

NELSON COUNTY
"ZONING RESOLUTION AND SUBDIVISION REGULATIONS"

June, 1979

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LAND DEVELOPMENT CODE

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SECTION I.

A. Authority

The Nelson County Zoning Resolution and Zoning District Maps are authorized by Chapter 11-33 of the North Dakota Century Code and are hereby declared to be in accordance with all provisions of this resolution.

B. Title

This Resolution shall be known and may be cited and referred to as the "Nelson County Zoning Resolution and Subdivision Regulation".

C. Purpose and Intent

The purpose and intent of this Resolution shall be:

1. To protect and guide the development of nonurban areas;
2. To secure safety from fire, flood and other dangers;
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, and structures, the percentage of lot that may be occupied, the size of courts, yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes.
4. To lessen governmental expenditures;
5. To conserve and develop natural resources.

D. Severability

If any section, provisions or portion of this Resolution is adjudged invalid by a court or competent jurisdiction, the remainder of this Resolution shall not be affected thereby.

E. Repeal

All other resolutions or parts of resolutions of Nelson County inconsistent or in conflict with this resolution, to the extent of inconsistency or conflict only are hereby repealed.

F. Effective Date

The resolution shall be effective after Notice and Public Hearing and adoption by the County Commissioners of Nelson County, North Dakota as stated in Chapter 11-33 of the North Dakota Century Code.

G. Definitions

For the purpose of this resolution certain words and terms used herein are defined as follows:

1. Accessory Building - 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 such as garages and tool sheds.
2. Agriculture - the art or science of cultivating the soil and activities incident thereto; the growing of soil crops in the customary manner on open tracts of land; the accessory raising of livestock and poultry.
3. Airport - any area of land or water which is used or intended for use for the landing and taking off of aircraft; and any accessory areas which are used or intended for use for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.
4. Alley - a public or private throughfare which affords only a secondary means of access to property abutting thereon.

5. Amendment - any change, revision or modification of the text of the resolution or the zoning district map.
6. Basement - a story having part of its height below the average grade of the adjoining ground. A basement shall be counted as a story for purpose of height measurements.
7. Board - the Board of County Commissioners of Nelson County, North Dakota.
8. Board of Adjustment - the body authorized by Nelson County Commissioners to hear appeals on the enforcement of the provisions of these regulations.
9. Boarding House - a building other than a hotel, where, for compensation and by pre-arrangement for definite periods, meals or lodging and meals, are provided for three or more persons, but not exceeding twenty persons.
10. Building - any structure designed or intended for support, enclosure, shelter or protection of persons, animals, chattels, or property.
11. Building Area - that portion of the lot that can be occupied by the principal use, thus excluding the front, rear and side yards.
12. Building Height - the vertical distance from the grade to the highest point of the coping of a flat roof or deck line of a mansard roof or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.

13. Code Administrator - the administrative official designated by the Nelson County Board of Commissioners to administer and enforce the provisions of this resolution and regulations.
14. Community Water & Sewer Systems - utilities systems serving a group of buildings, lots or an area of the county or more than 25 persons, with the design and construction of such utilities systems as approved by the County and the State of North Dakota.
15. Conditional Use - any use for which the Nelson County Board of Commissioners shall set specific conditions, all of which must be met prior to the approval of said use in the district.
16. District - a section of the county for which the regulations governing the height, area use of buildings and premises are the same.
17. Dwelling - any building or portion thereof which is designed and used exclusively for residential purposes.
18. Dwelling, Multi-Family - a building having accommodations for and occupied by two or more families.
19. Dwelling, Single Family - a building having accommodations for and occupied exclusively by one family.
20. Family - shall mean one individual or group of two or more persons related by blood or marriage living together as members of a single housekeeping unit and doing their cooking in a single kitchen on the premises, as distinguished from a group occupying a boarding and rooming house, lodging house, hotel, club, fraternity or sorority house.

21. Feedlot - the definition of a feedlot is the same as that of the State Health Departments.
22. Flood Plain - that continuous area, adjacent to a stream or stream-bed or other natural drainage channels or areas, which is low lying difficult to drain or subject to flooding.
23. Floor Area - the total number or square feet of floor space within the exterior walk of a building, not including space in cellars, basements, carports or garages.
24. Garage, Private - an accessory building or portion of a main building designed or used for storage of not more than four vehicles owned and used by the occupants of the buildings to which it is accessory.
25. Garage, Public - a building or portion thereof, other than a private or storage garage, designed or used for equipping, repairing, hiring, servicing, selling or storage of vehicles.
26. Garage Storage - a building or portion thereof, designed or used exclusively for housing more than four vehicles.
27. Home Occupation - any occupation of a service character which is clearly secondary to the main use of the premises as a dwelling and does not change the character thereof or have any exterior evidence of such secondary use.
28. Hotel or Motel - a building used as a transient abiding place for persons who are lodged for compensation.

29. Institution - a building occupied by a non-profit corporation, or non-profit establishment for public use.
30. Junk Yard - land or buildings where waste, discarded or salvaged materials are brought, sold, exchanged, stored, cleaned, packed, disassembled or handled including but not limited to, scrap metal, rags, paper, rubber products, glass products, lumber products and products resulting from the wrecking of automobiles or other vehicles.
31. Land Use Plan - the comprehensive long range plan for the desirable use of land in the county, as officially adopted and as amended from time to time by the planning commission and county commissioners; the purpose of such plan being, among other things, to serve as a guide to the zoning and progressive changes in the zoning of land to meet changing needs, in the subdividing and use of undeveloped land, and in the acquisition of land for such public purposes as streets, parks, schools and other public buildings or public uses.
32. Lot - a parcel of land, abutting on a street, whose area, in addition to the parts thereof occupied or hereafter to be occupied by a building and its accessory buildings, is sufficient to provide the yards and courts required by this resolution.
33. Lot, Area - the horizontal area within the lot lines of the lot.
34. Lot, Corner - a lot of which at least two adjacent sides abut for their full lengths upon a street, provided that the interior angles at the intersection of such two sides is less than 135 degrees.
35. Lot, Depth - the mean horizontal distance between the front and rear lot lines.

36. Lot, of Record - a lot, the description of which is recorded in the County Register of Deeds Office.
37. Lot, Width - the mean horizontal distance across the lot between lot lines at the building line measured at right angles to the depth.
38. Mobile Home - a structure, able to be transported in one or more sections to be used as a dwelling with or without a permanent foundation.
39. Mobile Home Park - a tract of land designed and developed to accommodate mobile homes on lots on a purchase, lease or rental basis.
40. Motel - a building or group of buildings used primarily for the temporary residence of motorists or travelers.
41. Non-conforming Uses - any building or land lawfully occupied by a use at the time of passage of this resolution or amendment thereto, which does not conform after the passage of this resolution or amendment thereto with the use regulations of the district in which it is situated.
42. Nursing Home, Convalescent Home - a home for the aged or infirm where occupants are provided with food, shelter, and care for hire or compensation.
43. Ordinance/Resolution - any legally enacted regulation adopted or amended by ordinance or by resolution.
44. Parking Space - an area enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.

45. Persons - any individual, firm partnership, corporation, company association, joint stock association or body politic, includes any trustee, receiver, assignee or other similar representative thereof.
46. Place - an open unoccupied space other than an alley or street permanently reserved as the principal means of access to abutting property.
47. Plat - a map of a subdivision recorded in the office of the county register of deeds.
48. Premises - a lot or plot with the required front, side and rear yards for a dwelling or other use as allowed under these regulations.
49. Setback - the minimum horizontal distance between a building and a highway or road center line.
50. Sign - any outdoor advertising having a permanent location on the ground or attached to or painted on a building, including bulletin boards, billboards and name plates.
51. Street Line - a dividing line between a lot, tract or parcel of land and a contiguous street.
52. Story - that portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, the space between the floor and the ceiling next above it.
53. Structure - anything built, constructed, or erected which requires permanent location on the ground, but not including fences.
54. Subdivision - the division of land into two or more lots for the purpose of sale or lease for building development.

