, twenty (20) feet shall be discouraged in a subdivision, exception may be made by the Zoning Commission if it will be used to access utilities, public spaces etc.
 - 6. Sidewalks, four (4) feet.
 - 7. Bike paths (per DOT standards).
- l. The plat shall show all accesses off public roads or highways including the size of culverts to be used. Where access is off a State Highway, written approval for the access, including culvert size, from the State Highway Department shall be submitted with the plat. Where access is off a County or Township Road, written approval from the County Water Resource Board and/or County Highway Department as to culvert size for all private drives as well as the public access shall be submitted with the plat. Access spacing from a County or township road shall be consistent with the standards set forth in the McHenry County Zoning Regulations and McHenry County Comprehensive Plan.
- m. Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with other requirements of the regulations; and where the Zoning Commission finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever a half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract. Both owners will have to sign the plat.
- n. Permanent dead-end streets shall not be longer than six hundred (600) feet and shall be provided at the closed end with a turn-around having an outside roadway diameter of at least

eighty (80) feet, and a street property line diameter of at least one hundred (100) feet.

- o. No street names shall be used which will duplicate or be confused with the names of existing streets in this or other subdivisions. Street names shall be subject to the approval of the Zoning Commission.
- p. All street grades, wherever feasible, shall not exceed 6 percent; however, grades within 200 feet of County Secondary Roads (County Highway System) shall not exceed two percent. Where grades cannot be met alternate grades may be considered by the County's designated engineer or the Road Foreman.

D. Easements:

- a. Drainage and utility easements shall be required over any storm water management facilities, natural drainage ways, and wetlands. The size and location of the necessary easements shall be reviewed and approved by the Zoning Commission along with the County Water Resource Board.
- b. Easements across lots or along rear or side lot lines shall be provided for utilities where necessary and shall be a minimum of five (5) feet wide on each side of the lot line and shall be designated as "utility easement".
- c. All lots shall be served by underground electric, cable television and telephone lines unless waived by the Zoning Commission due to topographic conditions or excessive costs.
- d. All utility lines for electric power, cable television and telephone services carried overhead shall be placed in utility easement.
- e. Utility lines installed in the utility easement shall not be closer than one foot to the property line or three (3) feet to any survey monument.

12. IMPROVEMENTS:

- A. Responsibility: All required improvements shall be installed and furnished by the developer, including all costs of inspection by the County, at the sole expense of the developer and at no expense to the County. If any improvement installed within the boundaries of the subdivision is determined to be of substantial benefit to lands beyond the boundaries of the subdivision, the County may make provisions for causing a portion of the cost of the improvement, representing the benefit to such lands, to be assessed against the same and, in such case, the developer will be required to pay only for such portion of the whole cost of said improvements that represents the benefit to the property within the subdivision.
- B. Standards and Requirements: Engineering requirements, standards for plans, the required improvements, and the standards for design and installation shall conform to such standards and specifications as adopted by the County and any additional or more restrictive standards adopted by the County in which the subdivision is located.
- C. Street Improvements:
 - a. Roads within the subdivision shall be constructed prior to development and inspected during construction and approved by the Zoning Administrator. Zoning Permits shall not be issued until such roads are approved.
 - b. All roads within the subdivision shall have either Yield or Stop signs that comply with the "Manual on Uniform Traffic Control Devices" at their intersection with a state, county or township road.
 - c. Culverts shall be installed under all roads within the subdivision. Culvert size shall match the larger of upstream or downstream culvert with a minimum diameter of twenty-four (24) inches. Culverts under driveways shall be a minimum diameter of twenty-four (24) inches. All

culverts shall be constructed of new riveted corrugated metal pipe with aprons.

D. Sanitary Sewer and Water Distribution Improvements:

- a. All sewage and water systems shall conform to the provisions of this Zoning Regulation and the State Health Department. Soil analysis and percolation tests shall be performed to determine the type of septic system to be used. No Zoning permit shall be issued until percolation tests have been performed.
- b. All unsafe wells and/or abandoned wells within and in the immediate vicinity of the subdivision shall be closed and capped.

E. Developer's Agreement: Prior to installation of any required improvements and prior to the plat being recorded, the developer shall enter into an agreement in writing with the County requiring the developer to furnish and construct said improvements at his sole cost and in accordance with plans and specifications and usual agreement conditions and/or pay appropriate costs for improvements or other costs associated with the plat. Further, the agreement shall provide for the development of any restrictions, covenants, easements, signage, park, or other conditions of the approved plat and provide for the proper execution, recording or other action required. Approval of the developer's agreement shall be part of plat approval by the Zoning Commission.

