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BURKE COUNTY ZONING REGULATIONS

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ZONING REGULATIONS BURKE COUNTY, NORTH DAKOTA

ARTICLE 1 – INTRODUCTION

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

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

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and amendments thereto adopted under the authority of Chapter 11-33 of the North Dakota Century Code is hereby repealed.

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

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

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

ARTICLE 2 – GENERAL PROVISIONS

SECTION 1. JURISDICTION: These zoning regulations shall apply to all areas within the civil boundaries of Burke County North Dakota; with the exception of those areas within the civil boundaries and extraterritorial zoning boundaries of organized cities in Burke County. Those areas that are within the civil boundaries and extraterritorial boundaries of an organized city will retain the opportunity to exercise their own zoning authority. **As of July 1, 2023 the townships within Burke County with their own zoning authority are as follows: Dimond, Clayton, and Forthun.**

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

SECTION 3. AGRICULTURE EXEMPTED: Nothing in this ordinance shall be applied for the purpose of preventing or restricting the use of land or buildings for agriculture or any of the normal incidents of agriculture. This provision does not apply to commercial businesses that provide goods and/or services to farmers or ranchers.

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

SECTION 5. NON-CONFORMING USES:

1. Lawful non-conforming uses of land or buildings existing at the effective date of these regulations may continue provided no structural alterations, except for normal maintenance, are made and such non-conforming uses shall not be extended to occupy a greater area of land than occupied at the effective date of these regulations.
2. If a nonconforming use or occupation of land or premises is discontinued for a period of more than two years any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.
3. A non-conforming structure destroyed or damaged less than fifty percent of its fair market value may be reconstructed within two years of such casualty. If damaged more than fifty percent of its fair market value, such structure shall be reconstructed in conformance with these regulations.

SECTION 6. UTILITIES:

1. All new utilities shall be considered as a conditional use and, as such, shall conform to all new requirements put on them by the Planning and Zoning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provisions for the following have been made:
 - A. Underground utilities shall be placed a minimum depth of three (3) feet so as not to constitute a hazard to farming or general county/township maintenance.
 - B. Above ground utilities shall be placed in a manner which will not place undue hardship on normal farming operations.
 - C. Utility placement shall conform with section lines, highway (state and federal) and railroad right-of-ways.
 - D. The activities will not result in undue damage or injury to roads, bridges, and right-of-ways in the county or to any public or private property.
 - E. Excavation costs for purposes of construction or maintenance of a utility shall be borne by the contractor or owner of said utility.

SECTION 7. MINERAL EXPLORATION AND MINERAL PRODUCTION:

1. All mineral exploration and mineral extraction activities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning and Zoning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provision for the following has been made:
 - A. The activities will not result in undue damage or injury to roads, bridges, and right-of-ways in the county or to any public or private property.
 - B. Evidence of a reclamation agreement with the surface owner. Reclamation of project shall be finished within one (1) year of the completion of the mineral exploration and/or production activities.
 - C. Evidence of compliance with all county, state and federal regulations.
 - D. Evidence that the activity is one hundred fifty (150) feet from all section lines, property lines, aquifer recharge areas and permanent open bodies of water and the centerlines of all township, county, state and federal roads.

SECTION 8. EXPLORATION AND PRODUCTION OF GRAVEL, CLAY, SCORIA AND ANY OTHER PRODUCT THAT MAY BE MINED:

1. All gravel, clay, scoria, and other surface mining activities shall be considered as a conditional use and, as such, shall conform to all requirements put on them by the Planning and Zoning Commission and/or County Commission.
2. No conditional use permit shall be issued unless satisfactory provision for the following has been made:
 - A. The activities will not result in undue damage or injury to roads, bridges, and right-of-ways in the county or to any public or private property without surface owner consent.
 - B. Evidence of a reclamation agreement with the surface owner.
 - a) Reclamation of project shall be finished within one (1) year of the completion of the mineral exploration and/or production activities.
 - C. Evidence of compliance with all county, state and federal regulations.
 - D. Evidence that the activity is one hundred fifty (150) feet from all section lines, property lines, aquifer recharge areas and permanent open bodies of water and the centerlines of all township, county, state and federal roads.
 - E. Applicant is responsible for dust control, any necessary road maintenance and/or repair, and to work with the Burke County Weed Board to control noxious weeds.

SECTION 9. SANITARY REGULATIONS:

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

SECTION 10. WASTE DISPOSAL SITES:

1. At a minimum the following described waste disposal sites shall comply with all applicable state, federal, local laws, rules and regulations. In addition, the Planning and Zoning Commission and/or County Commission may require compliance to other conditions.
2. Private Waste Disposal Sites – A solid waste disposal site used exclusively by and only for the landowner or tenant engaged in farming. Sites shall be limited to one per landowner and used only for refuse generated from personal farming operations, in addition these sites must comply with Agricultural Stabilization & Conservation (ASC) regulations.
 - A. Private waste disposal sites shall be located no less than 250 feet from all property lines and no less than 1,440 feet from a residence without written consent.
 - B. Private waste disposal sites shall avoid low and steep areas and be a minimum of two hundred fifty (250) feet away from waterways.
3. Commercial Waste Disposal Sites – A solid waste disposal site or facility permitted pursuant to the laws of the State of North Dakota.
 - A. The site, operation, or facility must meet or exceed all applicable federal, state, and local laws, rules and regulations.
 - B. The site, operation, or facility shall be limited to inert solid waste and municipal solid waste. Waste that is deemed hazardous in nature or exerts hazardous characteristics or nuclear waste, oil field waste, sewage sludge and incinerator ash are not permitted.
 - C. All areas for cell, excavation or waste filling operations shall maintain a minimum setback of 250 feet from all property lines and no less than 1440 feet from a residence without written consent.
 - D. No fires shall be permitted, except by permission of the County Commission. Any smoldering flame or spontaneous combustion at the site shall be immediately extinguished.
 - E. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on the site, except on areas where active filling operations are taking place.
 - F. Entrance to the site shall be controlled at all times to prevent improper dumping on the site.

- G. For facilities that manage municipal solid waste, a chain link fence six (6) feet high shall be installed along the boundaries of the area developed or the area of active filling operations and provided with gates of the same construction as the fence.
- H. For other facilities, other than a municipal solid waste site, a four-wire barbed wire fence, suitable to restrain livestock, shall be placed around the boundary of the permitted site.
- I. Provisions, approved by the County Commission, shall be made for the management of surface and storm water falling on or crossing the site at all times, during and after the completion of the operations. Surface and storm water management also shall comply with all applicable federal, state, and local laws, rules, and regulations. These provisions shall be accomplished through the use of a professional engineer that is registered by the State of North Dakota.
- J. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply or quality of ground water.
- K. Operators of a commercial waste disposal facility or site may have an environmental inspector on site. Provisions shall be made for the cost to be paid by the operator to the North Dakota Department of Environmental Quality or County as may be negotiated with the North Dakota Department of Environmental Quality or County.
- L. Facilities shall be required to have non-sudden and sudden liability insurance and closure and post-closure insurance payable to the North Dakota Department of Environmental Quality.

SECTION 11. SIGN REGULATIONS: Signs shall only be permitted if they conform to the regulations in this article.

- 1. PERMITTED SIGNS: The following signs shall be permitted in all zoning districts:
 - A. Signs bearing property numbers, box numbers, or names of occupants of the premises.
 - B. Flags and the insignia of any government.
 - C. Legal notices, identification information, or directional signs erected by government bodies.
 - D. Signs directing and guiding traffic or parking on private property.
 - E. No more than one sign advertising property for sale or rent.
 - F. Bulletin boards and signs for churches or other public institutions.
- 2. LIMITED PERMITTED SIGNS: The following signs shall be permitted in only the "CO" and the "IN" zoning districts:

- A. Illuminated signs.
- B. Marquee signs.
- C. Portable Signs.
- D. Projecting Signs.
- E. Roof Signs.
- F. Wall Signs.
- G. Temporary Signs.
- H. Commercial Signs for businesses currently in operation.

3. UNLAWFUL SIGNS: The following types of signs are prohibited from all zoning districts:

- A. Any sign, outdoor commercial advertising or lighting device such as a beacon light, constituting a nuisance because of lighting glare, focus, animation, or flashing.
- B. Any sign which conflicts in any manner with the clear and obvious appearance of public signs and devices controlling traffic.
- C. Any sign extending closer than two (2) feet to the driving surface of a road, or less than nine (9) feet above any road, street, alley, or public space.
- D. Signs for business no longer in operation for a period of 90 days.
- E. Signs that are unmaintained.

SECTION 12. WIND TURBINE REGULATIONS: Wind turbines and facilities shall only be permitted if they conform to the regulations in this section.

- 1. PURPOSE: This ordinance provides a framework for siting, construction, and operation of a wind energy facility in the County that will preserve the safety and wellbeing of the residents and facilitate equitable and orderly development.
- 2. REGULATORY FRAMEWORK: A wind energy facility may only be constructed in the County if the applicant first obtains a permit and complies with the conditions of this ordinance.
- 3. APPLICABILITY: The requirements of this ordinance apply to a wind energy facility, or any portion of one, erected in this County if the facility contains any wind turbine rated at 100 kilowatts or more nameplate capacity.
- 4. DEFINITIONS:

- A. Adjoining land is real property that has a different owner than the host property and is either contiguous to the host property at any point or segment, or is separated from the host property by an intervening fee simple interest that is less than 2RD.
- B. "Airstrip" is a takeoff and landing area for fixed wing aircraft, whether publicly or privately owned, that was given an FAA numerical designation sometime before 1 March 2009.
- C. "Applicant" is a person who filed an application for a conditional use permit.
- D. "Facility Owner" means the person(s) having an equity interest in the wind energy facility.
- E. "Feeder Lines" are power lines between a wind energy facility's collector stations or substations and the region's high voltage transmission line.
- F. "Gross Weight" means the weight of a vehicle without a load plus the weight of any load on it.
- G. "Host Property" is the very lot on which a wind turbine is located. A wind energy facility may contain several host properties. The fact that adjoining properties having various respective owners are covered by related options, leases or easements to a single facility owner does not cause the various land owners to be a single host property. Each parcel containing a turbine is a host property even if an abutting property belonging to another party contains a turbine belonging to the same facility owner.
- H. "Hub Height" means the distance measured from the surface of the tower foundation to the height of the axis of the wind turbine hub.
- I. "MET Tower" means a meteorological structure used to collect data on wind and or weather conditions.
- J. "Occupied Structure" is man-made shelter in which people either live, meet, conduct business, or gather, in addition it includes but is not limited a residence, dwelling, apartment house, condominium, residential subdivision platted and recorded under NDCC 11-33.2, its predecessor or successor law, a Townsite, addition or subdivision platted and recorded under NDCC 40-50.1, its predecessor or successor law, or residential setting; any structure open to the public for business that regularly conducts business including but not limited to a hotel, motel, campground, mall, school, hospital, church public library, store, airstrip, manufacturing facility, or sport venue; or other structure that is either legally inhabited, or in use or under substantial construction (e.g., surface has been improved in preparation for construction) at the time the permit application is submitted for use as one of the above.