55. Use - the purpose for which land or premises or a building thereon is designated, arranged or intended, or for which it is or may be occupied or maintained.
56. Yard - an open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of the 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.
57. Yard, Front - a yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the front lot line and the front of the main building or any projection of the usual steps unenclosed balconies, or open porch.
58. Yard, Rear - a yard extending across the rear of a lot, measured between the side lot lines, and being the minimum horizontal building including any projections other than steps, unenclosed balconies or unenclosed porches. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yards shall in all cases be at the opposite end of the lot from the front yard.

SECTION II

GENERAL PROVISIONS

A. Jurisdiction

The jurisdiction of this resolution shall apply to all areas of

Nelson County outside the incorporated limits and zoning jurisdiction authority accepted by the Municipalities within the County.

B. Zoning Not to Effect Normal Incidents of Farming

No regulation or restriction, herein, shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming as provided in Chapters 11-33 of the North Dakota Century Code.

C. Amendments

The Nelson County Board of Commissioners may from time to time on its own motion or on petition, or on recommendation of the Nelson County Planning Commission, amend supplement or repeal provisions of the resolution after notice and public hearing as provided by statute.

D. Non-Conforming Uses

The lawful use of a building, structure or premises at the time of the adoption or amendment of this resolution may be continued although such use does not conform with the provisions of this resolution. The total structural repairs in a nonconforming building or structure shall not, during its life exceed 50 percent of the market value of the building or structure unless permanently changed to a conforming use. If a non-conforming use is discontinued for a period of 24 months, any future use of the building, structure or premises shall conform with this resolution.

E. Continuing Existing Use

Within the restrictions of subsection D, nothing in this resolution shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by the Code Administrator, or the North Dakota State Fire Marshall.

F. Zoning Effects Every Structure and Use

Except as provided in subsection B and D herein, no building structure or land shall be used and no building or part thereof or structure shall be erected, constructed, reconstructed, occupied, moved altered, or repaired unless it conforms with the ordinance specified for the class of district in which it is located.

G. Development

The following activities or uses shall constitute development and require a building permit.

1. A change in the type of use of building or structure.
2. A reconstruction or alteration of the size of a building or structure.
3. A material increase in the intensity of use of land.
4. Commencement of excavation on a parcel of land upon which a structure can be constructed.
5. Demolition of a structure.
6. Deposit of refuse, solid or liquid waste or fill on a parcel of land.
7. Alteration of a use which has been abandoned for a period of 24 months.
8. The placing of poles for utility lines, and the burying of all utility lines and pipelines shall require a permit from the County Board of Commissioners.

The following activities or uses do not constitute development:

1. The maintenance or improvement of a public road or railroad track not involving substantial engineering redesign if the work is carried out on land within the boundaries of the right-of-way.
2. Work by any utility not involving substantial engineering redesign for the purpose of inspection, repair, renewal or construction on established rights-of-way of any streets, mains, pipes, powerlines, towers, poles, tracts or the like.
3. Work for the maintenance, renewal, improvement or any building or structure, if the work affects only the interior or the decoration of the exterior of the building or structure.

H. Water and Sewer Facilities

To protect the surface and subsurface water supply from pollution and to protect the public health and abate nuisance and odor, construction, of privies and cesspools shall be jointly approved by the Nelson County Planning Commission and Board of County Commissioners.

I. Conditionally Permitted Uses

Applications for approval of a conditional use shall be submitted to the Nelson County Planning Commission.

The Planning Commission shall hold a public hearing before action is taken on the application for approval of a conditionally permitted use. Notice of such hearing shall be published in the official county newspaper of general circulation at least one week prior to the hearing.

No applications for a conditional use shall be granted unless the Nelson County Planning Commission shall find all of the following conditions present:

1. The conditional use will not be detrimental to or endanger the public health, safety, morals or general welfare of the county residents.
2. The existing permitted uses in the adjacent land will not in any manner be substantially impaired or deminished by the establishment of the conditional use.
3. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The conditional use shall conform to all applicable regulations of the district in which it is located.
7. Based upon the County Planning Commission's findings of the above listed conditions the Nelson County Board of Commissioners shall grant or deny a conditional use.

J. Land Suitability

No land shall be divided, subdivided or developed for a use which is not deemed suitable by the Nelson County Planning Commission for reasons of soil limitations, inadequate drainage or any other condition likely to be harmful to the health, safety or welfare of the future residents

of the area or harmful to the overall county.

The subdivider or developer as a part of the pre-application procedure for subdivisions must request a determination of land suitability providing that he shall provide all necessary maps, data and information for such a determination to be made.

SECTION III
ZONING DISTRICTS

For the purpose of this Zoning Resolution Nelson County is divided into the following zoning districts:

- A - Agricultural District
- RD - Restricted Development

In addition to the above listed districts the R - Residential District, FC - Flood Control, RMH - Mobile Home Residential, C - Commercial and I - Industrial Zoning District Regulations are provided and are to be put into effect whenever land is changed to one of these uses.

The unincorporated areas of Nelson County are zoned as the land is presently being used as shown on the Zoning District Maps.

A. Zoning Map

The location and boundaries of the zoning districts are hereby established and shown on maps entitled "Zoning District Maps" which accompany and are hereby made a part of this resolution. The Zoning District Maps shall also be filed in the office of the county auditor. The Nelson County Planning Commission shall regularly update the "Zoning District Maps" to show any changes in the zoning district boundary line resulting from amendments to the zoning resolution.

1. Location of Zoning District Boundaries:

The following rule shall apply with respect to the boundaries of the zoning districts as shown on the zoning district maps.

- a. Unless otherwise indicated, the zone boundaries are the center-lines of streets, roads, highways, alleys and channelized waterways, or such lines extended.
- b. In unsubdivided property, zone boundaries shall be determined by use of the scale on the map. A legal description (section line, township line) acceptable to the enforcing officers of this resolution shall be made available if a controversy arises concerning zone district boundaries.
- c. Where a district boundary is shown by a specific dimension as being located at any given distance from any right-of-way line, such specific dimensions shall govern.
- d. Where conflict arises over district boundaries, the County Commissioners shall determine the actual boundary line.

2. Vacations

Whenever any street, alley or other public way is vacated by official action of the County Commissioners of Nelson County, the zoning district adjoining each side of such street, alley or public way shall be automatically extended to the center of such vacation and all areas included in the vacation shall then and henceforth be subject to all appropriate regulations to the extended district.

B. A-Agricultural District

1. Purpose - the purpose and intent of the A - Agricultural District is to provide a district that will: (1) allow agricultural activities; (2) prevent scattered non-farm growth; and (3) secure economy in gov-

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emental expenditures for public services, utilities and schools.