- a. The developer's agreement shall include provisions for the supervision of the details of construction by the Zoning Commission or its agent.
- b. The developer's agreement shall require the developer to provide a financial guarantee to ensure completion of all improvements as provided in Section 9 and 9 of this Resolution.
- c. The time for completion of the work, and the several parts thereof, shall be determined by the County upon recommendation of the Zoning Commission after consultation with the developer and shall be reasonable in relation to the work to be done, the seasons of the year, and proper coordination with construction activity in the subdivision.
- d. One (1) copy of the developer agreement which was signed by the applicant and the Zoning Commission shall be submitted to the Zoning Commission at the time the plat is recorded.

F. Completion of Improvements:

- a. Governmental Units. Governmental units to which these guarantee and agreement provisions apply may file, in lieu of said agreement or financial guarantee, a certified resolution or resolution from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this section.
- b. Failure to Complete Improvement. For a subdivision for which no financial guarantee has been posted, if the improvements are not completed within the period specified by the Zoning Commission in the approval process, the approval shall be deemed to have expired. In those cases where a financial guarantee has been posted and required improvements have not been installed within the terms of such financial guarantee, the County may declare the financial guarantee to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the financial guarantee is declared to be in default.
- c. Release of Financial Guarantee. Certification of Satisfactory Completion. The County shall not release a financial guarantee for those improvements required until the Zoning Commission has certified that all required improvements have been satisfactorily completed.

G. Maintenance of Improvements: The developer shall be required to maintain all improvements in the subdivision or on the individual subdivided lots and provide for snow removal and maintenance of streets until a homeowner association is set up to maintain the improvements. The County, Township or City is not liable for maintenance of improvements or snow removal. In addition, the County, Township or City will not be responsible to enforce private protective covenants.

H. Deferral or Waiver of Required Improvements:

- a. The Zoning Commission may defer or waive at the time of plat approval, subject to appropriate conditions, the provision of any or all such improvements that, in its judgment, are not requisite to the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.
- b. Whenever it is deemed necessary by the Zoning Commission to defer the construction of any required improvement because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the developer may post a financial guarantee ensuring completion of said improvements upon demand of the County.

13. FINANCIAL GUARANTEE: The developer's agreement provided in Section 9 Subsection 12 E requires the developer to provide a financial guarantee. The County shall determine the appropriate type of financial guarantee which shall take one of the following forms.

- A. Letter of Credit: The developer may furnish the County with a letter of credit from a financial institution providing authorization and guarantee that the County may draw on the developer's account, amounts not to exceed the required financial guarantee. The required financial guarantee shall be the sum equal to the total cost as estimated by the Zoning Commission, of all of the improvements to be furnished and installed by the developer pursuant to the agreement and which have not been completed prior to the approval of the plat. For road improvements the amount of \$50,000 per one half (1/2) mile of road shown on the plat shall be provided to insure the proper construction. The letter of credit shall be irrevocable, and shall provide for thirty (30) days notice to the County and approval of any change, amendment, or termination. The letter of credit shall be accepted as a financial guarantee only after review and approval by the McHenry County States Attorney.
- B. Bond: When roads or other improvements within the subdivision are not constructed prior to the plat being recorded in the office of the County Recorder, surety bond, or other security, in the amount of \$50,000 per one half (1/2) mile of frontage road shown on the plat shall be provided to insure the proper construction of improvements. For other improvements the required financial guarantee shall be the sum equal to the total cost as estimated by the Zoning Commission. If all of the proceeds of the bond, or other security, are insufficient to pay the cost of installing or making repairs or connections to all the improvements covered by the security, the Board of County Commissioners may install part of such improvements in all or part of the subdivision and may institute appropriate legal or equitable action to recover the money necessary to complete the remainder of the improvement. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the sub-divider, or both, shall be used solely for the installation of the improvements covered by such security and not for any other purpose. All bonds or other security deposited with the County as required hereby shall continue in effect until the improvements have been made according to County specifications.

14. MINOR SUBDIVISION: Where a proposed subdivision does not entail the establishment of any required street or road easements nor does it require any utility easements nor does the subdivision require any grading or re-contouring of the land surface, then said subdivision may be defined as a minor subdivision and shall follow the guidelines of these regulations developed for minor subdivisions.