- K. "Operator" means the person responsible for the day-to-day operation and maintenance of a wind energy facility. A facility owner may contract with or hire a person to operate it.
 - L. "Permittee" is the person holding the conditional use permit. Permittee may include the subsidiaries, agents, subcontractors, independent contractors, and employees of the person holding the permit; i.e., for purposes of liability for road damages caused in erection or maintenance.
 - M. "Person" means an individual, partnership, joint venture, private or public corporation, association, firm public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.
 - N. "Public Road" means every way or place generally open to vehicle travel, even though it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance. 57-43.1-01 A section line is a public road. 24-07-03
 - O. "RD" is an abbreviation for "rotor diameter" which is the distance of a line segment that bisects the center of the hub and terminates at a circle that encompasses the tips of each rotor blade that are farthest from the hub.
 - P. "Site" is a contiguous tract or group of parcels for which one operator and/or facility owner or a group acting in concert has option agreements, easements, and/or leases acquired to operate a turbine, wind energy facility or accessory thereto.
 - Q. "Site Perimeter" is the outside boundary of the contiguous parcels all having either an option, easement, and/or lease agreement for a wind energy facility accessory to the same facility owner.
 - R. "Turbine Height" means the distance measured from the ground level surface of the tower foundation to the highest point of the turbine rotor plane.
 - S. A "Wind Turbine" (also known herein as turbine) captures kinetic energy from the wind to drive an electrical generator. Its typical components include blades, tower, accelerator platform or nacelle body.
 - T. "Wind Energy Facility" means an electric generating facility, the main mechanical or electrical purpose of which is to supply electricity. It consists of one or more wind turbine and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures and facilities.
5. COUNTY ZONING ADMINISTRATOR AND CHAIRMAN OF THE PLANNING AND ZONING COMMISSION: Wind turbine zoning shall be administered by the Burke County Commissioners with supervisory assistance from the County Planning and Zoning Commission, the County Zoning Administrator and supplemental assistance from other county departments. The Zoning Administrator and the Chairman of the Planning and Zoning Commission shall have the following duties:

- A. Conduct preliminary administrative review of each permit application, variance request, and other information as required by this ordinance and forward recommendations for disposition to the County Planning and Zoning Commission or the Board of County Commissioners.
 - B. Schedule meetings and hearings that are required by law or by this Ordinance, providing notice to the Planning and Zoning Commission members, the press and the party who sought the hearing.
 - C. If there is cause to believe work is being done or a condition exists that is contrary to the provisions of this Ordinance, the Zoning Administrator or Chairman of the Planning and Zoning Commission shall in his/her discretion decide whether to investigate personally or with the assistance of the Sheriff's office and whether to recommend to the County Planning and Zoning Commission that a stop work order be issued. Any stop work order shall be served upon the owner and/or operator in accord with the provisions of Rule 4 of the North Dakota Rules of Civil Procedure, service upon the permittee's named agent for service of process is satisfactory.
 - D. Mail notice of authorization to proceed to the owner and/or operator after the County Planning and Zoning Commission has determined that a violation of this Ordinance, for which a stop work order was issued, has been remedied.
 - E. Conduct in depth appraisal of applications for conditional use or variances to ensure they satisfy the criteria for the benefit sought.
 - F. Mail any permit issued by the Planning and Zoning Commission to the facility owner.
 - G. Maintain records and permits as required by this Ordinance. Any records required to be maintained by the State shall be provided by the Zoning Administrator upon request.
 - H. Provide open records to requesters concerning this Ordinance in accord with the open records law.
 - I. Inspect wind energy facilities to insure compliance with the standards of this Ordinance. The Zoning Administrator or the Chairman of the Planning and Zoning Commission is to rely on the Sheriff's office and its trained investigators for detailed investigations. The Zoning Administrator or the Chairman of the Planning and Zoning Commission should consider requesting the Sheriff's assistance if there is cause to believe there is a violation of this ordinance that may require issue of a stop work notice.
6. **CONDITIONAL USE PERMIT AVAILABILITY BY ZONE:** A wind energy facility or part of one will be conditionally permitted or not permitted based on the generating capacity and land use district as established below:

Agricultural Zoning District
Permitted

Residential Community Zoning District
Permitted
Commercial Zoning District
Permitted
Industrial Zoning District
Permitted
Recreational/Open Space Zoning District
Permitted

7. **CONDITIONAL USE PERMIT APPLICATION PROCESS:** Work may commence to construct a wind energy facility only after a county conditional use permit has been issued by the Board of County Commissioners. This does not preclude wind monitoring, soil testing, or survey work prior to obtaining a permit, however even prior to applying for or receiving a conditional use permit for a wind energy facility, MET towers must be lighted.

A permit application must be submitted to the County Zoning Administrator, at the Burke County Planning & Zoning Office. Each application must be signed by a representative of the prospective permittee who is authorized to contractually bind the person. An application must include the following:

- A. A check or money order for the full amount of permit fees calculated at the rate of \$500.00 per turbine.
- B. The name, business address and phone number of the person in whose name the permit is to be issued and if the authorized agent for service of process is different than the permit holder, the name and North Dakota address of the agent of the person authorized to receive service of process on the person's behalf.
- C. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on the person's behalf to municipalities for purposes of zoning, siting, and construction of a wind energy facility.
- D. A schedule for the proposed start and completion of construction of the facility which includes the applicant's proposal for final repairs to public roads.
- E. The applicants shall include in the application information describing the applicant's property rights within the boundaries of the proposed site.
- F. The applicant shall provide a registered professional engineer's report as described below in road protection.
- G. A USGS topographical map of the wind energy facility and 1,320 feet of adjoining land, non-participating land, contiguous with any proposed host property. The following shall be clearly marked on the map:
 - i. Each existing: wind turbine, wind energy facility fixture, regardless of ownership, accessory structure or building, including substation,

- meteorological tower, electrical infrastructure, and collector line or transmission line;
- ii. Each of the applicant's proposed improvements for the wind energy facility or accessory structure or building, including each wind turbine, MET tower, electrical line, and access road;
 - iii. Each occupied structure, improvement, public road, private road, utility line, public facility;
 - iv. All section lines and any boundaries between abutting parcels, tracts or lots owned by different parties;
 - v. Boundaries of any easement for a section line, public road, highway, that is within 5RD of an envisioned or probably wind turbine site;
 - vi. Boundaries of any filed lease, easement, or option for wind energy facilities, whether they benefit the applicant, the applicant's probable operator, or an unrelated party;
 - vii. The site boundary
 - viii. Each public or private airstrip with FAA identification number, see http://www.faa.gov/airports_airtraffic/airports/airport_safety/airportdata_5010;
 - ix. Natural terrain features;
 - x. Either noted on the map and/or via a key, the names of the property owners inside the site and of the property owners for adjoining land.
 - xi. Maps must be easily discernable and broken down by townships.
 - xii. Maps must provided in both print and digital format.
8. PUBLIC HEARING: After receipt of the application, the Planning and Zoning Commission will review the application and will hold at least an initial public hearing on the application within 45 days of receiving the application. The zoning administrator shall publish notice of the meeting in the official newspaper of the County at least 14 days prior to the hearing.
9. DELIBERATION AND DECISION: If the Planning and Zoning Commission finds that the application satisfies the application criteria and is satisfied the prospective permittee will satisfy the conditions in this Ordinance, then it shall issue a conditional use permit within 15 days of making that finding. The Board of County Commissioners stands as the Board of Adjustment and Appeals.
10. DEMONSTRATION OF COMPLIANCE: The permit issued pursuant to this Ordinance is conditioned on the permittee's final demonstration of compliance with the requirements of the Ordinance following completion of construction of the facility. Within 90 days of facility construction completion, the permittee shall submit to the Planning and Zoning Commission an updated and final USGS topographical map, or survey if available, providing all the information pursuant to 2.10.7 and demonstrating actual compliance with the requirements and conditions of the permit.

