North Dakota Planning and Zoning Guide

Updated August 2022

Vision West ND Inc.™

NORTH DAKOTA PLANNING ASSOCIATION
Serving North Dakota since 1973

Unit 1
Introduction

Planning and Zoning Guide

About Vision West ND

Vision West ND Administrative Office

DLN Consulting, inc.
2493 4th Avenue West, Ste. G
Dickinson, ND 58601
701.483.2801
visionwest@dlnconsulting.com

Partners

DUNN COUNTY North Dakota

USDA Rural Development

North Dakota Department of Commerce

Western Dakota Energy Association

Vision West ND is a consortium of people who are interested in the long-term sustainability for the energy-producing counties of western North Dakota. Members include city and county officials, economic developers, business associations, construction and oil-related industry, conservation groups, educational facilities, transporation organizations, and tribal, state and federal representatives.

Vision West ND goals:

1. Address immediate, short-term needs to meet growth management challenges.
2. Establish a diversified economy in the future through the development of local and regional planning.

Planning and zoning is just one of the types of planning that is an ongoing priority for the energy-producing cities and counties.

Special thanks to those who have provided input into this Planning & Zoning Manual:

- Stacey Swanson, Billings County Zoning & Tax Director
- Sandy Rohde, Dunn County Zoning Code Administrator
- Scott Harmstead, SRF Consulting Group, Director - Planning

Members of the Vision West ND Board:

- Donna Scott (Dunn County),
- Buster Langowski (Mercer County),
- Daryl Dukart (Western Dakota Energy Association)
- KayCee Lindsey (Divide County)

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BUSH FOUNDATION

About the North Dakota Planning Association

NORTH DAKOTA
PLANNING ASSOCIATION

The North Dakota Planning Association (NDPA) strives to provide planners, commissioners, and interested citizens of North Dakota an exchange of ideas and opportunity to learn more about planning in the state and region. The current version of the Planning and Zoning Guide is partly funded by NDPA.

Special thanks to those to the NDPA Board:

- Sandy Rohde - President
  Dunn County Planning and Zoning
- John Van Dyke, AICP, CFM - Vice President
  City of Minot Planning
- Daniel Nairn, AICP - Treasurer
  City of Bismarck Planning
- Ryan Brooks - Secretary
  City of Grand Forks Planning
- Scott Harmstead, AICP - Past President
  SRF Consulting Group, Inc.
- Donna Bye - At Large
  Houston Engineering, Inc.
- Rachel Laqua, AICP - At Large
  City of Williston Planning

And our over 100 members across the state.

Planning and Zoning Guide Authors

The Planning and Zoning Guide was initially written in 2012 and then updated in 2018. Both versions were written by SRF Consulting Group, Inc. who were contracted by Vision West ND. Scott Harmstead and David Sweeney with SRF contributed to the 2018 update and can reached via the contact information below.

Scott Harmstead, AICP

Planner

sharmstead@srfconsulting.com
Phone: 701-354-2405

David Sweeney, AICP

Planner

dsweeney@srfconsulting.com
Phone: 701-893-7426

OTHER PROFESSIONAL PLANNING ASSOCIATIONS AND CERTIFICATION

Western Planner (www.westernplanner.org)

The Wester Planner is a regional organizaiton which connects planners in the western United States. It hosts an annual conference and provides free journal articles written by western planners who understand the challenges of the region. The website lists job openings throughout the region.

American Planning Association (www.planning.org)

The American Planning Association (APA) is a national organization of professional planners, educators, and students. There are more than 38,000 members. There are 47 chapters in the United States. North Dakota belongs to the Western Central Chapter, together with Montana, South Dakota, and Wyoming. The APA and its partner chapters are an outstanding resource for planners. Since North Dakota does not have its own APA chapter (it's part of the Western Central Chapter), the NDPA fills this role.

The APA is an indispensable forum for professional networking. If you're looking for a job, attending a conference, soliciting a request for proposal, or researching a local issue, the APA provides a network of local, regional, and national planners to help you out. The APA has broad student membership, so it's great way for public agencies and private firms to connect with potential hires. Each year, the APA hosts the National Planning Conference, which brings together thousands of planners, commissioners, appointed and elected officials, and students. The APA also houses 21 specialized divisions which connect planning practitioners based on their interests (e.g., small town and rural planning, economic development; environment, natural resources, and energy).