- A. Sketch plan Meeting Subsection 7
- B. Preliminary Plat Conditional approval Subsection 8
- C. Final Plat Subsection 10
- D. Data Omitted on Minor Subdivision Plats: The following may be omitted from any preliminary plat for a minor subdivision:
 - a. Location and approximate sizes of sidewalks, curbs, and gutters.
 - b. Topographic contours at a two foot interval or a maximum interval of five feet if the latter is acceptable to the reviewing authority.

- c. Location and extent of problem soil types and results of all percolation tests, if required.
- d. Location, widths and functions of all alleys, pedestrian walkways, easements and other areas to be dedicated for public purposes.
- e. Layout of public and private utility service lines and easements to include sewer and water, gas, electric, telephone, and communication lines.
- f. Stream and drainage structures, sedimentation basins, altered drainage profiles and culvert or bridge specifications.

15. ENFORCEMENT:

- A. Violations: The violation of any provision of this Resolution or the violation of the conditions or provisions of any permit issued pursuant to this Resolution shall be a Class B Misdemeanor pursuant to Century Code Section 11-33-21, and upon conviction thereof, the violator shall be subject to a monetary fine or imprisonment or both, and the cost of prosecution.
- B. Penalties: Unless otherwise provided, each act of violation and every day on which such violation occurs or continues shall constitute a separate offense.
- C. Application to County Personnel: The failure of any officer or employee of the County to perform any official duty imposed by this Regulation shall not subject the officer or employee to a penalty imposed for violation unless a penalty is specifically provided for such failure.
- D. Injunction: In the event of a violation or the threatened violation of any provision of this Regulation, or any provision or condition of a permit issued pursuant to this Regulation, the County, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, correct, or abate such violation or threatened violation.

16. SEVERABILITY, SUPREMACY, AND EFFECTIVE DATE:

- A. Severability:
 - a. Every section, provision, or part of this Resolution or any permit issued pursuant to this Resolution is declared separable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this Resolution or any permit issued pursuant to this Resolution shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.
 - b. If any court of competent jurisdiction shall judge invalid the application of any provision of this Resolution to a particular property, building, or structure, such judgment shall not affect other properties, buildings or structures.
- B. Supremacy:
 - a. When any condition imposed by a provision of this Resolution on the use of land or building or on the bulk of buildings is either more restrictive or less restrictive than similar conditions imposed by any provision of any other County Resolution or regulation, the more restrictive conditions shall prevail.
 - b. This Resolution is not intended to abrogate any easements, restrictions, or covenants relating to the use of land within the County by private declaration or agreement, but where the provisions of this Resolution are more restrictive than any such easement, restriction, or covenant or the provision of any private agreement, the provisions of this Resolution shall prevail.

ARTICLE 4 - ADMINISTRATION AND ENFORCEMENT

SECTION 1. ZONING COMMISSION: The administration and enforcement of these Zoning Regulations is hereby vested in the Zoning Commission of McHenry County. Members of the Zoning Commission shall be appointed by the County Commission in accordance with State Statutes. Duties of the Zoning Commission shall include:

1. Issuance of all permits.
2. Inspection for permit compliance in accordance with these Zoning Regulations.
3. Maintenance of the records for the regulations and permits.
4. Collection of any fees instituted by the County Commission in the administration of this ordinance.
5. Interpret district boundaries on the Official Zoning Map.
6. Establishment of rules, regulations and procedures for the purpose of administering these zoning regulations.
7. Periodic review of the provisions of these regulations.
8. Conduct public hearings on conditional use permits, variance permits, regulation amendments, and any other business pertaining to these zoning regulations which may require a public hearing.
9. The Zoning Commission shall serve as an advisor to the County Commission and make recommendations regarding the implementation of these Zoning Regulations. The County Commission shall have final review of Zoning Commission decisions with regard to conditional use permits, variance permits and zoning regulation amendments.
10. The Zoning Commission may request the County Commission to officially appoint a Zoning Administrator to conduct the business of the Zoning Commission for any part of the above mentioned duties.

SECTION 2. BOARD OF ZONING APPEALS: A Board of Zoning Appeals is hereby created. Such Board shall consist of the County Commission and shall have the authority to grant variances to these regulations.