2. Permitted uses:

- a. General farming operations including farm dwellings and agricultural buildings, nurseries and tree farms. In any permitted or conditionally permitted uses in the Agricultural District the following in addition to other provisions contained herein should apply:
 1. That all buildings, residential, commercial or otherwise, be placed not less than 160 feet from the centerline of any road in the County for the purpose of preventing snow accumulation and other road hazards.
 2. That all tree shelterbelts be planted not less than 200 feet back from the centerline of any road in the County, except that ~~one~~^{one} row tree shelterbelts which run perpendicular to the road right-of-way shall be excepted from these regulations; such shelterbelts being subject only to state law.
 3. That all landscaping of yards and planting of ornamental trees, yard shelterbelts and tree planting be done by permission and approval of the Board of County Commissioners, that no hedge shall be allowed to grow over 3 feet tall, all within 160 feet from the centerline of any road; no restrictions on plantings beyond 160 feet.
 4. That any new advertising signs or billboards over 3 feet by 5 feet in size, placed along any roadway shall be placed not less than 160 feet from the centerline of the road.
 5. That all junk yards, auto wrecking plants, scrap yards, rendering plants, hide and fur establishments, slaughter houses be at least 1,320 feet distant from any highway.
- b. Single family non-farm dwellings on a tract of land five acres or larger.
- c. Churches and similar places of worship including parish residences.
- d. Golf course and other recreational land use.
- e. Public and parochial schools.
- f. Temporary structures incidental to construction work, but only for the period of such work.

- g. Stands for the sale of agricultural products or commodities raised on the premises.
 - h. Fire, police stations and township halls.
3. Conditionally permitted uses: A public hearing is required:
- a. Utility lines and facilities necessary for public service.
 - b. Electric substations and gas regulator stations provided that:
 - 1. For each electric substation where transformers are exposed there shall be an enclosing wall or fence of at least six (6) feet high.
 - c. Airports and heliports.
 - d. Cemetary or crematory.
 - e. Radio, television, navigation or military control station, transmitter or tower.
 - f. Grain elevators
 - g. Sanitary landfills and incinerator sites.
 - h. Wrecking, salvage or junk yard.
 - i. Skeet trap and rifle ranges.
 - j. Hospital and sanitariums for contagious or infectious diseases.
 - k. Livestock sales rings shall be permitted subject to the following minimum conditions set forth below:
 - 1. All corrals or pens for live animals shall be placed at least two hundred (200) feet from any public street or public road and shall be to the rear of main buildings.
 - 2. The area shall provide adequate off-street parking for automobiles as well as trucks and shall be designed to provide adequate truck maneuvering space for both loaded and unloaded trucks.

3. Livestock sales rings shall not be operated in any manner as to impair or in any way effect the pbulic health, safety or welfare; or to operate said livestock sales ring in any manner as to be a public nuisance.

4. No more than ten (10) percent of the total number of animals presented for sale at any one auction shall be kept on the premises for more than ten (10) consecutive days following each auction.

5. When the application for livestock auction rings are filed with the Board of County Commissioners, the applicant shall present a plan showing the proposed development. Included in the plan shall be the following: topographic map showing two foot contours, a drainage plan, the location of existing utilities and proposed utility extensions, plan showing dimensions of the locations of all structures existing or proposed a parking plan and a driveway plan.

1. Animal feed lots shall be permitted subject to the conditions put upon them by the State Health Department.

m. Sand and gravel pits.

n. Dog kennels.

C. R - Residential District

1. The purpose and intent of the R-Residential District is to regulate residential development within the county and in its recognized, unincorporated villages.

2. Permitted uses.

a. Single family nonfarm dwellings with or without private garages, but not including mobile homes or trailer houses.

- b. Churches, schools and related facilities.
 - c. Public parks, playgrounds and other recreational land uses.
 - d. Nursing homes and hospitals.
 - e. Water supply buildings, reservoirs, wells, elevated tanks and similar essential public utility and service structures.
3. Conditionally permitted uses:
- a. Two or more family dwellings.
 - b. Home occupations, provided that not more than twenty-five (25) percent of the dwelling is used for such purposes.
 - c. Fire and police station.
 - d. Telephone exchange, without shops, garages or general administrative offices.
 - e. Electric substations and gas regulator stations provided that for each electric substation where transformers are exposed there shall be an enclosing fence at least six (6) feet high.
4. Area Requirements:
- a. The minimum lot area for single family units shall be 10,000 square feet, and with a minimum lot width of 75 feet.
 - b. The minimum lot area for 2 or more family units shall be 10,500 square feet per unit and with a minimum lot width of 100 feet.
5. Height Requirements:
- a. There shall be no height limitations, except as imposed by the County Planning Commission in light of other structures and units in the area of the proposed unit or units.

6. Minimum Floor Area:
 - a. There shall be a minimum floor area of eight hundred (800) square feet per single family dwelling and 500 square feet per unit in a multi-family complex.
7. Minimum Lot Frontage:
 - a. There shall be a lot frontage of not less than seventy-five (75) feet per single family dwelling and one hundred (100) feet for multi-family dwellings.
8. Minimum Front Yard:
 - a. Measured from the front property line the front yard shall not be less than twenty (20) feet.
9. Minimum Rear Yard:
 - a. Measured from the rear property line there shall be a rear yard of not less than twenty (20) feet.
10. Minimum Side Yard:
 - a. Measured from the side property lines there shall be side yards of not less than eight (8) feet on each side of a lot.
11. Parking Requirements:
 - a. One automobile off street parking space for each living unit shall be provided.

D. RD - Restricted Development District

1. Purpose and Intent - the purpose and intent of the R-D Restricted Development District is to (a) preserve historic sites and areas; (b) preserve subsurface aquifer areas; to (c) preserve lake and dam shore areas. & (d) to protect the flightway of airports as mandated by Federal and State regulations.

See Amendment 09-02

2. No development except as herein permitted shall be located 800 feet from the private property line. In the case of airports no development shall occur 1200 feet from the end of the runway & 800 feet from the sides of the runway as provided by State and Federal Regulations.
3. Permitted Uses:
 - a. General farming.
 - b. Public parks, playgrounds and recreational areas.
 - c. Day camps or summer camps.
 - d. The erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, or underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, and other equipment necessary for furnishing adequate service for the public health, safety or general welfare, but not including buildings.
 - e. All development within this district shall be subject to the approval of the Nelson County Planning Commission and County Board of Commissioners.

E. F-C - Flood Control District

1. Purpose and intent - the purpose and intent of the F-C- Flood Control District is to discourage development in areas which are subject to periodic flooding as defined by the National Flood Insurance Program administered by the Department of Housing and Urban Development.
2. Permitted Uses:
 - a. General farming and dairying.
 - b. The growing and preservation of trees, provided the storage of manure shall not be permitted nearer than one hundred fifty (150) feet from any lot line.
 - c. Public parks, playgrounds and other recreational facilities.

- d. Fur farming.
- e. Stock raising but not including feed lots.
- f. All development within this district, except as herein provided shall be subject to the approval of the Nelson County Planning & Zoning Commission and County Board of Commissioners.

F. RMH - Residential Mobile Home

- 1. Purpose - The purpose of RMH - mobile home district is to regulate the development of mobile home parks within Nelson County.
- 2. Permitted Uses:
 - a. Independent mobile homes located in a well drained area.
- 3. Mobile Home Park Requirements:
 - a. All regulations of North Dakota Regulatory Agencies and departments relating to mobile home park development shall be complied with.

G. C - Commercial District

- 1. Purpose - the purpose and intent of the C-Commercial District is to regulate commercial development within Nelson County.
- 2. Permitted Uses:
 - a. Hotels, motels, restaurants and taverns.
 - b. Medical and dental clinics.
 - c. Banks
 - d. Hospitals and nursing homes.
 - e. Funeral homes.
 - f. Apartments on floors other than ground level.
 - g. Amusement places.
 - h. Retail and service uses including artist studios, appliance stores, clothing stores, theatres, automobile sales, service and repair, professional offices, bakeries, grocery stores and restaurants,

auditoriums and similar places of public assembly, government buildings, florist shops, jewelry stores and newspaper offices.

i. Any other business which in the opinion of the Nelson County Planning Commission and Nelson County Commissioners are of the same nature as those enumerated above.