11. APPEARANCE, LIGHTING, SOUND, AGRICULTURAL OPERATIONS, ROADS, AND POWER LINES

- A. Wind turbines shall be painted a non-reflective coating and in a non-obtrusive color.
- B. Turbines shall not display any advertising.
- C. Each turbine will be marked with an identification number large enough to assist identification of the turbine number in an emergency.
- D. Turbines are to be lighted in a way that satisfies FAA regulations.
- E. At wind energy facilities, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations, or the landscape. In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, access roads should be built parallel or perpendicular to existing roads, not diagonally across fields for mere convenience of the shortest route to a turbine.
- F. The permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected landowner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
- G. The permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property, unless the permittee either first obtains a waiver from the private land owner and the permittee provides clear and convincing evidence to the Planning and Zoning Commission that satisfies the permittee's heavy burden of proving there are either geographic and/or geologic conditions present that make underground location impossible, impractical, or infeasible, in which case a variance would be granted. Similarly, where the permittee obtains a waiver from the landowner and can show by clear and convincing evidence presented to the Planning and Zoning Commission that the physics of conductivity will cause such a power loss due to transmitting over such a long distance underground, a variance will be granted. Use of the public right of way must be in compliance with the associated governing body's criteria for use. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. Feeder lines are excepted from the requirements in this paragraph.
- H. The permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or the permittee may place feeder lines on private property. A change of routes may be made as long as the feeder remains on public right-of-way and approval has been obtained from the government responsible for the affected right-of-way. When placing a feeder on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

- I. MET towers 90 feet or more tall must be marked in a way that satisfies FAA requirements. Those who erect, maintain, own or operate a MET tower in Burke County that is 90 feet or taller must apply the advice, methods, and guidance in the FAA circulars to any tower 90 feet or higher. All MET towers will be lighted to meet or exceed FAA regulations. Neither an environmental statement nor assessment is required.
 - J. This ordinance adopts EPA guidelines on noise levels. The guidelines are contained in the EPA publication, *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare With an Adequate Margin of Safety*. Operation of the wind energy facility must not cause any EPA level for activity interference or hearing loss to be exceeded either inside or within 50 feet of an occupied structure.
12. SETBACKS: These setbacks apply to all wind turbines in a wind energy facility. Setbacks are measured from the vertical or nearly vertical surface of the occupied or unoccupied structure, improvement, or the nearest point of a boundary, bridge, line, or the center line of the improved surface of a road or airstrip.
- A. SETBACKS
 - i. Each wind turbine must be set back at least 2 miles from any occupied structure.
 - ii. Each wind turbine must be set back at least 1.2 times the turbine height from any: public road or bridge; rail line; above ground electrical or communication line. Turbines must be set back at least 1.2 times the turbine height from each antenna, tower, unoccupied structure, or improvement.
 - iii. Each wind turbine must be set back at least 1.2 times the turbine height from the boundary between the host property and any non-participating landowner property that adjoins the host property. Public roads *are* excepted from this setback requirement but have an applicable setback above.
 - B. VARIANCE TO SETBACK: A variance to a setback related to private property may be granted by the Planning and Zoning Commission if the permittee and the affected party sign a waiver agreement. The Planning and Zoning Commission may issue a variance from a setback requirement regarding an occupied structure if that structure has not been used as an occupied structure in a year or more prior to submission of the permit application or request for variance. The act of providing this particular example of one reason a variance to a setback can be issued does not limit the Planning and Zoning Commission to issuing variances from only that reason.
 - C. NOTICE OF HEARING ON APPLICATION FOR VARIANCE TO A SETBACK: The Planning and Zoning Commission shall publish a notice of the public hearing in the official county newspaper at least ten days before the hearing. The applicant must notify by certified mail, return receipt the adjacent property owners at least fifteen (15) days prior to the public hearing and provide proof of such notification before any action can be taken by the Planning and Zoning Commission. Adjacent

property owners are all property owners located within the setback area sought to be diminished.

- D. **WAIVER OF SETBACK:** Where the provisions for variances on wind turbines differs from the general variance provision of this ordinance, this wind turbine's special provision governs for wind turbine issues.

A permit applicant, permittee, or host property owner may apply for a variance from a setback requirement involving an occupied structure, unoccupied structure, improvement, antenna, tower, road, or bridge. However, the variance for an occupied structure may not contain a waiver to locate a turbine in a location less than 1.2 times the turbine height.

- E. **CONTENTS OF SETBACK WAIVER:** The party seeking the variance from the setback must attempt to obtain from the affected property owner and should provide to the Planning and Zoning Commission a waiver executed by each affected owner sought to be removed from the applicable setback protection. The waiver should be for a period of time equal to or greater than the greatest period of time granted to the operator in the lease, easement, option, or the greatest combination thereof given by the host property owner. The setback waiver signed by the affected property owner must contain a notice to the property owner of the setback required by this ordinance, describe how the proposed wind turbine location is not in compliance with the setback, and clearly state that consent is granted for the wind turbine or accessory to be closer to the owner's property than allowed by the ordinance.

13. **REQUIRED DIGNITIES OF VALID VARIANCE:** A setback variance is only valid if granted by duly passed motion of the Planning and Zoning Commission, issued in writing, and signed by either the Chairman of the Planning and Zoning Commission or the Zoning Administrator.

14. **MINIMUM GROUND CLEARANCE:** The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than 65 feet.

15. **RESTORATION OF PROPERTY:** Within 180 days of termination or abandonment of leases or easements for a wind energy facility in the County, the permittee shall cause, at its expense, removal of all structures to a depth of four feet below preconstruction grade.

16. **ROAD PROTECTION:** The permittee is responsible for abiding by the State and local overweight load permitting process. See NDCC chapter 39-12 and the Burke County Highway Department (701) 377-2312. A conditional use permit issued under this ordinance to erect a wind energy facility does not negate a hauler's obligation to obtain an overweight load permit prior to hauling.

Any road damage caused by the permittee, its independent contractor, employee, agent contractor, or subcontractor shall be promptly repaired at the permittee's expense to current standards set out in the NDDOT's Standard Specifications for Road and Bridge Construction. <http://www.dot.nd.gov/dotnet/supplspecs/StandardSpecs.aspx>. If it is reasonably

foreseeable that continued trips will make prompt repair to this standard impractical, then intermediary measures must be taken by the operator, if approved by the political subdivision in charge of the road, to ensure the public road remains passable and useable as has been the tradition in the County. Final repairs to these standards must be made promptly after the completion of the construction of the wind energy facility.

17. **ENGINEER'S REPORT:** The applicant shall identify, by map, each public road in Burke County that the permittee may or will travel on with a gross weight of over 80,000 lbs.

The applicant will at its own expense supply to the County both a pre- and post-construction/haul inspections. The reports must be approved by a civil engineer registered as a professional engineer under NDCC chapter 43-19.1. The report shall use objectively verifiable, generally accepted means of testing to catalogue the condition of any public road or bridge in Burke County that the permittee may or will use to carry, cross, or traverse with a gross weight over 80,000 lbs or in excess of bridge or structure limits. The report will describe the gross weights the permittee anticipates running for certain classes of jobs; a rough estimate of the number of extreme (over 150,000 lbs.) gross weight trips; what general damage or wear the engineer expects to see; and what places the engineer expects to see the pavement entirely fail.

Both the pre-haul inspection and the post-haul inspection must address the following: (1) Video recording of the haul road(s) from start to finish taken from a vehicle driven at 25 mph. (2) Use straight edge or most current method to check for rutting every 0.10 miles. (3) Use still photography with notations re: location and length to record breakups and yielding aka alligator aka checkerboard. (4) Record round (steel) and joint alignment (concrete) on major centerline culverts. (5) Record width of traveled way and depth of pavement or gravel every 0.10 miles. Any damage caused or thought to be exacerbated by the permittee's loads or work that has not been repaired or remedied at the time of the report will be identified and a timeline for repairing each will be identified along with an explanation of the repair or replacement proposed.

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

SECTION 13. SOLAR ENERGY CONVERSION FACILITIES:

This Ordinance provides a framework for siting, construction, and operation of a Solar Energy Conversion Facility within Burke County that will preserve the safety and well-

being of residents and property while facilitating orderly development. The requirements of this ordinance apply to a solar energy facility, or any portion of one, erected in this County if the facility is rated as a 1 megawatt facility or more nameplate capacity.

No solar energy generating facilities shall be constructed in Burke County without a conditional use permit issued by the Board of County Commissioners and without complying with all requirements of this Ordinance. This does not preclude solar monitoring, soil testing, or survey work prior to obtaining a conditional use permit.

Solar Energy Conversion Facility or Solar Farm shall not be construed to prohibit the installation of a solar collector that gathers solar radiation as a substitute for traditional energy sources for water heating, active space heating and cooling, or generating electricity for individual residential, agricultural, or commercial buildings.

Regulations Applicable to Solar Farms:

1. Fencing

- A. All solar farms shall be fenced around the exterior with a chain link fence that shall be at least 6 feet in height and shall have at least three strands of barbed wire run above the six feet.
- B. The fencing shall be constructed to substantially lessen the likelihood of unauthorized entry to the solar farm.
- C. The fence shall be maintained in good order and kept free of garbage and vegetation. Failure to maintain the fencing and to keep it clean and free of vegetation shall constitute a violation of this ordinance.
- D. The fence requirements shall continue notwithstanding the fact that the solar farm is no longer operational. The fencing requirement remains until the solar farm is dismantled and removed from the parcel of land upon which it was constructed.

2. Gates and locks

- A. All gates in the fences of the solar farm shall be at least 6 feet in height with at least three strands of barbed wire run above the six feet.
- B. All gates shall be equipped with locks and shall remain locked at all times except for those times the owner, operator, or their agents are accessing the property and are present in the solar farm.
- C. The gates shall be constructed to substantially lessen the likelihood of unauthorized entry to the solar farm.
- D. The gates and locks shall be maintained in good order. Failure to maintain the gates shall constitute a violation of this ordinance.
- E. The gate requirements shall continue notwithstanding the fact that the solar farm is no longer operational. The requirement remains until the solar farm is dismantled and removed from the parcel of land upon which it was constructed.

3. Setbacks

- A. Every solar farm shall be setback at least 100 feet from all property lines of the parcel upon which the solar farm is located and setback at least ½ mile from all occupied residences.
- B. Every solar farm shall be setback at least 165 feet from the centerline of any township road, at least 200 feet from any county road, and 250 feet from any state or federal highway.
- C. Every solar farm shall be setback at least 100 feet from the high water mark of any lake and the stream banks of any navigable stream.
- D. All setbacks shall be measured from the exterior of the fencing and gates.

4. Noxious weeds or Invasive Weeds

- A. The owner/operator of the solar farm shall ensure that no noxious or invasive weeds are present on the parcel or capable of spreading to adjacent property.
- B. The operator may use mechanical, chemical or biological methods to control weeds within the solar farm. No chemical or biological methods may be employed that are not approved for use in North Dakota.
- C. The Burke County Weed Board is the determining authority as to whether or not weed control is adequate to protect adjacent land from invasive or noxious weeds.

5. Vegetative Buffer

- A. A vegetative buffer may be required between an occupied residence and the solar farm.

6. Light and Heat Trespass:

- A. All photovoltaic panels shall be placed such that concentrated solar radiation or glare does not project onto nearby structures, roadways or airfields. The applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation
- B. Solar farms shall not raise the ambient temperature more than 2°Fahrenheit at the edge of adjacent property lines.

7. Application Process – The permit application shall include the following:

- A. A check or money order for the permit fees. The fees include a \$6,500.00 base fee for each site.
- B. The name, business address, and phone number of the person in whose name the permit is to be issued. If the authorized agent for service of process is different than the prospective permit holder, the name and North Dakota address of the person authorized to receive service of process on the person's behalf.