1. **RECORDS:** The Board shall keep minutes of its proceedings, show evidence presented, findings of fact by the Board, decisions of the Board, and voting upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.
2. **PUBLIC HEARING AND NOTICE:** The Board of Zoning Appeals shall within thirty days of filing fix a date for the hearing of an appeal. Notice of the time, place and subject of such hearing shall be published once each week for two consecutive weeks in the official county newspaper prior to the date fixed for the hearing. A copy of said notice shall be mailed to each party to the appeal.
3. **POWERS AND JURISDICTIONS:** The Board of Zoning Appeals shall administer the details of appeals or other matters referred to it regarding the application of the zoning regulations. The Board shall have the following specific powers:
 - A. To hear and decide on appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the Zoning Commission in the enforcement of the zoning regulations.
 - B. To interpret the provisions of these regulations in such a way as to carry out the intent and purpose of the adopted comprehensive plan and, as shown upon the zoning district maps.
 - C. The concurring vote of two-thirds of all members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Commission or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance or to affect any variation of these regulations.

4. PROCEDURE: The appeals process is outlined below:
 - A. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, by any officer of the County or by any governmental agency or body affected by any decision of the official administering the provisions of these zoning regulations.
 - B. Appeals shall be taken within thirty days of filing provided by the rules of the Board, by filing a notice of appeal specifying the grounds thereof and payment of the required filing fee.
 - C. Appeals and requests to the Board for variances and exceptions to these zoning regulations shall be prepared and submitted on forms furnished by the County.
 - D. The Board of Zoning Appeals shall advertise and hold a public hearing as required in Section 2.2 of this Article.
 - E. Notice of the decision of the Board of Zoning Appeals shall be in writing and transmitted within fifteen days to the appellant. A copy of such decision shall also be transmitted to the official administering the regulations for action, if action is required.

SECTION 3. ZONING PERMITS: No building or structure, shall be erected, moved, added to, or structurally altered without a zoning permit. No zoning permit shall be issued except in conformity with the provisions of this regulation unless a written order has been received from the County Commission in the form of a conditional use or the Board of Zoning Appeals in the form of an administrative review or variance as provided by this ordinance. No permit is required for maintenance of any building or structure which does not structurally alter the building. If no construction takes place in a year from the issuance of a zoning permit, the permit shall expire.

1. PROCEDURE: The zoning permit process is outlined below:
 - A. All applicants who wish to build or alter any structure as defined in these zoning regulations must file an application to the Zoning Commission for a permit.
 - B. If the applicant's plans meet district regulations as prescribed in these zoning regulations and any other applicable ordinances to include evidence of compliance with the rules and regulations of North Dakota State Health Department, the Zoning Commission or designated Zoning Administrator collects any applicable fees and issues the zoning permit.
 - C. If the applicant's plans do not comply with district regulations, the amendment, variance, conditional use procedures or appeals sections of these regulations may be applied.
2. APPLICATIONS: Application for a Zoning Permit shall be submitted by the property owner and/or Contractor to the Zoning Commission on forms provided by the Commission.

The application shall include:

- A. The name and address of the applicant.
- B. The date of the application.
- C. The legal description of the property, where proposed building will be located.
- D. A preliminary map showing boundary property lines and location of proposed structures/ area to be developed on the site.
- E. Location of existing structures on adjacent property.
- F. Parking plan showing off street parking areas and/or loading areas.
- G. Any reasonable information the Zoning Commission deems necessary.

- H. If applicable: Evidence of compliance with the rules and regulations of North Dakota State Health Department and North Dakota State Laboratories Department. (copy of sewer permit)
- I. If applicable: Evidence of compliance with McHenry County Water Resource Board and State Water Commission Storm water management rules
- J. Payment of the required filing fee.

SECTION 4. CONDITIONAL USE PERMITS

- 1. REQUIREMENTS FOR CONDITIONAL USES: A Conditional Use Permit may be granted following compliance with the procedure set forth in this section if the conditional use is one set forth in the District Regulations, provided that no application for a conditional use shall be granted unless all of the following conditions are found to be present:
 - A. The conditional use will not be detrimental to or endanger the public health, safety or general welfare;
 - B. The existing permitted uses in the area will not be substantially impaired or diminished by the establishment of the conditional use;
 - C. The conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district;
 - D. Adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided;
 - E. Adequate measures have or will be taken to provide access and exit so designed as to minimize traffic congestion in the public roads and streets;
 - F. If applicable: Evidence of compliance with the rules and regulations of North Dakota State Health Department and North Dakota State Laboratories Department. (copy of sewer permit)
 - G. Evidence of compliance with McHenry County Water Resource Board and State Water Commission Storm water management rules.
 - H. The conditional use shall conform to all provisions of the district in which it is located.