3. Conditionally permitted uses:

a. Lumber yards

b. Warehouses

4. Yard Requirements:

a. Same setback requirements as in the A-Agricultural District.

b. Side Yard - no side yard is required for any building in the C - Commercial District.

c. Rear Yard - no rear yard is required for any building in the C - Commercial District.

H. I - Industrial District

1. The purpose and intent of the I - Industrial District is to regulate industrial development within Nelson County.

2. Permitted uses:

a. Agriculture

b. Blacksmith and welding shops

c. Lumber yards

d. Fertilizer plants

e. Warehousing

f. Radiator repair shops

g. Heavy equipment sales, service and repair.

h. Fuel storage tanks and chemical storage tanks.

i. Manufacturing and processing of wood, agricultural products, metal, concrete and blacktop mix.

- j. Motor vehicle and farm implement sales, storage, service and repair.
 - k. Seed processing and treating plants where there is no emission of dust, husks, or other particulate matter in the air.
 - l. Truck and railroad terminals.
 - m. Public utility and public service uses.
 - n. Accessory uses customarily incident to the above uses and that in the opinion of the Nelson County Planning Commission and County Board of Commissioners are the same nature as those enumerated above.
3. Intensity of use regulations:
- a. When a building or structure is within 150 feet of a residential district zone, said building and structure shall not exceed forty-five (45) feet in height.
 - b. When a building or structure is more than 150 feet from a residential district zone, said building or structure shall not exceed seventy-five (75) feet in height.
 - c. Buffer-strip - a buffer strip, which is approved by the Nelson County Planning Commission and the Nelson County Board of Commissioners shall provide a sight and sound barrier when an industrial use is abutting a R- Residential District. The buffer zone shall be adequately maintained by the property owner.

- d. Storage - the open storage of materials other than waste materials or salvage automobiles may be permitted when located at least one hundred (100) feet from any R-Residential District and at least thirty (30) feet from any street right-of-way line or other lot line. All material shall be handled with care to control dust and odor. All combustible material shall be stored in such a way as to permit free access to fire fighting equipment.
- e. Minimum front yard - measured from the front property line there shall be a front yard of not less than ten (10) feet. Where lots have double frontage the required front yard shall be provided of both sides.
- f. Minimum rear yard - measured from the rear property line there shall be a rear yard of ten (10) feet, except where a rear property line adjoins a dedicated alley or easement no rear yard is required.
- g. Minimum side yard - measured from the side property line there shall be side yards of not less than ten (10) feet.

I. Special Regulations

1. General - the zoning district requirements hereinafter set forth in this section qualify or supplement, as the case may be, the District Regulations appearing elsewhere in these regulations.
2. Off-Street Parking and Unloading - no building shall be erected, enlarged to the extent of increasing the floor area by as much as fifty (50) percent, or changed in use unless there is provided on the lot, space for the parking of automobiles or trucks in accordance with the following minimum requirements:
 - a. Bowling alley, five parking spaces for each alley.
 - b. Business, professional or public office building, studio, bank, medical or dental clinic, three parking spaces plus one additional parking space for each four hundred (400) square feet of floor area over one thousand (1,000) feet.
 - c. Church, one parking space for each eight seats in the main auditorium.
 - d. College or school, one parking space for each eight seats in the main auditorium or three spaces for each classroom whichever is greater.
 - e. Community center, library, museum or art gallery, ten parking spaces plus one additional space for each three hundred (300) square feet of floor area in excess of two thousand (2,000) square feet.
 - f. Dwellings, one parking space for each dwelling unit.
 - g. Hospital, sanitarium, home for the aged, or similar institution, one parking space for each three beds.
 - h. Hotel, one parking space for each three sleeping rooms of suites plus one parking space for each two hundred (200) square feet of

commercial floor area contained therein.

- i. Manufacturing or industrial establishment, research or testing laboratory, creamery, bottling plant, warehouse or similar establishment, one parking space for every two employees on the maximum working shift plus space to accommodate all trucks and other vehicles used in connection therewith.
- j. Mortuary or funeral home, one parking space for each fifty (50) square feet of floor space in slumber rooms, parlors and individual funeral service rooms.
- k. Private club or lodge, one parking space for every ten members.
- l. Restaurant, night club, cafe or similar recreation or amusement establishment, one parking space for each one hundred (100) square feet of floor area.
- m. Retail store or personal service establishment, one parking space for each two hundred (200) square feet of floor area.
- n. Sports arena, stadium or gymnasium (except school), one parking space for each five seats or seating spaces.
- o. Theater or auditorium (except school), one parking space for each five seats or bench seating spaces.

J. Sign

1. The following regulation shall govern the location, area and type of signs permitted within Nelson County.

a. General sign requirements:

1. All signs shall be structurally safe and shall be securely anchored or otherwise fastened, suspended, or supported so that they will not be a menace to the safety of persons or property.

2. No sign, outdoor commercial advertising device or lighting device constituting a nuisance to an adjacent residential district, because of lighting glare, focus, animation or flashing of a sign, lighting or advertising device shall be erected or continued in operation.
 3. No "revolving beacon" sign shall be permitted in any district.
 4. No sign in any district shall obstruct in any manner the clear and obvious appearance of public devices controlling public traffic.
 5. Ground signs shall not be located on public property except by specific approval of the Board of County Commissioners.
 6. Temporary signs or banners on or over public property may be authorized by the Board for a period not to exceed ten (10) days.
 7. Signs projecting over a street, alley or other public space shall project not more than ten (10) feet and be no closer than two (2) feet to a plumbline from curblines; clearance below such signs shall be a minimum of nine (9) feet.
 8. Roadside market signs advertising produce grown and sold on the premises on which they are located. Said signs shall not remain continuously erected more than six (6) months of any calendar year.
- b. Residential districts:
1. One identification sign shall be permitted per residential use provided such sign does not exceed two (2) square feet in area; said sign may be wall, pedestal, ground, or projecting type (but not projecting over public property).
 2. One sign of a temporary nature, such as "for sale" or "for

rent" shall be permitted per residential use provided such sign does not exceed six (6) square feet and is not lighted; said sign may be wall, pedestal or ground type.

c. Agricultural districts

1. Unless subject to more severe restrictions by other agencies highway billboards, or other such highway oriented advertising devices shall be permitted providing such signs and devices are located at least one thousand (1,000) feet from any existing advertising sign or device.

d. Public or semi-public uses

1. One identification sign shall be permitted per public or semi-public use provided such sign does not exceed ten (10) square feet in area; said sign may be wall, pedestal, ground or projecting type.

e. Industrial parks

1. No billboards or advertising signs other than those identifying the name, business and products of the person or firm occupying the premises shall be permitted. All such signs must be wholly supported by and attached to the walls and supports of said building, except that a detached sign not to exceed ten (10) feet by twenty (20) feet in size offering the premises for sale or lease may be permitted.

f. R-D, F-C, C and I districts

1. No restrictions except the general sign requirements of Section J above.

SECTION IV

For the purpose of this ordinance, the County of Nelson has set forth the following procedures, requirements, and standards, for the division of land and subdivision approval.

A. Procedures for Subdivision Approval

1. Pre-application procedure

a. Prior to the filing of an application for approval of a preliminary plat, the subdivider shall consult the code administrator for advice and assistance in reviewing the procedures and requirements of this regulation and other ordinances, and any data or plans which may affect the proposed development.

b. This step does not require formal application fee or filing of a plat.