- C. Evidence of the applicant's capacity to contractually bind the person seeking the permit and authority to make binding representations on the person's behalf for purposes of zoning, siting, and construction of the Solar Energy Facility.
- D. A schedule for the proposed start and completion of construction of the facility which includes the applicant's proposal for final repairs to public roads.
- E. Information describing the applicant's rights within the boundaries of the proposed site.
- F. A USGS topographical map of the solar energy facility and 1,440 feet of adjoining land, non-participating land, contiguous with any proposed host property. The following items will be clearly marked on the map:
 - i. Each existing wind turbine, solar energy facility fixture, accessory structure or building, including substation, electrical infrastructure, and collector line or transmission line regardless of ownership.
 - ii. Each of the applicant's proposed improvements for the Solar Energy Facility or accessory structure or building, including each panel, electrical equipment, electrical line, and access road.
 - iii. Each occupied structure, improvement, public road, private road, utility line, and public facility.
 - iv. All section lines and boundaries between abutting parcels, tracts or lots owned by different parties
 - v. Each public or private airstrip with FAA identification number.
 - vi. Natural terrain features.
 - vii. The names of property owners inside the site and of the property owners for adjoining land noted on the map or via a key.

SECTION 14. MEDICAL MARIJUANA:

1. PURPOSE: All persons, entities or organizations wishing to establish a Medical Marijuana compassion Center within Burke County must apply for and be granted a Conditional Use Permit for said use and have a license from the State of North Dakota for a Medical Marijuana Compassion Center.
 - A. The use, cultivation, manufacturing, production, distribution, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a “controlled substance” by both North Dakota and federal law;
 - B. The Burke County Commission does not have the authority to, and nothing in this chapter is intended to, authorize, promote, condone or aid the production, distribution or possession of medical marijuana in violation of any applicable law.
 - C. The Burke County Commission intends to regulate the use, acquisition, cultivation, manufacturing, and distribution of usable medical marijuana in a manner that is consistent with the North Dakota Century Code. The regulations are intended to apply to all medical marijuana operations in the County by any medical marijuana business permitted under State law. Medical marijuana cultivation and production can have an impact on health, safety, and community resources, and this chapter is intended to permit state-licensed Medical Marijuana Compassion Centers where they have a minimal negative impact;
 - D. To the extent that Medical Marijuana Compassion centers are registered and authorized by the State of North Dakota to operate in the County, this Commission desires to provide for their licensing and regulation to protect the public health, safety and general welfare of the citizens of the County;
 - E. This chapter is to be construed to protect the public over medical marijuana business interests. Operation of a medical marijuana business is a revocable privilege and not a right in the County. There is no property right for an individual or business to have medical marijuana in the County; and
 - F. Medical marijuana is a heavily regulated industry in the State and County, and the County has a zero tolerance policy for violations of this chapter.
 - G. The purpose of this chapter is to protect the public health, safety, and welfare of the residents and patients of the County by prescribing the manner in which medical marijuana businesses can be conducted in the County. Further, the purpose of this chapter is to:
 - i. Provide for a means of cultivating, manufacturing and distribution of usable marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes as prescribed by state law.

- ii. Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, neighborhood and patient safety, security for the business and its personnel, and other health and safety concerns.
- iii. Impose fees to cover the cost to the County of licensing medical marijuana businesses in an amount sufficient for the County to cover the costs of the licensing program.
- iv. Create regulations that address the particular needs of the facilities, patients and residents of the County and comply with laws that may be enacted by the State regarding medical marijuana.

2. DEFINITIONS

Unless specified in this ordinance, all terms defined in N.D.C.C. § 19-24-02 or successors to that statute shall have the definitions provided therein.

- A. Marijuana: any species in the genus Cannabis, including but not limited to Cannabis sativa, Cannabis indica, and Cannabis ruderalis. Means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant.
- B. Medical Marijuana: Means a product intended for human consumption or use which contains cannabinoid concentrate containing, derived from, or containing a derivative of Marijuana in any form, including but not limited to plants, seeds, and resins or any Medical Marijuana Product.
- C. Medical Marijuana Cultivation and / Manufacturing Facility: any entity registered with the North Dakota Department of Health to acquire, possess, cultivate, or transport Medical Marijuana for the purpose of manufacturing Medical Marijuana or for the delivery, supply, or sale of Medical Marijuana to a Medical Marijuana Dispensary.
- D. Medical Marijuana Dispensary: an entity registered with the North Dakota Department of Health under this chapter to acquire, possess, store, deliver, transfer, transport, sell, supply, or dispense Medical Marijuana or related products and educational materials to a Medical Marijuana Qualifying Patient or Medical Marijuana Registered Designated Caregiver.
- E. Medical Marijuana Compassion Center: means a manufacturing facility or dispensary, any facility engaged in the cultivation, manufacturing, acquiring, possession, storage, delivery, transfer, transport, sale, supply, or dispensing of Medical marijuana or related products to a Caregiver, including but not limited to a Medical Marijuana Cultivation and / or Manufacturing Facility and a Medical Marijuana Dispensary.

- F. Medical Marijuana Registered Designated Caregiver: an individual who is registered with the North Dakota Department of Health who agrees to manage the well-being of a Medical Marijuana Qualifying Patient with respect to the Medical Marijuana Qualifying Patient's medical use of Marijuana.
- G. Medical Marijuana Qualifying Patient: a person who has been diagnosed with a debilitating medical condition by a physician licensed to practice medicine in the State of North Dakota and who has in that person's possession a current, valid photo identification issued by the State of North Dakota or the United States of America and a current, valid document issued by the North Dakota Department of Health to that person and authorizing that person to possess and use Medical Marijuana.

3. ANNUAL PERMIT FEE

The Board of County Commissioners shall establish an annual permit fee to offset costs associated with policing, site inspections, monitoring, storage of media, and / or regulating medical marijuana facilities involved in the cultivation, propagation, manufacturing, processing, refining, distribution, delivery, supply, sale or handling of Medical Marijuana.

4. CONDITIONAL USE PERMIT REQUIREMENTS

In addition to the requirements applicable to all Conditional Use Permit applications, an application for a Conditional Use Permit for a Medical Marijuana Compassion Center must include the following:

- A. Proof of Insurance
- B. List of all persons and entities with an ownership interest in the compassion center including all shareholders that hold any share in stock in the compassion center.
- C. A security plan depicting the location and configuration of security cameras and surveillance equipment.
- D. A complete description of the products and services to be produced or sold by the Medical Marijuana Compassion Center.
- E. A notarized statement acknowledging that the applicant understands applicable federal laws, any guidance or directives issued by the U.S. Department of Justice, the laws of the State of North Dakota and the laws and regulations of the County applicable thereto concerning the operation of a Medical Marijuana Compassion Center. The written statement shall also acknowledge that any violation of any laws or regulations of the State of North Dakota or of the County, or any activity in violation of any guidance or directives issued by the U. S. Department of Justice, in such place of business, or in connection therewith, or the commencement of any legal proceeding relating to such Medical Marijuana Compassion Center by federal authorities, may render the license subject to immediate suspension or revocation.

- F. A notarized statement that the applicant will hold harmless, indemnify, and defend the County against all claims and litigation arising from the issuance of license and / or a Conditional Uses Permit including any claims and litigation arising from the compassion center, operation or ownership of the Medical Marijuana Compassion Center.
- G. A notarized acknowledgement that the applicant is seeking a Medical Marijuana Compassion Center Conditional Use Permit and understands that each person and entity with an ownership interest must be found suitable to hold such license by the County Commission prior to the issuance of the Conditional Use Permit; that the applicant understands and acknowledges that the burden of proving qualifications to receive such a Conditional Use Permit for a Medical Marijuana Compassion Center is at the discretion of the County Commission; and that the applicant agrees to abide by the decision of the County Commission.
- H. The Planning & Zoning Commission may require additional plans, documents or other information prior to deeming the application complete.
- I. A Medical Marijuana Compassion Center Conditional Use Permit shall be reviewed annually by the County Commission for renewal.
- J. If the State of North Dakota or its electorate repeals the Compassionate Care Act or the act is otherwise declared void, all Medical Marijuana Compassion Center Conditional Use Permits issue by the County Commission will be deemed to have immediately expired.
- K. A Conditional Use Permit for a Medical Marijuana facility shall only be considered in an Industrial Zoning District. In all other zoning districts a medical marijuana facility will be considered a prohibited use.
- L. Evidence of a letter of credit in the amount of \$50,000 to be on file and renewed annually with the Planning & Zoning Office until close of the business.

5. INSURANCE REQUIREMENTS

- A. The minimum amount of third-person insurance coverage for a Medical Marijuana Compassion Center shall be one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) general aggregate for bodily injury and property damage arising out of licensed activities and one million dollars (\$1,000,000.00) products and completed operations aggregate, commercial automobile coverage in a minimum of one million dollars (\$1,000,000.00) and excess liability in a minimum of three million dollars (\$3,000,000.00).
- B. Additional insured: The County shall be named as an additional insured on all general liability, umbrella, and excess insurance policies required under this section. All insurance policies required under this section shall be primary over any other valid and collectible insurance.