APA

American Planning Association

Creating Great Communities for All

Professional Planning Certification (AICP)

The American Institute of Certified Planners provides the only professional certification for planners in the United States. The national AICP exam is conducted twice a year, in May and November. To sit for the exam, applicants must meet specific criteria for education and experience. Usually, this equates to a bachelor's degree in a program accredited by the Planning Accreditation Board (PAB) and three years of professional experience, or a graduate degree in a PAB-accredited program, plus two years of experience. In addition, applicants must be members of the American Planning Association.

Earning your AICP credentials provides numerous benefits. This is the single-best way to demonstrate your knowledge, education, and experience to potential employers, your local planning commission, and other peer professionals. Often, employers filter job applications based on these four letters. Hiring agencies look for AICP accreditation because it demonstrates that they are committed to high standards of quality and ethical practice. In the private sector, AICP staff help firms demonstrate the experience needed to win work. Last – and not least – certified planners earn higher salaries on average than planners without their AICP. APA's website provides several tips to assist test-takers with the application process and exam preparation.

Unit 8 - Ethics, has more information pertaining to the AICP Code of Ethics, a recommended guideline for anywho are involved with planning and zoning in North Dakota.

Frequently Asked Questions

Below are 12 questions that local government planners, auditors, staff, and elected officials often hear from the public. The answers provide general guidance, which should be tailored for your regulatory framework.

1. How do I know what my property is zoned?

Some local governments provide a link to the zoning map on their website. There is usually a link on the home page to all ordinance and zoning materials, including the zoning map. If not, you can search the website to find the zoning map. When you find the name of your zoning district on the map (e.g., R1 - Single Family Residential), cross-reference the zoning ordinance (text document) to find the requirements that pertain to your property. If the map is not clear or not available, contact the jurisdiction via phone or email and ask staff to tell you the zoning.

There may be additional zoning schemes that affect your property which are not apparent from the zoning map. In addition to the base zoning district, there may be overlay zones, such as an airport zoning overlay or a flood overlay. Overlay zones impose another set of requirements, in addition to the base zoning district. If you have questions about zoning in your community, contact the planning department.

2. When do I need a building permit?

A building permit is a specific application for building code compliance when a certificate of occupancy is issued. A building permit is required for all new construction that exceeds a certain dimensional threshold (e.g., 120 square feet for a detached structure). A permit is usually required for any project that involves structurally changing an existing building through remodeling or expansion. Even if the structure is unchanged, a permit is likely required to perform substantial electrical, plumbing, or mechanical work. Note that requirements may vary slightly from place to place.

3. What types of subdivisions require a plat?

ALL subdivisions require a plat. North Dakota Century Code defines a subdivision as "the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces."

A lot merger may or may not require a subdivision plat depending on the jurisdiction. If you have contiguous lots and you want to dissolve lot lines so you can build across them, contact the local contact responsible for planning and zoning. Your property taxes will be modified to reflect the change, and the setbacks associated with the inner lot lines will no longer apply.

4. How do I find out where my property lines are? And where can I erect a fence?

Only a Professional Land Surveyor or survey-licensed firm can legally locate your property lines. However, there are several strategies to estimate your property lines. First, talk to your neighbors. (Also a good idea if you plan to build a fence.) They may know where the property line is, or where the monuments are. When your property was platted, monuments were set at the lot corners. They may still be in place. Look for property pins, usually 5/8" in diameter and 18" long, that are placed vertically in the ground. Be aware that they may have moved over time, or they may be buried in the ground, depending on how much fill was used. Use a metal detector if needed.

Your city or county has standard requirements for lot, easement, and right-of-way dimensions. If you know these requirements, you may be able to estimate the location of your property lines. For example, if your neighborhood has sidewalks, the front of your property probably begins 2" from the back of the sidewalk.

In most jurisdictions, you can erect a fence on the property line. If you want to be conservative, erect the fence 6" behind the property line.

5. How do I know what my setbacks are?

Most zoning districts have setbacks that determine the location of a structure. For example, single-family lots have setback requirements for the front, rear, and side yards. These dimensional requirements are given in the zoning ordinance. If you know your zoning and your property lines, you can determine the setbacks.