2. Plat, when required

a. It shall be unlawful for the owner, agent or other having control of any land within Nelson County to subdivide or cause to be layed out any such land into lots, blocks, streets, avenues, alleys, public ways or grounds, unless by subdivision plat and in accordance with these regulations and the Nelson County Land Use Plan. No building permit shall be issued and no building shall be erected on any subdivided lot or tract of land without the street giving access thereto having first been accepted by the County's governing body.

3. Preliminary plat procedure

a. Prior to submitting a final plat for approval, the subdivider shall prepare a preliminary plat of the proposed subdivision and construction plans for improvement adequate to determine that sewer, water and street improvements which conform with the requirements set forth in this ordinance. The subdivider shall file with the code administrator an application in writing seeking the approval of said plat, accompanied by three copies of the plat. Said application shall be submitted at least one (1) week prior to a regularly scheduled meeting of the County Planning Commission.

b. The preliminary plat shall cover the entire area owned or controlled by the subdivider even though a small portion thereof is proposed for development. The code administrator will check the preliminary plat to insure that it conforms with the adopted land use plan, ordinances and requirements set forth in this ordinance.

c. The Nelson County Planning Commission upon receipt of the recommendations and advice of the code administrator shall approve, approve with modifications or disapprove the preliminary plat within thirty (30) days of receipt of the plat.

4. Final Plat Procedure

a. If the preliminary plat has been approved or conditionally approved, the subdivider shall submit to the County Planning Commission, three copies of the final plat or a certified

survey map prepared by a registered land surveyor or engineer.

b. All improvements required by this regulation shall be made or guaranteed in a manner acceptable to the Nelson County Board of Commissioners.

c. The Nelson County Planning Commission shall hold a public hearing before action on the plat is taken in accordance with the North Dakota State Century Code.

d. After the final plat meets the requirements of this code and has been submitted within three months of the approval date of the preliminary plat and the conditions have been met, the Nelson County Commissioners shall approve the final plat of the subdivision.

B. Plat and Data Submission Requirements

1. Preliminary plat

a. The preliminary plat shall be based on a survey and shall be submitted in three copies at a scale of four hundred (400) feet or less to one inch and show correctly on its face the following:

1. The proposed name of the subdivision, which shall not duplicate or closely approximate the name of any other subdivision in the nearby community or area.
2. An accurate description of the property involved according to the real estate records of the county.
3. The names and addresses of the owners of record, the subdivider and registered surveyor who prepared the plat.

4. The names of adjoining subdivisions and the names of record owners of adjoining parcels of unplatted land.
5. The boundary lines, accurate in scale, of the tract to be subdivided.
6. Existing sewers, water mains, culverts and other underground structures within the tract of land and immediately adjacent thereto with pipe sizes and grade indicated.
7. The location, widths, and names of all existing or platted streets or other public ways and easements within or immediately adjacent to the tract of land, corporate limits, section and quarter section lines, and other important features such as existing permanent buildings, water courses, railroad lines, etc.
8. The layout, proposed names and widths of proposed streets, alleys, and easements, the location and approximate sizes of proposed water basins, culverts and other drainage structures, the layout, numbers and approximate dimensions of proposed lots.
9. Proposed front yard set-back and other set-back lines.
10. The width and approximate dimensions of all land intended to be dedicated or reserved for public use, or to be reserved in the deeds for the common use of property owners in the subdivision, with the purpose, conditions or limitations of such dedication or reservation indicated.
11. Copies of any proposed restrictions.
12. A notation stating "Preliminary Plat - Not For Record".

2. Final Plat

a. The final plat of the proposed subdivision shall be prepared by a registered surveyor or engineer and shall conform to the requirements of the preliminary plat and any additions attached thereto by the Nelson County Planning Commission.

C. Design Standards

1. Streets

- a. The arrangements, classification, intent, width, grade and location of all streets shall conform to the adopted county land use plan and shall be designed in relation to existing and planned streets, topographic conditions, public convenience and safety, and the proposed uses of the land to be served by such streets.
- b. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas.
- c. Minor streets should be so laid out that their use by through traffic will be discouraged.
- d. Dead-end streets shall not be permitted without a suitable turn-around with a diameter of no less than 75 feet.
- e. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Nelson County Planning Commission may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land. Such distances shall be determined with due regard for the requirements of approach grades and future grade separations.

f. All street names shall be subject to the approval of the Nelson County Planning **Commission**.

2. Utility Easements

a. Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and for such purposes shall be at least twenty (20) feet wide.

3. Drainage way easements

a. Where a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, as will be adequate for the purpose. Parallel streets or parking may be required in connection therewith.

4. Blocks

a. The length, width, and shape of blocks shall be suited to the planned use of land, zoning requirements, convenient access, control and safety of street traffic.

5. Lots

a. The size, shape and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated.

b. The subdividing of land shall provide each lot with access to a public street.

c. Corner lots shall have an extra ten (10) feet over the minimum requirement to permit adequate building setbacks from side streets.

d. Side lot lines shall be approximately at right angles to the right-of-way of the street on which the lot fronts.

D. Required Improvements

1. Survey monuments

a. Monuments shall be placed at all block corners, angle points, points of curves in streets, lot corners and at the intermediate points as required by the Nelson County Planning Commission and noted on plat plan.

2. Water lines

a. The subdivider shall provide sanitary potable water to each lot within the subdivision.

3. Sewage system

a. The subdivider shall install adequate sanitary sewage facilities so as to provide service to each lot within the subdivision. The sewage system must meet the approval of the County Board of Commissioners.

4. Installation of Improvements

a. The improvements specified herein shall be installed and approval of the final plat shall be given only after the work has been completed or there shall have been filed with the County of Nelson one of the following:

1. A duly completed and executed survey bond in the amount

sufficient to complete the work with surety satisfaction to the County of Nelson.

2. Other arrangements satisfactory to the County of Nelson to complete the work.

SECTION V

ADMINISTRATION AND ENFORCEMENT

The administration and enforcement of this resolution is hereby vested in the Nelson County Board of Commissioners, the Nelson County Planning Commission, the Board of Zoning Adjustment and the Code Administrator.

A. Nelson County Board of Commissioners

1. Duties under this resolution:

- a. Approve or deny all building permits, variances, conditional uses and final plats.
- b. All amendments to the text of this resolution and the "Zoning District Map" shall be approved by the Nelson County Board of Commissioners after notice and public hearing held by the Nelson County Planning Commission.
- c. Investigate and note the violation of the provisions of this resolution and take action.

B. Nelson County Planning Commission

1. Membership

- a. The membership shall be composed of nine members, two of whom shall be appointed from the Board of County Commissioners, and two from the governing body of the municipality designated as the county seat of the county to serve for their respective terms of elected office. The remaining five members shall be appointed from the county at large. When appointments of said commission are first made, three members-at-large shall be appointed for a two

year term and two members at large for a four year term; after which all subsequent appointments for members-at-large shall be for a four year term. Appointments to fill vacancies shall be for the unexpired portion of the term. All appointments to the County Planning Commission shall be made by the Board of County Commissioners.

2. Duties under these regulations:

- a. Recommend to the Nelson County Board of Commissioners rules and procedures for administering the zoning and subdivision resolution.
- b. Hold public hearings on all applications for subdivision plats, amending the "zoning district map" and the text of this resolution. Publish notice of the public hearings in a newspaper of general circulation at least one week prior to the said hearing.
- c. Recommend approval, denial or modifications of all applications for amending after the public hearing to the County Board of Commissioners.