The Conditional Use Permit may be issued for a specified period of time with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the Permit and periodic review may be required to determine if the conditional use has any detrimental effects on neighboring uses or districts. The Permit shall be granted for a particular use and not for a particular person or firm.

- 2. APPLICATIONS: Application for a Conditional Use Permit shall be submitted by the property owner and/or contractor to the Zoning Commission on forms provided by the Commission. The application shall include:
 - A. The name and address of the applicant.
 - B. The date of the application.
 - C. The legal description of the property, where building/ mineral extraction site is located.
 - D. A preliminary map showing property lines and location of proposed structures/ mineral extraction area to be developed on the site.
 - E. Location of existing structures on adjacent property.
 - F. Parking plan showing off street parking areas and/or loading areas.

- G. Names and addresses of adjacent property owners.
 - H. Any reasonable information the Zoning Commission deems necessary.
 - I. If applicable: Evidence of compliance with the rules and regulations of North Dakota State Health Department and North Dakota State Laboratories Department. (copy of sewer permit)
 - J. If applicable: Evidence of compliance with McHenry County Water Resource Board and State Water Commission Storm water management rules
 - K. Payment of the required filing fee.
3. **ZONING COMMISSION RECOMMENDATION:** The Zoning Commission, upon receipt of a completed application for a Conditional Use Permit, shall at its next regular or special meeting, specify a time and date within the next thirty days for a public hearing for the proposed conditional use. Following the public hearing, the Zoning Commission shall consider the application and make a recommendation to the County Commission within thirty days.
 4. **PUBLIC HEARING AND NOTICE:** The Zoning Commission shall publish a notice of the public hearing in the official county newspaper once each week for two consecutive weeks prior to the hearing. Notice shall include the date, time, place, and purpose of the hearing. In addition to the published notice, the Zoning Commission may require that notice be mailed to those persons designated by the Zoning Commission. A notice must be sent to the affected Township.
 5. **COUNTY COMMISSION APPROVAL:** Following the public hearing conducted by the Zoning Commission, the County Commission may either grant the proposed conditional use, grant the proposed conditional use with additional conditions, or deny the proposed conditional use. If the Zoning Commission has not acted within the required time limits of this Article, the County Commission shall hold a public hearing on the proposed conditional use.

SECTION 5. VARIANCE PERMITS: To permit a variation in the yard, setback and height requirements of any district where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, or topographical or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare, or where variations may be permitted which allow unusual arrangement on the lot and still clearly and unmistakably accomplish the intent of these regulations. The Board must find that the granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable or unusual hardship or difficulty.

The Variance Permit may be issued for a specified period of time with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the Permit and periodic review may be required to determine if the variance has any detrimental effects on neighboring uses or districts. The Permit shall be granted for a particular use and not for a particular person or firm.

1. **APPLICATIONS:** Application for a Variance Permit shall be submitted by the property owner to the Zoning Commission on forms provided by the Commission. The application shall include:
 - A. The name and address of the applicant.
 - B. The date of the application.
 - C. The legal description of the property, where building/ mineral extraction site is located.
 - D. A preliminary map showing property lines and location of proposed structures/ mineral extraction area to be developed on the site.
 - E. Location of existing structures on adjacent property.
 - F. Parking plan showing off street parking areas and/or loading areas.
 - G. Names and addresses of adjacent property owners.

- H. Any reasonable information the Zoning Commission deems necessary.
 - I. If applicable: Evidence of compliance with the rules and regulations of North Dakota State Health Department and North Dakota State Laboratories Department. (copy of sewer permit)
 - J. If applicable: Evidence of compliance with McHenry County Water Resource Board and State Water Commission Storm water management rules.
 - K. Payment of the required filing fee.
2. **ZONING COMMISSION RECOMMENDATION:** The Zoning Commission, upon receipt of an application for a Variance Permit, shall at its next regular or special meeting, specify a time and date within the next thirty days for a public hearing for the proposed variance. Following the public hearing, the Zoning Commission shall consider the application and make a recommendation to the County Commission within thirty days.
 3. **PUBLIC HEARING AND NOTICE:** The Zoning Commission shall publish a notice of the public hearing in the official county newspaper once each week for two consecutive weeks prior to the hearing. Notice shall include the date, time, place, and purpose of the hearing. In addition to the published notice, the Zoning Commission may require that notice be mailed to those persons designated by the Zoning Commission. A notice must be sent to the affected Township.
 4. **COUNTY COMMISSION APPROVAL:** Following the public hearing conducted by the Zoning Commission, the County Commission may either grant the proposed variance, grant the proposed variance with additional conditions, or deny the proposed variance. If the Zoning Commission has not acted within the required time limits of this Article, the County Commission shall hold a public hearing on the proposed variance.