6. DESIGN STANDARDS

- A. Each Medical Marijuana Compassion Center must be located in a separate, permanent, stand-alone, secured structure and have a minimum six (6) foot height perimeter chain link fence encompassing the parcel boundary.
- B. Each Medical Marijuana Compassion Center must be located at a minimum of 2 miles from a public or private preschool, kindergarten, elementary, secondary or high school, public park, public community center, dependent care facility, homeless shelter, youth center, or place of worship. The distance shall be measured from the exterior fence of the Medical Marijuana Compassion Center to the property line or dwelling of the protected use.
- C. Each Medical Marijuana Compassion Center(s) must be located a minimum of 2,640 feet from any residential district, or any residential dwelling, trailer, recreational vehicle or recreational district. The distance shall be measured from the exterior fence of the Medical Marijuana Compassion Center to the property line or dwelling of the protected use.
- D. No Medical Marijuana Dispensary shall have operating hours earlier than 8:00 a.m. or later than 7:00 p.m.
- E. The entire perimeter of a Medical Marijuana Compassion Center structure must be well lit (minimum 1 candle foot) to prevent concealment in shadows around the structure for a minimum of 15 feet around each structure that is part of the Medical Marijuana Compassion Center. Further, everything within the fenced area shall have 24-hour surveillance cameras depicting the entire exterior of the Compassion Center as well as cameras at the property entrance depicting vehicles and license plates of each vehicle enter the parking lot.
- F. Each Medical Marijuana Dispensary shall have at least 1 parking space per 250 sq. ft. of structure.
- G. Each Medical Marijuana Cultivation and / or Manufacturing Facility shall have at least 1 parking space for every 1000 sq. ft. of plant cultivation area and 1 parking space for each 250 sq. ft. of all other areas of the structure.
- H. With the exception of the specific Medical Marijuana Compassion Center approved as part of a Conditional Use Permit, no other activity may occur with the facility or land parcel.
- I. No outdoor storage on-site shall be permitted.
- J. No drive-through, drive-up, or walk-up facilities shall be permitted.
- K. Each Medical Marijuana Compassion Center must ensure there is no emission of dust, fumes, vapors or odors into the environment.
- L. Windows must remain unobstructed, allowing visibility into the facility. Window tints, decals or window signage of any kind shall be strictly prohibited.
- M. Each permittee shall obtain an inspection of the property from the County Sheriff or fire marshall prior to the annual renewal of the Conditional Use Permit.

- N. All surveillance camera locations and surveillance recording equipment including specifications must be approved by the Planning & Zoning Commission.
- O. All applicable state standards and requirements shall apply in the design and operations of any Compassion Center.

7. OTHER REQUIREMENTS

- A. Once a Conditional Use Permit is obtained for a Medical Marijuana Compassion Center, any change in operation of the facility or in ownership shall require prior approval of the Burke County Board of County Commissioners.
- B. Any building modifications or alterations must be approved by the Planning & Zoning Commission.

8. SERVICEABILITY, EXCLUSIONS AND EXCEPTIONS:

- A. The provisions of this chapter do not waive or modify any other provision of this ordinance with which Medical Marijuana Compassion Center is required to comply. Nothing in this section is intended to authorize, legalize or permit the Compassion Center, operation or maintenance of any facility, building or use which violates any County ordinance or statute of the State of North Dakota regarding public nuisances, Medical Marijuana, or any federal regulations or statutes relating to the use of controlled substances.
- B. This chapter shall be null and void if any determination is made, after the adoption of the ordinance enacting this chapter, by any court of competent jurisdiction, that Ch. 19-24, N.D.C.C. is invalid, or shall be null and void to the extent any portion of such section is held invalid.
- C. Should any section, subsection, clause or provision of this chapter for any reason be held to be invalid or factually unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter, and each and every section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved, adopted and / or ratified irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases of this chapter be declared invalid or unconstitutional.

- 9. FUTURE LEGISLATION: In the event that legislation is enacted to make marijuana a legal substance that is no longer classified as a controlled substance, the provisions regulating medical marijuana facilities outlined above shall apply to all marijuana facilities.

SECTION 15. STANDARDS FOR RESIDENTIALLY RELATED ACTIVITIES: The following standards are applicable to special activities pertaining to residential development:

1. Bed and Breakfasts. Bed and Breakfasts shall have one off street parking spot shall be required for the first guest room and two off street parking spots shall be required if there are two or three guest rooms.
2. Boarding Houses. Boarding Houses shall meet the following requirements:
 - A. One off street parking spot shall be required for each guest room.
 - B. The building which is or contains the boarding house shall fit the architectural character of the surrounding neighborhood.
 - C. Off street parking spaces for guests shall be located in the side or rear yard and screened from adjacent parcels.
 - D. Egress to all guest rooms shall be through the interior of the building.
 - E. No cooking is permitted in any guest room.
 - F. Each floor shall contain at least one fully-equipped bathroom for each four guestrooms, and be accessible by a common hallway.
3. Home Businesses. In order to protect residential or agricultural areas from adverse effects of activities associated with home businesses, a home occupation shall meet the following standards:
 - A. The area used for the business shall be limited to the dwelling or a detached structure.
 - B. The area of the business shall not exceed 25% of the main floor area, but not including basement or garage floor space.
 - C. Employees are limited to two full-time or four part-time besides residents of the dwelling.
 - D. Despite any other sign regulations in this Ordinance which may have a different requirement, one and only one sign may be permitted.
 - E. Except for the one sign allowed, evidence of the business shall not be visible from the adjacent road.
 - F. The business shall not adversely affect the character of the zoning district.
 - G. The business must clearly be incidental and secondary to the residential use of the dwelling in which it is conducted.

ARTICLE 3 – DISTRICTS AND BOUNDARIES

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

“AG”- Agricultural District

“RR”- Rural Residential District

“CO”- Commercial District

“IN”- Industrial District

“RE”- Recreational District

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

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

1. Where zoning district boundaries follow streets, highways, roads, railroad lines, or extensions thereof, such boundary lines shall be the centerlines of those streets, highways, roads, railroad lines, or extensions thereof.
2. Zoning district boundaries indicated as approximately following platted lot lines or other property lines shall be construed to follow such lines or extensions thereof.
3. Zoning district boundaries that do not follow streets, highways, roads, railroad lines, property lines, or lot lines or extensions thereof shall be determined by the use of a scale or dimensions appearing on the map.
4. In the case that rules 1-3 above do not provide adequate guidance to determine zoning district boundaries, the Planning and Zoning Commission shall determine the appropriate zoning district boundaries.

SECTION 4. AGRICULTURAL DISTRICT (AG):

1. **INTENT AND PURPOSE:** This district is established for the purpose of preserving and protecting agricultural uses and other natural land uses in the county.
2. **PERMITTED USES:** The following uses shall be permitted in this district:
 - A. Agriculture and agriculture related buildings and farm dwellings
 - B. Park and outdoor recreational facilities and related buildings for outdoor recreation.
 - C. Single family non-farm dwellings (subject to the residential guidelines of this section).
 - D. Churches and similar places of worship and parish house.

- E. Greenhouses, nurseries and garden centers.
 - F. Essential services and utilities.
3. **CONDITIONAL USES:** The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
- A. Mineral extraction and exploration (including sand and gravel) subject to the requirements of Article 2, Section 7 of these regulations.
 - B. National Wildlife Refuges and Waterfowl Management Areas.
 - C. Commercial feed lots.
 - D. Radio or TV towers or telecommunication towers, utility lines, substations and pipelines subject to the requirements of Article 2, Section 6 of these regulations.
 - E. Commercial grain elevators.
 - F. Cemetery.
 - G. Junkyards and automobile salvage operations (provided all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than 8 feet in height).
 - H. Private waste disposal sites subject to the requirements of Article 2, Section 9 of these regulations.
 - I. Utility Facilities
4. **PROHIBITED USES:** Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment procedures of these regulations.
5. **SHELTERBELTS:** All shelterbelts or major tree plantings shall be setback 95 feet from the centerline of all state, county, and township roads, from all section lines, and from adjacent landowners. Shelterbelts or major tree plantings shall be setback a 300 ft. radius of the center of intersections of all state, county and township roads.
6. **NON-FARM RESIDENTIAL DEVELOPMENT:** The following regulations shall be applied to the construction of individual non-farm dwelling units: (The terms of lot size shall exclude the immediate family of the surface owner.)
- A. Lot Size – Not less than three (3) acres.
 - B. Lot Density – Not more than one non-farm dwelling per 40 acres.

- C. Lot Location – The development and location of all lots related to non-farm dwellings shall abut an existing improved road, or, if such development is proposed to have access to a roadway that is not currently being maintained, proof of agreement with the entity responsible for the roadway's repair and maintenance must be provided. An improved road is one that is gravel or hard surfaced and is regularly maintained in good driving condition.

7. DIMENSIONAL STANDARDS:

- A. Building and Structure Setbacks – One hundred fifty (150) feet from all section lines and the centerlines of all township and county roads; or two hundred fifty (250) feet from the centerline of all state and federal highways.

SECTION 5: RURAL RESIDENTIAL DISTRICT (RR):

1. INTENT AND PURPOSE: This district is established for the purpose of providing for and guiding the development of any rural subdivisions and for preserving and protecting the character of residential areas in unincorporated villages in Burke County.
2. PERMITTED USES: The following uses shall be permitted in this district:
 - A. All single-family dwellings.
 - B. Parks and outdoor recreational facilities and related buildings for outdoor recreation.
 - C. Churches and facilities related to religious activities.
 - D. Public and parochial schools.
 - E. Essential services.
3. CONDITIONAL USES: The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - A. Manufactured home parks.
 - B. Multiple family non-farm dwellings. The following is required:
 - i. A plot plan drawn to scale showing units (location, size, number, construction and types), additional structures, setbacks, utilities, drainage, ingress and egress, parking plans, screens, buffers and fencing.
 - ii. Copy of permit, or approval, issued by the North Dakota State Health Department, together with any other relevant permits or letters of approval from relevant governmental authorities and / or agencies having jurisdiction over the subject property when requested by the Planning & Zoning Commission.

- iii. Copy of refuse disposal plan (which must include a contract or letter of intent from solid waste hauler).
- iv. Number of expected and maximum occupancy.
- v. A numbering system for each building. Signs must be easily visible 24 hours a day.
- vi. A description of how buildings will be set and / or anchored. Unit spacing adequate to accommodate emergency services.
- vii. Fire and emergency evacuation plan.
- viii. Off-street parking shall be provided on a two-to-one ratio: one parking space for a personal vehicle and one parking space for a commercial vehicle for each occupant. If semi-truck parking is to be allowed, sufficient off-street parking must be provided, in addition to adequate turning area for trucks to maneuver.
- ix. List of facility rules and regulations.
- x. The Planning and Zoning Commission, may, in its sole discretion, require provisions in addition to the above, based on the particular facts and circumstances surrounding a particular application.
- xi. A road maintenance agreement with Burke County may be required to compensate the Township, City or County for additional expenses that may be incurred to the roadways as a result of travel to and from the facility.

C. Home Businesses.

D. Boarding houses, and Bed and Breakfasts

E. Utility Facilities

4. PROHIBITED USES: Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment procedures of these regulations.

5. DIMENSIONAL STANDARDS:

- A. Lot Size – Not less than 5,000 square feet if served by a sewer collection system common to other adjoining users, not less than three (3) acres if the sewer is drained into an onsite user owned drainage field.