C. Board of Adjustment

1. Membership

a. The board of adjustment consisting of five members shall be appointed by the Nelson County Commissioners. The Board of Adjustment shall consist of residents from various sections of the county. The member shall not be an employee of the county or of a county official. The appointing authority may remove any member of the board for cause after a public hearing.

2. Duties under this resolution:

a. Hear the appeal of any person, form or organization aggrieved by the decision or ruling of the Code Administrator. The Code Administrator shall transmit to the Board of Adjustment all records

on which his or her decision was based.

b. Fix a reasonable time for the hearing of the appeal and publish notice of said hearing in the official county newspaper of general circulation at least one week prior to the hearing.

c. Hear and decide appeals where there is allegedly errors in the administration of the ordinances.

d. Hear and decide on variance from these regulations as will not be contrary to the public interest, where the literary enforcement of the regulations will result in undue hardship of an individual, family or business. The concurring note of the majority shall uphold or reverse the order or decision of the Code Administrator. The Board shall record the grounds for its decision.

e. The Board of Adjustment shall base its findings upon evidence presented to it and shall determine that all of the following conditions are present:

(1) The purpose of the variance is not based on a desire for economic or other gain.

(2) The alleged difficulty or hardship is caused by these regulations and has not been created by any person presently having an interest in the property.

(3) The variance shall not be detrimental to the public welfare or injurious to other properties in the area.

(4) The variance shall not be contrary to the intent and purpose of these regulations.

D. Code Administrator

1. Appointment

a. The Code Administrator shall be appointed by the Nelson County Board of Commissioners and be responsible to them and the Nelson County Planning Commission. The County Board of Commissioners shall decide the salary and compensation of the position.

2. Duties under these regulations:

a. Receive and file all applications for plats of subdivisions, amendments to these regulations, the "Zoning District Map" and development permits.

b. Inspect buildings and maintain records

c. Fill complaints against any person, persons, firm or corporation for violation of any of the provisions of any of the regulations over which he (she) has been granted jurisdiction.

d. Issue certificates of compliance.

e. Report all zoning violations to the planning commission and the Board of County Commissioners for appropriate action.

E. Building or Development Permit Fee:

1. It shall be unlawful for any person to begin any development or building without obtaining a building permit, except for buildings and activities directly used in connection with farming operations.

2. Fees for building (development) permits shall be as follows:

- | | | |
|---|---------|---------------------|
| a. For any development | \$10.00 | |
| b. For review of subdivison preliminary plats | 25.00 | See Amendment 09-01 |
| c. For review of subdivision final plats | 25.00 | |

3. Any building permit issued pursuant of these regulations shall expire one year from the date of issuance.

F. Certificate of Compliance

1. No building or structure shall be occupied until a Certificate of Compliance shall have been issued by the Code Administrator for determining the conformity with the specification for which the development permit has been reviewed.

G. Violations and Penalties

1. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the Nelson County Board of Commissioners pursuant thereto.

Violation thereof shall be a misdemeanor and may be punishable by a fine of not to exceed one hundred dollars (\$100.00) for each and every day that any violator fails to comply with the provisions of this resolution. Whenever a violation of this resolution occurs, any person may file a complaint in regard hereto. All fines for violation shall be paid to the Nelson County Auditor and shall be credited to the general fund of Nelson County.

DATE OF EFFECT

Subdivision 1. Date of Effect

This Resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed and approved this 3 day of July, 1979.

Charles Gehlke

Board of County Commissioners

ATTEST Leland Steinman, County Auditor
Leland Steinman

Recommended by: THE COUNTY PLANNING COMMISSION

Date July 3, 1979

Donald F. Sloan

Chairman of County Planning Commission

AN ORDINANCE TO ENACT ARTICLE I OF THE 1994 SOLID WASTE ZONING
ORDINANCE OF NELSON COUNTY, NORTH DAKOTA.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
NELSON COUNTY, NORTH DAKOTA:

Article I, of the 1994 Solid Waste Zoning Ordinance is hereby enacted as follows:

Section 1. SOLID WASTE MANAGEMENT FACILITY

(i.) Solid waste management facilities regulated by this section include all facilities for the incineration or disposal of solid waste or solid waste residue, required to be permitted under North Dakota statute or rule by the North Dakota Department of Health and Consolidated Laboratories (NDDHCL), with the exception of inert waste sites as defined by North Dakota statute. A solid waste management facility that is in compliance with North Dakota law and NDDHCL rules, may be allowed in any Agricultural use zone as a special use provided:

(a) It is located outside the zoning authority of any city and at least one-half mile from any existing occupied residence.

(b) The location must be approved by the Board of County Commissioners of

NELSON County.

(ii.) Solid waste management facilities not otherwise regulated by state law or rule, such as recycling centers, are regulated by this section. Recycling centers include facilities that handle, in any manner, used tires. Any facility listed in the District IV Solid Waste Management Board's approved plan may be allowed under the term of this Section 1. A recycling facility may be located on a site that is also occupied by an existing residence if the site is owned by the owner of the residence.

Section 2. INERT WASTE FACILITIES

An inert waste facility, whether or not required to be permitted by North Dakota statute or rule by the NDDHCL, that is in compliance with North Dakota law and NDDHCL rules, may be allowed in any Agricultural use zone

provided:

- (a) It is located outside the zoning authority of any city and at least one-half mile from any existing occupied residence.
- (b) The location must be approved by the Board of County Commissioners of NELSON County.

Section 3. REPEAL

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4. EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its final passage and adoption.

Section 5. SEVERABILITY

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

tions of this ordinance.

Final passage and adoption: DECEMBER 6, 1994

I, W.J. Davidson, Nelson County Auditor, do hereby certify that the above is a true and correct copy of Nelson County Ordinance 94-01.

Dated this 6th day of December, 1994.

W. J. Davidson
W.J. Davidson

ORDINANCE 06-01

This land-use ordinance for animal feeding operations includes the following sections.

1. General Provisions
 - 1.1 Definitions
 - 1.2 Equivalent Animal Numbers
 - 1.3 Environmental Provisions
 - 1.4 Enforcement
 - 1.5 Severability
2. Setback Requirements
 - 2.1 Water Resource Setbacks
 - 2.2 Odor Setbacks
3. Conditional Uses
 - 3.1 Permit Procedures
 - 3.2 Ownership Change
 - 3.3 Operational Change

1. GENERAL PROVISIONS

1.1 DEFINITIONS

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

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

“Animal wintering operation” means the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the

weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes.

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

“Existing” means in place and operating on the date this ordinance is effective.

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

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

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

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

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

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

1.2 EQUIVALENT ANIMAL NUMBERS

An “animal unit equivalent” is a unitless number developed from the nutrient and volume characteristics of *manure* for a specific *livestock* type. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific *livestock* type which produce comparable bulk quantities of *manure*. The animal unit equivalents for types of *livestock* and the numbers of *livestock* for facility size thresholds of 300 animal units (a.u.), and so forth, are listed in the following table.

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	2.0	150 hd	500 hd	1,000 hd	2,500 hd
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder - finishing	1.0	300	1,000	2,000	5,000
1 beef feeder - backgrounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine, > 55 lbs	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

1.3 ENVIRONMENTAL PROTECTION

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

1.4 ENFORCEMENT

In the event of a violation of this ordinance or a judgement on a civil action by the North Dakota Department of Health, the local unit of government, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the *operator* corrects or abates the cause(s) of the violation. If the cause(s) of the

violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.