SECTION 6. AMENDMENTS: The County Commission may from time to time amend, supplement or change the district boundaries or regulations contained in these zoning regulations. A proposal for an amendment or a change in zoning may be initiated by the County Commission, by the Zoning Commission, or upon application of the owner of the property affected.

1. **APPLICATIONS:** The party desiring any change in zoning district boundaries or zoning regulations as to any lot, tract or area of land, shall file with the County Auditor an application upon forms provided, and such application shall be accompanied by such data and information as may be prescribed by the Zoning Commission.
2. **PUBLIC HEARING AND NOTICE:** Before the Zoning Commission shall, by proper action, formulate its recommendation to the County Commission on any such proposed or requested change of zoning district boundary or regulation, whether initiated by the County Commission, the Zoning Commission or by the property owner, the Zoning Commission shall hold a public hearing on such proposal. The Zoning Commission shall cause a notice of public hearing to be published once a week for two successive weeks prior to the time set for the said hearing in the official county newspaper. Such notices shall contain:
 - A. The time and place of the hearing.
 - B. A description of any property involved in any zoning change, by street address and/or other legal description.
 - C. A description of the nature, scope and purpose of the proposed regulation, restriction or boundary.
 - D. A statement of the times at which it will be available to the public for inspection and copying at the office of the County Auditor.

3. COUNTY COMMISSION APPROVAL: Following the public hearing conducted by the Zoning Commission, the County Commission may either adopt the proposed amendment, adopt the proposed amendment with additional conditions, or deny the proposed amendment. If the Zoning Commission has not acted within the required time limits of this Article, the County Commission shall hold a public hearing on the proposed amendment.

SECTION 7. SCHEDULE OF FEES AND CHARGES: The County Commission shall establish a schedule of fees, charges and expenses and a collection procedure for permits, appeals and other matters pertaining to these regulations. The schedule of fees shall be posted in the office of the County Auditor and may be altered or amended only by the County Commission.

Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

1. Zoning Permits: The following schedule shall be used for issuing zoning permits. The fee is determined by the estimated value of the construction or improvements:

<u>Value of Improvements</u>	<u>Fee</u>
Less than \$10,000	\$40.00
More than \$10,000	\$100.00
Subdivision Plat	\$1,000.00

2. Other Permits and Hearings:

Conditional use or Variance with structures	\$100.00 plus fee for value of improvements
Conditional use or Variance (no new structures)	\$300.00
Conditional use requiring a Variance	\$500.00
Zoning Amendment (in addition to the zoning fee.)	\$200.00
Wind energy Facility	\$1000.00 plus \$300/tower

3. Tipping Fees: Owners of commercial waste disposal sites shall pay a quarterly tipping fee equal to \$1.00/ton of material disposed in the site during that quarter. The tipping fee shall be credited to a waste disposal impact fund, which will be used to offset costs attributable to the administration, enforcement, review, monitoring of a commercial waste disposal site. In addition the monies in this fund could be used to offset other impacts from the location of a commercial waste disposal site including road damages, legal fees and public education costs associated with waste reduction and recycling.

SECTION 9. PENALTIES

1. ENFORCEMENT: The County Sheriff and the Sheriff's staff shall enforce these zoning regulations.
2. COMPLAINTS: Any person may file a written complaint whenever a violation of these regulations occurs, or is alleged to have occurred. Such complaint shall state the cause and basis thereof and be filed with the County Sheriff. The County Sheriff shall record the complaint, promptly investigate, and report to the Zoning Commission.
3. VIOLATIONS: If any building or structure is erected, reconstructed, enlarged or moved; or if any building, structure, or land is used in violation of these regulations, the Zoning Commission shall order in writing, the correction of such violation.

The County Sheriff, States Attorney or other official designated by the County Commission, or any affected citizen or property owner, may institute appropriate action or proceedings for the purpose of:

- A. Prosecuting any violation.
- B. Restraining, correcting or abating such violation.
- C. Preventing the occupancy of any building, structure or land in violation of these regulations.