B. Setbacks:

- i. Front Yard – Twenty (20) feet from property line, or one hundred (100) feet from the centerline if abutting a federal, state, county or township road.
- ii. Side Yard – Six (6) feet from property line, or one hundred (100) feet from the centerline if abutting a federal, state, county or township road.

- iii. Rear Yard – Twenty (20) feet from property line, or one hundred (100) feet from the centerline if abutting a federal, state, county or township road.
- iv. Lot coverage by buildings: Not more than fifty (50) percent of the lot shall be covered by the principal building and all accessory buildings.

SECTION 6: COMMERCIAL DISTRICT (CO):

1. INTENT AND PURPOSE: This district is established for the purpose of allowing commercial areas adjacent to highways and for the grouping together of retail and service businesses in areas to best serve the needs of persons traveling in the country, and to also provide area residents convenient access to those entities.
2. PERMITTED USES: Generally any commercial retail or service business which may include but is not limited to the following:
 - A. Automobile/truck sales, supply, service, and repair.
 - B. Service stations, bulk fuel sales.
 - C. Grocery and convenience stores.
 - D. Farm implement sales, supply, service, and repair.
 - E. Motels, hotels.
 - F. Public buildings and churches.
 - G. Parks and playgrounds.
 - H. Restaurants, lounges, and liquor stores.
 - I. Banks and other savings and lending institutions.
 - J. Apparel, department, clothing, toy, variety, furniture, hardware and other retail establishments.
 - K. Medical, dental, health and veterinary clinics.
 - L. Essential services.
3. CONDITIONAL USES: The following uses shall be considered conditional uses and may be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - A. Commercial grain elevators.
 - B. Welding shops.
 - C. Wholesale supply and warehouse storage facilities.

- D. Residential RV parks. The following conditions are required, and the Planning and Zoning Commission may at its sole discretion require additional provisions based on the particular facts and circumstances surrounding a particular application.
- i. Copy of permit, or approval, issued by the North Dakota State Health Department, together with any other relevant permits or letters of approval from relevant governmental authorities and / or agencies having jurisdiction over the subject property when requested by the Planning and Zoning Council.
 - ii. Copy of refuse disposal plan (which must include a contract or letter of intent from solid waste hauler).
 - iii. Number of expected and maximum occupancy.
 - iv. A numbering system for each building. Signs must be easily visible 24 hours a day.
 - v. Fire and emergency evacuation plan.
 - vi. Residential RV spaces must allow and maintain fourteen (14) feet of unobstructed space between each recreational vehicle.
- E. Storage facilities for building materials, such as lumber, steel, concrete blocks or pipe; provided that these materials are either:
- i. Enclosed by a wall or fence not less than five (5) feet high, or
 - ii. Stored in an enclosed structure.
- F. Sleeping rooms, apartments or owner-occupied residences housed within commercial businesses or service establishments provided that the above uses are secondary to the main commercial use of the building and occupy less than 50 percent of the total floor area.
- G. Temporary Crew Housing is allowed for two (2) years with the following setbacks:
- i. Front setback 25 feet minimum from front of property line.
 - ii. Rear setback 10 feet from a commercial lot or 30 feet setback if adjoining residential district.
 - iii. Side setback 10 feet.
 - iv. There must be a minimum of fourteen (14) feet between skid units or any other structures on the property. This area must remain unobstructed.
- H. Utility Facilities

4. PROHIBITED USES: Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.

5. DIMENSIONAL STANDARDS:

- A. Lot Size – Not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than three (3) acres if the sewer is drained into an onsite user owned drainage field.
- B. Setbacks – With the exception of temporary crew housing (as listed in Section 3, G), no minimum setbacks, except in the case of the property abutting a federal, state, county or township road. If the property abuts a federal, state, county or township road, building setbacks shall be a minimum of one hundred (100) feet from the centerline of that road.
- C. Lot Coverage by Buildings – No requirements other than those that may exist with regard to fire protection.
- D. Residential RV spaces must allow and maintain fourteen (14) feet of unobstructed space between each camper.

SECTION 7: INDUSTRIAL DISTRICT (IN):

- 1. INTENT AND PURPOSE: This district is intended to provide areas for industrial development and those land uses which are generally not compatible with agricultural, commercial or residential land uses.
- 2. PERMITTED USES: The following uses shall be permitted in this district:
 - A. All commercial (CO) district permitted uses and conditional uses.
 - B. Airports, railroads, essential public utilities, and public service installations.
 - C. Radio or television transmitting stations.
 - D. Overhead, above grade and underground storage facilities for oil, gas, flammable liquids and gases, as approved by fire code regulations.
 - E. Manufacturing industries.
 - F. Processing industries consisting of agricultural products and foodstuffs.
 - G. Concrete mixing and concrete products manufacturing plants.
 - H. Essential services.
- 3. CONDITIONAL USES: The following uses shall be considered conditional uses and may be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - A. Petroleum or petroleum products refining.
 - B. Junkyard, auto wrecking yard or salvage yard provided that all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than eight (8) feet in height.

- C. Adult entertainment center provided it is at least twelve hundred (1200) feet from any other zoning district boundary.
- D. Commercial bulk storage of chemicals.
- E. Commercial waste disposal sites subject to the requirements of Article 2, Section 9 of these regulations.
- F. Utility Facilities.
- G. Medical Marijuana Facilities

- 4. PROHIBITED USES: Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
- 5. DIMENSIONAL STANDARDS:
 - A. Lot Size – No minimum standard.
 - B. Setbacks – No minimum setbacks, except in the case of the property abutting a federal, state, county or township road. If the property abuts a federal, state, county or township road, building setbacks shall be a minimum of one hundred (100) feet from the centerline of that road.
 - C. Lot Coverage by Buildings – No requirements other than those that may exist with regard to fire protection.

SECTION 8: RECREATIONAL DISTRICT (RE):

- 1. INTENT AND PURPOSE: This district is intended to provide areas for rural recreational development and those land uses associated with rural vacation or seasonal residential developments and recreational vehicle parks for short-term or seasonal parking.
- 2. PERMITTED USES:
 - A. Agriculture and the normal incidents of agriculture
 - B. Single family lake cabins and cottages intended for seasonal use.
 - C. Golf courses, miniature golf and driving tees operated for commercial purposes.
 - D. Parks, picnic shelters, playgrounds, or community buildings.
 - E. Essential services.
 - F. Customary accessory uses and structures located on the same tract with the principle use, including barns, sheds, barbecue ovens, fireplaces, private boat docks (located on streams, rivers, lakes, reservoirs or other water areas) and similar uses.

3. **CONDITIONAL USES:** The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations.
 - A. Commercial lake resort.
 - B. Commercial boat, docks, sales, rental, construction and repair and sale of bait and fishing equipment, fuel and other commercial recreational activities.
 - C. Commercial campgrounds (tent and/or recreational vehicle).
 - D. Manufactured homes.
 - E. Camps operated by nonprofit, charitable or religious institutions.
 - F. Utility Facilities.
4. **PROHIBITED USES:** Land uses which are not listed in this section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment procedures of these regulations.
5. **DIMENSIONAL STANDARDS:**
 - A. Lot Size – Not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than three (3) acres if the sewer is drained into an onsite user owned drainage field.
 - B. Setbacks:
 - i. Front Yard – Twenty (20) feet from property line, fifty (50) feet from any shoreline with the exception of boathouses, ramps, docks or retaining walls or one-hundred (100) feet from the centerline if abutting a federal, state, county or township road.
 - ii. Side Yard – Six (6) feet from property line, fifty (50) feet from any shoreline with the exception of boathouses, ramps, docks or retaining walls or one-hundred (100) feet from the centerline if abutting a federal, state, county or township road.
 - iii. Rear Yard – Twenty (20) feet from property line, fifty (50) feet from any shoreline with the exception of boathouses, ramps, docks or retaining walls or one-hundred (100) feet from the centerline if abutting a federal, state, county or township road.
 - C. Lot coverage by buildings: Not more than fifty percent of the lot shall be covered by the principal building and all accessory buildings.

ARTICLE 4 – ADMINISTRATION AND ENFORCEMENT

SECTION 1: PLANNING AND ZONING COMMISSION: The administration and enforcement of these zoning regulations is hereby vested in the Planning and Zoning Commission of Burke County. Members of the Planning and Zoning Commission shall be appointed by the County Commission in accordance with State Statutes. Duties of the Planning and Zoning Commission shall include:

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

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

1. **RECORDS:** The board shall keep minutes of its proceedings, show evidence presented, findings of fact by the board, decisions of the board, and voting upon each question. Records of all official actions of the board shall be filed in its office and shall be a public record.
2. **PUBLIC HEARING AND NOTICE:** The Board of Zoning Appeals shall, within thirty days of filing, fix a date for the hearing of an appeal. Notice of the time, place and subject of such hearing shall be published once in the official county newspaper at least ten days prior to the date fixed for the hearing. A copy of said notice shall be mailed to each party to the appeal.

3. **POWERS AND JURISDICTIONS:** The Board of Zoning Appeals shall administer the details of appeals or other matters referred to it regarding the application of the zoning regulations.

The board shall have the following specific powers:

- A. To hear and decide on appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the Planning and Zoning Commission in the enforcement of the zoning regulations.
- B. To interpret the provisions of these regulations in such a way as to carry out the intent and purpose of the adopted comprehensive plan and, as shown upon the zoning maps.
- C. The concurring vote of two-thirds of all members of the board shall be necessary to reverse any order, requirement, decision, or determination of the Planning and Zoning Commission or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance or to affect any variation of these regulations.

4. **PROCEDURE:** The appeals process is outlined below:

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

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

1. PROCEDURE: The building permit process is outlined below:

- A. All applicants who wish to build or alter any structure as defined in these zoning regulations must apply to the Planning and Zoning Commission for a permit.
- B. If the applicant's plans meet district regulations as prescribed in these zoning regulations and any other applicable ordinances, the Planning and Zoning Commission or designated Zoning Administrator collects any applicable fees and issues the building permit.
- C. If the applicant's plans do not comply with district regulations, the amendment, variance, conditional use procedures or appeals sections of these regulations may be applied.