1.5 SEVERABILITY

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

2. SETBACK REQUIREMENTS

2.1 WATER RESOURCE SETBACKS

The *operator* of a new *animal feeding operation* that has more than 1,000 animal units 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 (365.6 meters) of a private ground water well which is not owned by the operator or within 1,500 feet (457.1 meters) of a public ground water well which does not have a delineated source water protection area.

2.2 ODOR SETBACKS

The *operator* of a new facility for an *animal feeding operation* shall not locate that operation within the extra territorial zoning jurisdiction of an incorporated city.

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

Setback Distances for <i>Animal Feeding Operations</i>		
Number of Animal Units	Hog Operations	Other Animal Operations
fewer than 300	none	none
300 - 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

The *operator* of a new *animal feeding operation* shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.

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

A local unit of government may, upon recommendation of the zoning commission or land use administrator, increase or decrease a setback distance for a new *animal feeding operation* after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environmental or public welfare concerns.

3. CONDITIONAL USES

3.1 PERMIT PROCEDURES

3.1.A. Applicability.

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

1. A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 1,000 animal units is a conditional (or special) use of land.
2. An *existing animal feeding operation* that expands to handle more than 1,000 animal units is a conditional (or special) use of land.

Whenever the capacity of an *animal feeding operation* is expanded to handle more than 2,000 or 5,000 animal units, the *operator* shall apply for a new conditional (or special) use permit.

3.1.B. Procedure.

The local unit of government may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.

1. Application for a conditional use (or special use) permit shall be submitted to the local unit of government for tentative approval. The local unit of government shall notify the Department of Health that it has received such application.
2. The local unit of government shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new *animal feeding operation*. This notification must occur within 21 days of receiving the application. The approval process utilized by the local unit of government may include at least one advertised public hearing.
3. Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
4. The applicant shall then forward its application for a conditional (or special) use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.
5. Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the local unit of government of its decision.
6. The conditional (or special) use permit will become final following the granting of a permit by the Department of Health.
7. A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.

3.1.C. Application Requirements.

The application for a conditional use (or special use) permit to operate a facility for an *animal feeding operation* shall include a scaled site plan. If the facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The local unit of government may require any or all of the following elements, or require additional elements,

in its site plan review process when needed to determine the nature and scope of the animal feeding operation.

1. Proposed number of animal units.
2. Total acreage of the site of the facility.
3. Existing and proposed roads and access ways within and adjacent to the site of the facility.
4. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
5. A copy of the permit application submitted by the applicant to the Department of Health.
6. Payment of an application fee of \$.50 per animal unit.

3.2 OWNERSHIP CHANGE

An operator of a facility that includes an *animal feeding operation* having a permit granted by this ordinance shall notify the local unit of government of the sale, or the transfer of the ownership of that operation.

3.3 OPERATING CHANGE

An operator of a facility that includes an *animal feeding operation* having a permit granted by this ordinance shall notify the local unit of government of intent to include an alternate *livestock* type. The notice shall be given at least 120 days prior to the anticipated date of the change.

PASSED THIS 5th of January, 2006

APPROVED:



Odell Flaagan, Chairman
Nelson County Commissioners



W. J. Davidson, Nelson County Auditor

Amendment 09 – 01

The purpose of this amendment is to update Section V, Part E, Paragraph 2, which are the fees for building (development) permits. It shall read:

2. Fees for building (development) permits shall be as follows:

- a. Building permit \$25.00
- b. Conditional use permit (1st one) 500.00
Each one thereafter (if filed together) 100.00
- c. Review of subdivision preliminary plats 25.00
- d. Review of subdivision final plats 25.00

Said amendment amends the Nelson County Zoning Resolution & Subdivision Regulations filed July 18, 1979 at 10:45 A.M.

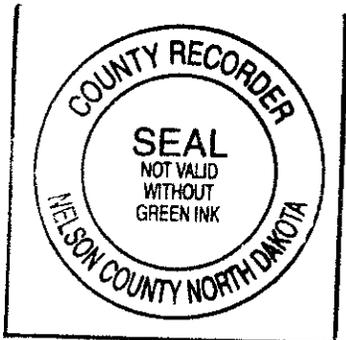
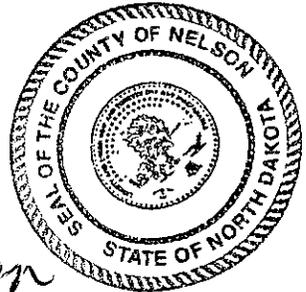
PASSED THIS 6th of March, 2009

APPROVED

Odell Flaagan
Odell Flaagan, Chairman
Nelson County Commissioner

ATTEST:

W. J. Davidson
W. J. Davidson
Nelson County Auditor



141464 \$0.00
Recorder's Office, Nelson County, ND 3/23/2009 3:12 PM
I certify that this instrument was filed for record this date.

RUTH STEVENS, County Recorder
By *Ruth Stevens*

Amendment 09 – 02

The purpose of this amendment is to define the Restricted Development District cited in Section III, Part D, Paragraph 1. It shall read:

1. Purpose and Intent – the purpose and intent of the R – D Restricted Development District is to (a) preserve historic sites and areas; (b) preserve subsurface aquifer areas; (c) preserve lake and dam shore areas; (d) protect the flightway of airports as mandated by Federal and State regulations. The Restricted Development District is defined as 1,000 feet out (away from the lake) from an elevation of 1451 feet mean sea level, which is the base flood elevation, to the water of Stump Lake.

Said amendment amends the Nelson County
Zoning Resolution & Subdivision Regulations
filed July 18, 1979 at 10:45 A.M.

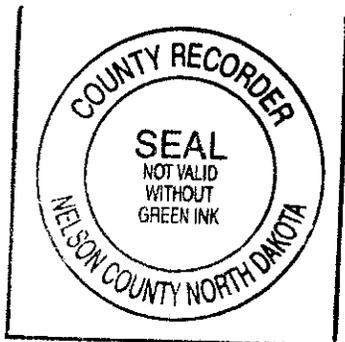
PASSED THIS 6th of March, 2009

APPROVED

Odell Flaagan
Odell Flaagan, Chairman
Nelson County Commission

ATTEST:

W. J. Davidson
W. J. Davidson
Nelson County Auditor



141465 \$0.00
Recorder's Office, Nelson County, ND 3/23/2009 3:12 PM
I certify that this instrument was filed for record this date.
RUTH STEVENS, County Recorder
By Ruth Stevens

ORDINANCE 12-01

SECTION 1.0

Definitions

“Temporary Housing Facility”, “man camp”, “construction camp”, “crew housing facility” or any similarly worded facility means 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.

SECTION 2.0

Conditional Use Permit Required

- 2.1 The use of temporary housing camps and incidental commercial and other accessory uses shall be considered conditional uses, and as such a conditional use permit must be obtained from the County Planning Commission, hereinafter “Planning Commission”. The application will be considered by the Nelson County Planning Commission. Said Commission will then make a recommendation to the County Commissioners. The County Commission may approve or deny the request for a conditional use permit for temporary housing camps depending upon the compatibility with surrounding land uses and compliance with this title.
- 2.2 Temporary housing camps shall be located adjacent to a maintained public or private road.

SECTION 3.0

Intent – Zoning

Temporary housing camps may be permitted by conditional permit in areas zoned agricultural only. Such installations shall be permitted only after approval of the County Commission after review by the planning commission, subject to the restrictions and conditions contained in this title. All state laws and regulations must be met.