- D. Preventing any illegal act, conduct, business, or use in or about any buildings, structure or land in violation of these regulations.
4. PENALTY: Any persons, firm or corporation violating the provisions of these regulations shall constitute the maintenance of a public nuisance and shall be a Class B misdemeanor. Nothing herein contained shall prevent the County from taking such other lawful action to prevent or remedy any violation of the zoning regulations.

ARTICLE 5 - DEFINITIONS

SECTION 1. RULES: For the purpose of these regulations, the following rules shall apply.

1. Words used singularly shall include the plural. Words used in the plural form shall include the singular. Words used in the present tense shall include the future.
2. The word "persons" includes a corporation, members of a partnership, a business organization, a committee, board, trustee, receiver, agent, or other representative.
3. The word "shall" is mandatory. The word "may" is permissive.
4. The word "including" shall mean including, but not limited to.

SECTION 2. DEFINITIONS: The following words, terms and phrases are hereby defined and shall be interpreted in the same fashion throughout these regulations. Terms not herein defined shall have the meaning customarily assigned to them.

ACCESS: A way or means of approach to provide physical entrance to property.

ACCESSORY BUILDINGS AND USES: A subordinate building or portion of the main building, the use of which is incidental to that of the main building or to the main use of the premises. An accessory use is one which is incidental to the main use of the premises. Any storage building 8 feet by 10 feet or smaller doesn't require a zoning permit however setbacks must be met.

ADULT ENTERTAINMENT CENTER: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time. An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

AGRICULTURE: The production, keeping, or maintenance, for sale, lease, or personal use, of plants and animals useful to man, including to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, or any mutation or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds including grapes, nuts and berries; vegetables, nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

AIRPORT: A place where aircraft can land and take off, usually equipped with hangers, facilities for refueling and repair and various accommodations for passengers.

ANIMAL FEEDING OPERATIONS – Any building, structure, enclosure, or premises used, designed, or intended for the concentrated feeding or fattening of livestock for more than 45 days in any 12 month period for marketing and which less than 50% of the feed is raised by the owner and which animal waste or manure accumulates and is a separate pursuit to the normal incidence of farming. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation, if they use common areas or systems for manure handling.

BUILDING: A structure having a roof supported by columns or walls.

CONDITIONAL USE: A use which generally would not be suitable in a particular zoning district, which would be acceptable under certain circumstances. The permit shall be granted for a particular use and not for a particular person or firm.

CONSTRUCTION CAMP: See temporary housing facility.

COUNTY COMMISSION: Shall mean the McHenry County Commission.

CREW HOUSING FACILITY: See temporary housing facility.

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

DWELLING, NON-FARM: A single family dwelling or mobile home located on a farm or otherwise of which the occupant does not derive at least fifty (50) percent of his/her income from agricultural activities.

FARM: Farm means a single tract or continuous tracts of agricultural land containing a minimum of ten acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with his/her source of primary annual income.

Hobby Farm - Means agriculture and agriculture related farm buildings, where the uses are not maintained in connection with a normal farm or farming operation and does not provide the surface owner with his/her source of primary annual income, but is operated as a pursuit of pleasure.

JUNK YARD: An area of more than two hundred square feet, or any area not more than fifty feet from any street, used for the storage, keeping, processing or abandonment of junk, including scrap metals or other scrap materials or goods, used for dismantling, demolition, or abandonment of automobiles or other vehicles or machinery, or parts thereof.

LIVESTOCK: Any and all animals or types customarily raised or kept on farms for profit or other purposes.

LOT: A piece, plot, or area of land, or contiguous assemblage as established by survey, plat or deed, occupied or to be occupied by a building, or a unit group of buildings, and/or accessory buildings thereto or for other use, together with such open spaces as may be required under these regulations and having its frontage on a street or officially approved place.

MAINTENANCE OF BUILDINGS: Replace or repairing any materials used in the construction of the building without changing the original dimension of structure.

MAN CAMP: See temporary housing facility.

MINERAL EXPLORATION/EXTRACTION: Any activity, use or technique which when applied to the surface of the land will aid in the discovery, evaluation or production of coal, oil, gas, potash, sand, gravel and/or rock, or other subsurface minerals as defined in North Dakota Century Code 38-12.

MOBILE HOME PARK: Any park, court, camp, or tract of ground upon which mobile home sites are leased or used, whether for compensation or not, including all accessory uses.