SECTION 4: CONDITIONAL USE PERMITS:

1. REQUIREMENTS FOR CONDITIONAL USES: A Conditional Use Permit may be granted following compliance with the procedure set forth in this section if the conditional use is one set forth in the district regulations, provided that no application for a conditional use shall be granted unless all of the following conditions are found to be present:

- A. The conditional use will not be detrimental to or endanger the public health, safety or general welfare;
- B. The existing permitted uses in the area will not be substantially impaired or diminished by the establishment of the conditional use;
- C. The conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district;
- D. Adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided;
- E. Adequate measures have or will be taken to provide access and exit so designed as to minimize traffic congestion in the public roads and streets; and
- F. The conditional use shall conform to all provisions of the district in which it is located.

2. LENGTH: The Conditional Use Permit may be issued for a specified period of time with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the permit and periodic review may be required to determine if the conditional use has any detrimental effects on neighboring uses or districts. The permit shall be granted for a particular use and for a particular person or firm.

3. APPLICATION: Application for a Conditional Use Permit shall be submitted by the property owner to the Planning and Zoning Commission on forms provided by the Commission. The application shall include:

- A. Name and address of applicant.
- B. Date of the application.

- C. A description of the site and the immediate surrounding area.
 - D. A preliminary map showing boundary lines and location of structures to be developed on the site.
 - E. Location of existing structures on adjacent property.
 - F. Parking plan showing off street parking areas and/or loading areas.
 - G. Names and addresses of adjacent property owners.
 - H. Any reasonable information the Planning and Zoning Commission deems necessary.
 - I. Payment of the required filing fee.
 - J. Description of use for which approval is being requested
4. **PLANNING AND ZONING COMMISSION RECOMMENDATION:** The Planning and Zoning Commission, upon receipt of an application for a Conditional Use Permit, shall at its next regular or special meeting, specify a time and date within the next thirty days for a public hearing for the proposed conditional use. Following the public hearing the Planning and Zoning Commission shall consider the application and make a recommendation to the County Commission within thirty days.
5. **PUBLIC HEARING AND NOTICE:** The Planning and Zoning Commission shall publish a notice of the public hearing in the official county newspaper at least ten days before the hearing. The applicant must notify by certified mail, return receipt the adjacent property owners at least fifteen (15) days prior to the public hearing and provide proof of such notification before any action can be taken by the Planning and Zoning Commission. Adjacent property owners are all property owners fronting or within 150 feet (46M) of the property in question. Applicant is required to notify local entity such as Township Board or City Council. Proof of notification is required by the time of the hearing. Notice shall include the date, time, place, and purpose of the hearing. In addition to the notice listed above, the Planning and Zoning Commission may require that notice be mailed to those persons designated by the Planning and Zoning Commission.
6. **COUNTY COMMISSION:** Upon receipt of the Planning and Zoning Commission's recommendations, or if the Planning and Zoning Commission has not acted within the required time limits of this article, the County Commission shall hold a public hearing on the proposed conditional use, grant the proposed conditional use with additional conditions, or deny the proposed conditional use.

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

1. **APPLICATIONS:** Application for a Variance Permit shall be submitted by the property owner to the Planning and Zoning Commission on forms provided by the Commission. The application shall include:
 - A. Name and address of applicant.
 - B. Date of the application.
 - C. A description of the site and the immediate surrounding area.
 - D. A preliminary map showing boundary lines and location of structures to be developed on the site.
 - E. Location of existing structures on adjacent property.
 - F. Parking plan showing off street parking areas and/or loading areas.
 - G. Names and addresses of adjacent property owners.
 - H. Any reasonable information the Planning and Zoning Commission deems necessary.
 - I. Payment of the required filing fee.
2. **PLANNING AND ZONING COMMISSION RECOMMENDATION:** The Planning and Zoning Commission, upon receipt of an application for a Variance Permit, shall at its next regular or special meeting, specify a time and date within the next thirty days for a public hearing for the proposed variance. Following the public hearing the Planning and Zoning Commission shall consider the application and make a recommendation to the County Commission within thirty days.
3. **PUBLIC HEARING AND NOTICE:** The Planning and Zoning Commission shall publish a notice of the public hearing in the official county newspaper at least ten days before the hearing. The applicant must notify by certified mail, return receipt the adjacent property owners at least fifteen (15) days prior to the public hearing and provide proof of such notification before any action can be taken by the Planning and Zoning Commission. Adjacent property owners are all property owners fronting or within 150 feet (46M) of the property in question. Notice shall include the date, time, place, and purpose of the hearing. In addition to the notice listed above, the Planning and Zoning Commission may require that notice be mailed to those persons designated by the Planning and Zoning Commission.
4. **COUNTY COMMISSION:** Upon receipt of the Planning and Zoning Commission's recommendations, or if the Planning and Zoning Commission has not acted within the required time limits of this article, the County Commission shall hold a public hearing on the proposed variance. Following the public hearing, the County Commission may either grant the Variance Permit, grant the Variance Permit with additional conditions, or deny the Variance Permit.

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

County Commission, by the Planning and Zoning Commission, or upon application of the owner of the property affected.

1. **APPLICATIONS:** The party desiring any change in zoning district boundaries or zoning regulations as to any lot, tract or area of land, shall file with the County Planning & Zoning Office an application upon forms provided, and such application shall be accompanied by such data and information as may be prescribed by the Planning and Zoning Commission.
2. **PUBLIC HEARING AND NOTICE:** Before the Planning and Zoning Commission shall, by proper action, formulate its recommendation to the County Commission on any such proposed or requested change of zoning district boundary or regulation, whether initiated by the County Commission, the Planning and Zoning Commission or by the property owner, the Planning and Zoning Commission shall hold a public hearing on such proposal. The Planning and Zoning Commission shall cause a notice of public hearing to be published once a week for two successive weeks prior to the time set for the said hearing in the official county newspaper. The applicant must notify by certified mail, return receipt the adjacent property owners at least fifteen (15) days prior to the public hearing and provide proof of such notification before any action can be taken by the Planning and Zoning Commission. Adjacent property owners are all property owners fronting or within 150 feet (46M) of the property in question. Such notices shall contain:
 - A. The time and place of the hearing.
 - B. A description of any property involved in any zoning change, by street address and/or other legal description.
 - C. A description of the nature, scope and purpose of the proposed regulation, restriction or boundary.
 - D. A statement of the times at which it will be available to the public for inspection and copying at the office of the County Planning & Zoning Office.
3. **COUNTY COMMISSION APPROVAL:** Upon receipt of the recommendation of the Planning and Zoning Commission on any amendment, or in the event of the failure of the Planning and Zoning Commission to so report after thirty days from the time of the filing of the proposed amendment to the Planning and Zoning Commission, the County Commission shall render a decision. If for any reason the Planning and Zoning Commission did not hold a public hearing, the County Commission shall hold a public hearing. The public hearing will follow the guidelines listed in section 6.2 of this article. A majority decision of the County Commission shall be sufficient to approve an amendment of the zoning regulations.

SECTION 7: CERTIFICATE OF COMPLIANCE:

1. A certificate of compliance is required before any structure, building or land can be occupied which has been built or structurally altered such that it requires a building permit.
2. The certificate of compliance process is outlined below:
 - A. Upon notification of completion of any work requiring a building permit, the Planning and Zoning Commission conducts an onsite inspection of the work specified on the building permit.
 - B. If the completed work is found to be in accordance with the zoning ordinance, the Planning and Zoning Commission will issue a certificate of compliance.
 - C. Reasons for refusing to issue a certificate of compliance must be stated by the Planning and Zoning Commission in writing within fifteen days after the request of the applicant for the certificate. Notice of such refusal shall be sent in writing to the applicant within one week after such refusal is made.

SECTION 8: SCHEDULE OF FEES AND CHARGES: The County Commission shall establish a schedule of fees, charges and expenses and a collection procedure for permits, appeals and other matters pertaining to these regulations. The schedule of fees shall be posted in the office of the County Planning & Zoning Office and may be altered or amended only by the County Commission. Until all applicable fees, charges and expenses have been paid in full no action shall be taken on any application or appeal. Fees have been established by the Board of County Commissioners and shall remain as established until changed by the Board of County Commissioners.

SECTION 9: PENALTIES:

1. **ENFORCEMENT:** The County Sheriff and the Sheriff's staff shall enforce these zoning regulations.
2. **COMPLAINTS:** Any person may file a written complaint whenever a violation of these regulations occurs, or is alleged to have occurred. Such complaint shall state the cause and basis thereof and be filed with the County Planning & Zoning Office. The complaint shall be recorded with the County Sheriff who will promptly investigate, and report to the Planning and Zoning Commission.
3. **VIOLATIONS:** If any building or structure is erected, reconstructed, repaired, altered, enlarged, converted, maintained, or moved; or if any building, structure, or land is used in violation of these regulations, the Planning and Zoning Commission shall order in writing, the correction of such violation. The County Sheriff, States Attorney or other official designated by the County Commission, or any affected citizen or property owner, may institute appropriate action or proceedings for the purpose of:
 - A. Prosecuting any violation.
 - B. Restraining, correcting or abating such violation.
 - C. Preventing the occupancy of any building, structure or land in violation of these regulations.

D. Preventing any illegal act, conduct, business, or use in or about any buildings, structure or land in violation of these regulations.

4. PENALTY: Any persons, firm or corporation violating the provisions of these regulations shall constitute the maintenance of a public nuisance and shall be a Class B misdemeanor. Nothing herein contained shall prevent the County from taking such other lawful action to prevent or remedy any violation of the zoning regulations.