SECTION 4.0

Site Plan Approval Required

A site plan with supporting documents must be submitted for review and approval to the Planning Commission. The plan shall be drawn to scale, and shall provide the following information:

- 4.1 Dimensions, orientation and vicinity of the parcel;
- 4.2 Location, size, number, construction and types of proposed housing;
- 4.3 Traffic access to camp and parking;
- 4.4 Location and types of recreational facilities;
- 4.5 Approved culinary water system and sewage and solid waste disposal;
- 4.6 Storm water runoff, and method for control of storm water according to Nelson County Water Board Specifications and signed by a North Dakota registered Civil Engineer, based on vegetation coefficient, a 25 year event, 24 hour rainfall.
- 4.7 Location of fire protection and medical facilities;
- 4.8 Such other data as may be requested by the Planning Commission.

SECTION 5.0

Documents Required

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 State Health Department shall be required.

SECTION 6.0

Temporary Housing Camps

A conditional use permit for temporary housing camps will be in effect for two years, except in the case of recreational vehicles, when the permit will be in effect for one year. An applicant may request a renewal of the Conditional Use Permit at then end of the permit period. The following services and facilities must be provided in a temporary housing camp:

- 6.1 Culinary water and sewage and solid waste disposal facilities approved by the State Health Department;
- 6.2 Adequate access to the site and parking;
- 6.3 Maintenance of the site;
- 6.4 Emergency medical and fire facilities and security services;
- 6.5 Electrical services;
- 6.6 Recreational facilities.

SECTION 7.0

Restoration of site

Applicant shall provide a written plan and agreement together with a Cleanup Bond in the amount set in Section 12.0 of this document, setting forth how the temporary housing

camp will be dismantled, and the area restored to its condition before being occupied by a "man camp".

SECTION 8.0

Fees

Temporary housing camps may be subject to real property taxation or crew housing permit fees as set forth by Nelson County.

SECTION 9.0

Compliance

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.

SECTION 10.0

Violation – Penalty

Any person, firm or corporation, whether as principal, agent, employee, or otherwise, violating or causing the violation of any of the provisions of this title, shall be guilty of a Class B misdemeanor and upon conviction thereof shall be punishable by a fine of not more than one thousand (\$1,000.00) or by imprisonment for a term not to exceed thirty (30) days, or by both such fine and imprisonment. Such person, firm or corporation shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this title is committed or continued by such person, firm or corporation and shall be punishable as provided in this section.

SECTION 11.0

Transfer

There shall be no transferring of a conditional use permit for temporary housing from the original applicant to another person.

SECTION 12.0

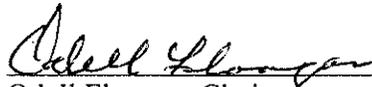
Cleanup Bond

The cleanup bond must be purchased and on file before a permit is issued.

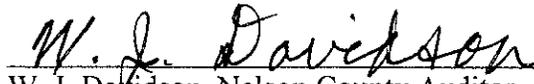
0 to 100 person camp	\$100,000
101 to 250 person camp	\$250,000
251 to 500 person camp	\$350,000
501 to 1200 person camp	\$500,000

PASSED THIS *5th* of *April*, 2012

APPROVED:



Odell Flaagan, Chairman
Nelson County Commission



W. J. Davidson, Nelson County Auditor

ORDINANCE 15-01

SECTION 1.0

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Nelson County Commission of Nelson County, North Dakota does ordain as follows:

1.2 FINDINGS OF FACT

- (1) The flood hazard areas of Nelson County are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

1.3 STATEMENT OF PURPOSE

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

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

- (7) To ensure that potential buyers are notified that property is in a special flood hazard area; and,
- (8) To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

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

SECTION 2.0

DEFINITIONS

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

"Appeal" means a request for a review of the Code Administrator/County Auditor's interpretation of any provision of this ordinance or a request for a variance.

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

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

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

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

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

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

"Flood Insurance Rate Map" (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zones A, AE, AO, AH, A1-A30, or A-99.

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

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

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

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

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

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

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

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

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

“Recreational vehicle” means a vehicle which is:

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

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

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

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

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

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

- 1) Before the improvement or repair is started; or
- 2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not

that alteration affects the external dimensions of the structure.

The term does not, however, include either:

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

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

SECTION 3.0

GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

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

3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "**Flood Insurance Study, Nelson County North Dakota and Incorporated Areas, February 18, 2009**" with accompanying **Flood Insurance Rate Map** is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the **Nelson County Auditor's Office**.

3.3 COMPLIANCE

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

3.4 GREATER RESTRICTIONS

This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. In accordance with this section, Nelson County is establishing a higher standard of development whereas the lowest level of any residential and nonresidential structure is elevated to or above 1460 feet mean sea level.

3.5 INTERPRETATION

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

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

3.6 WARNING AND DISCLAIMER OR LIABILITY

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

SECTION 4.0

ADMINISTRATION

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 3.2. Application for a development permit shall be made on forms furnished by the Code Administrator/County Auditor and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

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

4.2 DESIGNATION OF THE CODE ADMINISTRATOR/COUNTY AUDITOR

The Code Administrator/County Auditor is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 DUTIES AND RESPONSIBILITIES OF THE CODE ADMINISTRATOR/COUNTY AUDITOR.

Duties of the Code Administrator/County Auditor shall include, but not be limited to:

4.3-1 Permit Review

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
- (3) Review all development permits to determine if the proposed development adversely affects the flood-carrying capacity of the special flood hazard area. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-foot at any point.

4.3-2 Use of Other Base Flood Data

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

4.3-3 Information to be Obtained and Maintained

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
 - (i) obtain and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed;
 - (ii) maintain the floodproofing certifications required in Section 4.1(3).

- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 Alteration of Watercourses

The responsible person shall:

- (1) Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,
- (3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

4.3-5 Interpretation of Flood Insurance Rate Map (FIRM) Boundaries

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

4.4 VARIANCE PROCEDURE

4.4-1 Appeal Board

- (1) The Board of Adjustment as established by Nelson County shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Code Administrator/County Auditor in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to the District Court, as provided in NDCC 40-47-11, 11-33-12, or 58-03-14.
- (4) In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:

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

4.4-2 Conditions for Variances

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory

of Historic Places, without regard to the procedures set forth in the remainder of this section.

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

SECTION 5.0

PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

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

5.1-1 Anchoring

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

5.1-2 Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

- (2) All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.1-3 Utilities

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

5.1-4 Subdivision Proposals

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

5.1-5 Encroachments

The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one-foot at any point.

5.2 SPECIFIC STANDARDS

In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS or Section 4.3-2, Use of Other Base Flood Data, the following provisions are required:

5.2-1 Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to an elevation of 1460 msl.

5.2-2 Nonresidential Construction

New construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated on fill to an elevation of 1460 msl or, together with attendant utility and sanitary facilities shall:

- (1) Be floodproofed to at least an elevation of 1460 msl, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 4.3-3(2).

5.2-3 Manufactured Homes

- (1) Manufactured homes shall be anchored in accordance with Section 5.1-1(2).
- (2) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to an elevation of 1460 msl, and is securely anchored to an adequately anchored foundation system.

SECTION 6.0

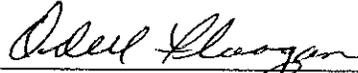
6.1 PENALTIES FOR VIOLATIONS

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

- (2) Nothing herein contained shall prevent the Nelson County Commission from taking such other lawful action as is necessary to prevent or remedy any violation.

PASSED THIS 2nd of September, 2015

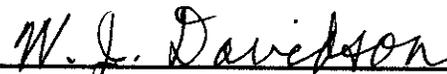
APPROVED:



Odell Flaagan, Chairman
Nelson County Commission

ATTEST:

(seal)



W. J. Davidson, Nelson County Auditor