Note that there are other dimensional requirements that may impact your construction plans. For example, the lot coverage requirement determines the percentage of buildable land on your parcel (some open space is needed to control the density of the buildings). So, if you're planning to extend your home or garage, it's a good idea to check your lot coverage requirements in addition to the setbacks.

6. How do I know what Fire District I'm in?

The State of North Dakota provides Fire District boundary maps for each county. Check here: https://www.nd.gov/ndins/Companies/Firedistrictpayment/Firedistrictboundarymaps/

7. What's my e911 address?

When you call 911 from your cell phone, dispatch uses latitude and longitude coordinates and your e911 address to determine your location. Your e911 address is your street address, but your cellular carrier may only be transmitting your billing address to the dispatch center. Usually, these are the same. However, when you move or change cell phone carriers, you should update the e911 address using the general settings in your phone. The procedure varies depending on your cellular provider.

8. When would I need a title opinion?

A title opinion identifies the ownership, mortgages, liens, and taxes associated with a property. In addition, a legally binding title opinion is usually the only document that verifies mineral ownership. The North Dakota Century Code requires a title opinion with subdivision applications. A licensed attorney can perform this duty.

9. Who has mineral rights on my property?

See above. Commission a title opinion to determine who has mineral rights on the property. If you plan to purchase property, a title opinion will determine whether you, the future property owner, own the rights, the State of North Dakota owns the rights, or the mineral rights have been leased for oil or gas exploration and extraction. If the mineral rights were leased but the mineral interest has not been used for at least 20 years, the interest is abandoned. The North Dakota Oil and Gas Division regulates oil and gas activity, pursuant to Chapters 32, 38, and 43 of the North Dakota Century Code.

10. What's the process for installing a septic system?

A septic system is required for any building that produces sewage or wastewater, which isn't connected to a community sewer system. All septic systems must be licensed by the North Dakota Department of Health. A permit is required prior to installation or repair work. All work must be completed by a licensed sewer contractor or a certified property owner.

Contact your Health Division (e.g., First District Health Unit) to get started on the application process. To expedite permitting for new development, before you submit your application, make sure you have identified property lines and corners, proposed building corners, the stub out location, utilities, and well sites. NDSU Agricultural Extension provides an excellent guide to individual home sewage treatment systems.

11. What do I do if I want to build a new access to my property?

If you live in a city, chances are the Engineering Department or city consultant oversees the construction of curbs, sidewalks, and driveway aprons. If you want to build or widen an existing driveway and you are doing construction in the public right-of-way, you need to obtain a permit. If you are building a new house, typically the home builder will hire an approved contractor to install the sidewalks and driveways, or will work with the Engineering Department to use their preferred contractor.

If you live in a county, and your driveway or private road provides access to a county road, you will need to obtain approval from the County Highway Department. To build direct access to a State or Federal Highway, you need approval from the North Dakota Department of Transportation.

Things to remember:

- You need a legal, deeded easement to traverse someone else's property.
- Many rural township roads are not maintained by the county. Verify maintenance responsibilities before you construct an access.
- Your driveway should be wide enough and sturdy enough for emergency vehicles and construction vehicles to access your property. Contact the county for design requirements.

12. What constitutes a wetland? Can I legally drain a wetland on my property?

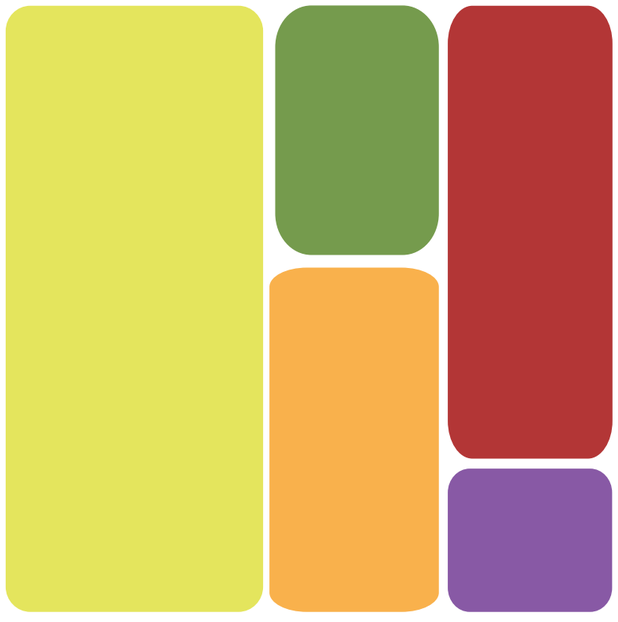
Section 404 of the Clean Water Act (CWA) defines wetlands as "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Essentially, a wetland is determined by the characteristics of the area's hydrology, soil, and vegetation.