NONCONFORMING USES: Use of a building or of land that does not conform to the regulations as to use for the district in which it is situated.

PARK: A tract of land designated and used by the public for active and passive recreation.

PERMITTED USE: Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

ZONING COMMISSION: The Zoning Commission of McHenry County, North Dakota.

PROHIBITED USE: A use that is not permitted in a zoned district.

PUBLIC HEARING: A meeting announced and advertised in advance and open to the public, with the public given an opportunity to talk and participate.

SETBACK: The open space extending the full width of a lot between a building and a public right-of-way line, easement or property line.

SHELTERBELT: A barrier of trees and shrubs that is used to protect crops, farmsteads and non-farm dwellings from wind and storms.

SIGN: Any surface, fabric, device, or display which bears lettered, pictorial or sculptured matter, including forms shaped to resemble any human, animal, or product, designed to convey information visually and which is exposed to public view. For purposes of these regulations, the term "sign" shall include all structural members. A sign shall be construed to be a display surface or device containing organized and related elements composed to form a single unit. In cases here matter is displayed in a random or unconnected manner without organized relationship of the components, each such component shall be considered to be a single sign.

Billboard - A sign which directs attention to a business, commodity, service, or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

Bulletin Board - A sign which identifies an institution or organization on the premises of which it is located and which contains the name of the institution or organization, the names of individuals connected with it, and general announcements of events or activities occurring at the institution or similar messages.

Illuminated - A sign lighted by or exposed to artificial lighting either by lights on or in the sign (directly illuminated) or directed toward the sign (indirectly illuminated).

Marquee - Any sign attached to and made part of a marquee. A marquee is defined as a permanent roof-like structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

Portable - A sign that is not permanent, affixed to a building, structure or the ground.

Roof - A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the deck line of a building with a mansard roof.

Temporary - A sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.

Wall - A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the sign, and which does not project more than 12 inches from such building or structure.

STREET: Any thoroughfare or public space which has been dedicated to, and accepted by, the public for public use and includes all the right-of-way sidelines.

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location of the ground, including, but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, and arbors or breeze-ways, but excepting utility poles, fences, retaining walls, and ornamental light fixtures.

TEMPORARY HOUSING FACILITY: Also known as man camp, construction camp or crew housing facility. A facility designed and intended to be used for a temporary period of time to house a variety of field-related workers, including oil field, construction, etc. Such facilities are not intended to accommodate families with children. Temporary housing camps may include the use of skid units, travel-trailers, recreational vehicles, campers, mobile homes, or a combination of these.

UTILITY: Any person, firm, corporation, municipal department or board duly authorized to furnish and furnishing under public regulations, to the public: electricity, gas, heat, power, steam, telephone, transportation, or water.

VARIANCE: The relaxation of the terms of the Zoning Regulations in relations to height, area, size, and open spaces where specific physical conditions, unique to the site, would create an unreasonable hardship in the development of the site for permitted uses.

WASTE:

Chemical - Shall be defined as, but not limited to, any waste product associated with mineral exploration, production, or abandonment procedures.

Hazardous - Shall be defined by North Dakota or Federal laws or rules or regulations.

Inert Solid - Means the non putrescible solid waste which is generally not contaminated water or from contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete, asphalt concrete, tire, metals, and tree branches. Solid waste does not include hazardous waste either alone or as a part of otherwise included waste.

Municipal Solid - Means that garbage, refuse and trash generated by households, motels, hotels and recreation facilities by public and private facilities and by commercial, wholesale, private and retail businesses. The term does not include special waste.

Special - Shall mean only the special waste described in the North Dakota Century Code 23-29-03(16).

WASTE DISPOSAL SITE:

Private - a solid waste disposal site used exclusively by and only for the landowner engaged in farming.

Commercial - a solid waste disposal site used by public entities or commercial waste haulers for the temporary or permanent storage or reclamation of solid waste generated through medical, industrial, municipal or household collection.

YARD: An open space on the same lot with a building, unoccupied and obstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width of side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

Front - A yard that extends across the full width of the lot. The depth is measured as the least distance between the front lot line and the front building line.

Rear - A yard that extends across the full width of the lot. The depth is measured as the least distance between the rear lot line and the rear building line.

Side - A yard extending from the front yard to the rear yard. The depth is measured from the side lot line and side building line.

ZONING MAP: The map or maps which are a part of the zoning ordinance and delineate the boundaries of the zoning districts.