ARTICLE 5: DEFINITIONS:

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

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

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

1. ACCESS: A way or means of approach to provide physical entrance to property.
2. ACCESSORY BUILDING AND USES: A subordinate building or portion of the main building, the use of which is incidental to that of the main building or to the main use of the premises. An accessory use is one which is incidental to the main use of the premises.
3. ADJACENT PROPERTY OWNERS: All property owners fronting or within 150 feet (46M) of the property in question.
4. ADULT ENTERTAINMENT CENTER: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection; which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas; for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time. An enclosed building having a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.
5. AGRICULTURE: The production, keeping, maintenance, for sale, lease, or personal use of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry

products; livestock including beef cattle, sheep, swine, horses, ponies, mules, goats, or any mutation or hybrids thereof including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds including grapes, nuts, berries, vegetables, nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

6. AIRPORT: A place where aircraft can land and take off, usually equipped with hangers, facilities for refueling and repair and various accommodations for passengers.
7. ALTERATION: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams girders, or interior partitions; any change in doors, windows, or any enlargement or diminution of a building or structure, whether horizontally or vertically; or the moving of a building or structure from one location to another.
8. BED AND BREAKFAST: A private owner occupied residence with one to three guestrooms where the accommodation of guests for pay is subordinate and incidental to the main residential use of the building.
9. BOARDING HOUSE: A private owner occupied residence with 8 or less guestrooms where accommodation of guests for pay is provided, and where meals may or may not be provided to the guests.
10. BUILDING: A structure having a roof supported by columns or walls.
11. COMMERCIAL CAMPGROUND: Any land or premises upon which recreational vehicles or camping sites are offered for temporary occupancy, whether for compensation or not, including all accessory uses. These do not include camps operated by nonprofit, charitable or religious institutions.
12. COMMERCIAL FEED LOT: Any building, structure, enclosure, or premises used, designed, or intended for the concentrated feeding or fattening of livestock for marketing and which less than fifty (50) percent of the feed is raised by the owner and is a separate pursuit to the normal incidence of farming.
13. CONDITIONAL USE: A use, which generally would not be suitable in a particular zoning district, would be acceptable under certain circumstances. The permit shall be granted for a particular use and not for a particular person or firm.
14. COUNTY COMMISSION: Shall mean the Burke County Commission.
15. DAYCARE: An occupied private residence in which supplemental parental care is regularly provided for no more than five children including no more than 3 infants.
16. DWELLING: Any building or portion thereof which is designed and used primarily for residential purposes.
17. DWELLING, FARM: A single family dwelling or manufactured home which is occupied by a farmer.

18. DWELLING, NON-FARM: A single family dwelling or manufactured home which is not occupied by a farmer.
19. ESSENTIAL SERVICES: Overhead and underground gas, electrical, water, sewage, and communication systems installed to provide direct service to end users.
20. FAMILY: persons related by blood, marriage, or adoption, or no more than three individuals occupying a dwelling and living together as a single housekeeping unit
21. FARM: A single tract or contiguous tracts of land containing a minimum of ten acres. Used by a farmer for activities of producing products of the soil, poultry, livestock or dairy farming and such products.
22. FARMER: Means any individual who normally devotes the major portion of his/her time to the activities of producing products of the soil, poultry, livestock or dairy farming and such products; who normally receives not less than fifty (50) percent of his/her annual net income from any one or more of the foregoing activities (as defined in *North Dakota Century Code 57-02*); and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned or occupied as a farmer, as above defined the residence in which he/she lives and is exempt from taxation pursuant to the laws of North Dakota.
23. GROUP HOME: A community based residential home licensed by the appropriate North Dakota State licensing authority that provides room, board, personal care, habitation, services, or supervision in a family environment.
24. HOME BUSINESS: A business, profession, or other economic activity conducted full-time or part-time in a dwelling unit that serves as the principal residence of the practitioner of the home occupation.
25. HOTEL: A building or portion thereof or a group of buildings (excluding bread and breakfasts, boarding houses, and group homes) which provides sleeping accommodations for hire in separate units or rooms for transients on a daily, weekly, or similar short-term basis.
26. JUNK YARD: An area of more than two hundred square feet, or any area not more than fifty feet from any street, used for the storage, keeping, processing or abandonment of junk, including scrap metals or other scrap materials or goods, used for dismantling, demolition, or abandonment of automobiles or other vehicles, machinery, or parts thereof.
27. LIVESTOCK: Domestic animals or types customarily raised or kept on farms for profit or other purposes.
28. LOT: A piece, plot or area of land, or contiguous assemblage as established by survey, plat or deed, occupied or to be occupied by a building, or a unit group of buildings, and/or accessory buildings thereto or for other use, together with such open spaces as may be required under these regulations and having its frontage on a street or officially approved place.

29. **MANUFACTURED HOME:** A structure, transportable in one or more sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty square feet [29.73 square meters] or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.
30. **MANUFACTURED HOME PARK:** Any park, court, camp, or tract of ground upon which manufactured home sites are leased or used, whether for compensation or not, including all accessory uses.
31. **MINERAL EXPLORATION / EXTRACTION:** Any activity, use or technique which when applied to the surface of the land will aid in the discovery, evaluation or production of coal, oil, gas, potash, sand, gravel and/or rock, or other subsurface minerals as defined in North Dakota Century Code 38-12.
32. **MULTI-FAMILY DWELLING UNIT:** Residential dwelling designed for occupancy by two or more families. Each separate building shall be considered one (1) multi-family unit regardless of how many families the building has been designed for.
33. **NONCONFORMING USES:** Use of a building or of land that does not conform to the regulations as to use for the district in which it is situated.
34. **PARK:** A tract of land designated and used by the public for active and passive recreation.
35. **PERMITTED USE:** Any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.
36. **PLANNING AND ZONING COMMISSION:** The Planning and Zoning Commission of Burke County, North Dakota.
37. **PROHIBITED USE:** A use that is not permitted in a zone district.
38. **PUBLIC HEARING:** A meeting announced and advertised in advance and open to the public, with the public given an opportunity to talk and participate.
39. **RESIDENTIAL RV PARK:** Any park, court, camp, parcel, or tract of ground upon which recreational vehicles are leased or used, whether for compensation or not, including all accessory uses.
40. **SCHOOL:** Any building or part thereof which is designed, constructed, or used for education or instruction in any branch of knowledge.

41. **SETBACK:** The open space extending the full width of a lot between a building and a public right-of-way line, easement or property line.
42. **SHELTERBELT:** A barrier of trees and shrubs that is used to protect crops, farmsteads and non-farm dwellings from wind and storms.
43. **SIGN:** Any surface, fabric, device, or display which bears lettered, pictorial or sculptured matter, including forms shaped to resemble any human, animal, or product, designed to convey information visually and is exposed to public view. For purposes of these regulations, the term “sign” shall include all structural members. A sign shall be construed to be a display surface or device containing organized and related elements composed to form a single unit. In cases where matter is displayed in a random or unconnected manner without organized relationship of the components, each such component shall be considered to be a single sign.
- A. **BILLBOARD:** A sign which directs attention to a business, commodity, service, or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.
- B. **BULLETIN BOARD:** A sign that identifies an institution or organization on the premises of which it is located and which contains the name of the institution or organization, the names of individuals connected with it, and general announcements of events or activities occurring at the institution or similar messages.
- C. **ILLUMINATED:** A sign lighted by or exposed to artificial lighting either by lights on or in the sign (directly illuminated) or directed toward the sign (indirectly illuminated).
- D. **MARQUEE:** Any sign attached to and made part of a marquee. A marquee is defined as a permanent roof-like structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building’s wall and generally designed and constructed to provide protection against the weather.
- E. **PORTABLE:** A sign that is not permanent, affixed to a building, structure or the ground.
- F. **ROOF:** A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the deck line of a building with a mansard roof.
- G. **TEMPORARY:** A sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.
- H. **WALL:** A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the sign, and which does not project more than twelve (12) inches from such building or structure.

44. **STREET:** Any thoroughfare or public space that has been dedicated to, and accepted by, the public for public use and includes all the right-of-way sidelines.
45. **STRUCTURE:** Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground, including, but limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, and arbors or breeze-ways, but excepting utility poles, fences, retaining walls, and ornamental light fixtures.
46. **STRUCTURAL ALTERATIONS:** Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or girder, or any complete rebuilding of the roof or exterior walls.
47. **TEMPORARY CREW HOUSING:** Any modular residential structure or part of a structure intended or used for residential purposes which is not affixed to the property where it is located, is not a mobile home or a manufactured home as defined by NDCC Section 57-02-04 or NDCC Section 57-55-01, but is used to house multiple employees of the owner's company or a contracted company on a temporary basis, and is approved for a specified period of time.
48. **UTILITY:** Any person, firm, corporation, municipal department or board duly authorized to furnish and furnishing under public regulations, to the public or to private parties: electricity, gas, heat, power, steam, telephone, telegraph, transportation, or water; and the physical facilities utilized in the provision thereof.
49. **UTILITY FACILITY:** Electrical Substations, microwave and radio relay structures, telephone exchanges and transmission equipment buildings, communications towers, water pumping stations or water reservoirs, sewage treatment facilities and sewage system lift stations, oil and gas collection pipelines; transmission pipelines, electrical transmission facilities, booster stations or other nodes in transmission systems.
50. **VARIANCE:** The relaxation of the terms of the zoning regulations in relations to height, area, size and open spaces where specific physical conditions, unique to the site, would create an unreasonable hardship in the development of the site for permitted uses.
51. **YARD:** An open space on the same lot with a building, unoccupied and obstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width of side yard, the depth of a front yard, or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.
- A. **Front:** A yard that extends across the full width of the lot. The depth is measured as the least distance between the front lot line and the front building line.
 - B. **Rear:** A yard that extends across the full width of the lot. The depth is measured as the least distance between the rear lot line and the rear building line.
 - C. **Side:** A yard extending from the front yard to the rear yard. The depth is measured from the side lot line and side building line.

52. WASTE:

- A. Chemical – Shall be defined as, but not limited to, any waste product associated with mineral exploration, production, or abandonment procedures.
- B. Hazardous – Shall be defined by North Dakota or Federal laws, rules, or regulations.
- C. Inert Solid – Means the nonputrescible solid waste that is generally not contaminated water or from contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete, asphalt concrete, tire, metals, and tree branches. Solid waste does not include hazardous waste either alone or as a part of otherwise included waste.
- D. Municipal Solid – Means that garbage, refuse and trash generated by households, motels, hotels, and recreation facilities by public and private facilities and by commercial, wholesale, private and retail businesses. The term does not include special waste.
- E. Special – Shall mean only the special waste described in the North Dakota Century Code 23-29-03 (15).

53. WASTE DISPOSAL SITE:

- A. Private – A solid waste disposal site used exclusively by and only for the landowner engaged in farming.
- B. Commercial – A solid waste disposal site used by public entities or commercial waste haulers for the temporary or permanent storage or reclamation of solid waste generated through medical, industrial, municipal or household collection.

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