Wetlands on private land are not governed by mandate. The current legal consensus is that mandating wetland preservation on private property would be a taking (i.e., it would unlawfully restrict use of the property, and the property owner would have to be compensated for the loss of that use). Note that wetlands which provide habitat for endangered species are protected by the Endangered Species Act (ESA). Additional regulations apply for ESA habitat, but the ESA does not expressly prohibit drainage of wetlands on private property.

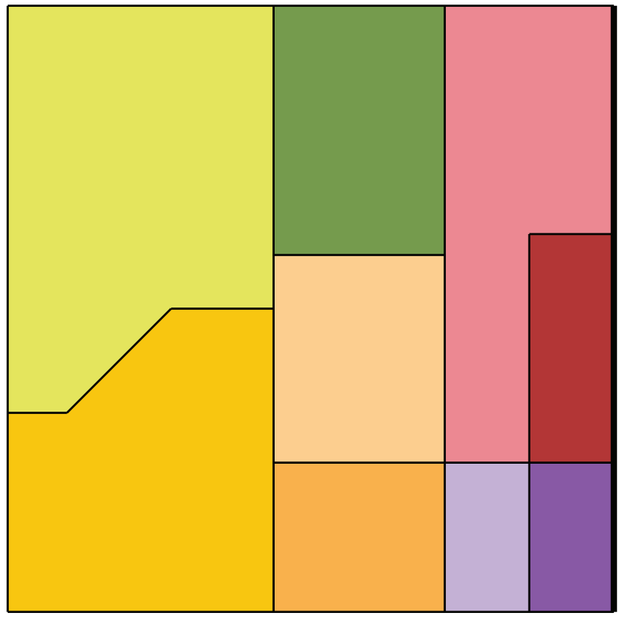
Numerous State and Federal programs incentivize wetlands conservation, including the following:

- NDCC Section 57-02-08.4 allows for a property tax exemption for the conservation of wetlands. Ask your local county for information.
- NDCC Section 61-31 describes the North Dakota waterbank program, which allows property owners to enter into an agreement with the State to receive payment for wetland conservation. Visit https://www.nd.gov/ndda/program/waterbank-program
- The USDA Environmental Quality Incentives Program (EQIP) can provide financial assistance for farmers to implement conservation practice.
- The Federal Swampbuster law can make it expensive to farm a converted wetland.

Land Use Plan



Zoning



Master Plan

Unit 2
Comprehensive Planning

Planning and Zoning Guide

Unit 2 - Comprehensive Plans

What is a Comprehensive Plan?

The North Dakota Century Code defines a comprehensive plan as follows:

The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

The comprehensive plan sets forth a long-term vision for the jurisdiction, which guides day-to-day decisions by local staff and leaders, particularly as related to land use and development. Plans may also describe a vision for related aspects of the community, such as transportation, housing, economic development, or water resources. Most plans include supplementary maps and figures, but these are not required.

A comprehensive plan is the foundation from which a local government makes decisions about future development and change. These decisions about the future usually involve acting in concert with their plan, but may occasionally involve amending their plan.

Each comprehensive plan is defined by the following characteristics:

a. **Community vision.** The plan records the vision for a local community – a city, township, county, or tribe. It serves as a guide for growth and development.

b. **Comprehensive scope.** As its name implies, the plan addresses a variety of topics that are relevant for the community. At its core, the plan must provide a template to guide future land use within the jurisdiction. However, the land use plan can and should be used to support community objectives on a variety of issues, such as housing, economic development, or environmental stewardship. For this reason, comprehensive plans often address a variety of topics.

c. **Conceptual framework.** The plan does not call for specific, immediate action. Rather, it provides context for evaluating future decisions regarding land use and growth.

d. **Long-range.** The plan establishes a vision and goals intended to prepare a community for 10-20 years of growth.

e. **Communication.** The plan is a form communication with the public about the values, goals, objectives, and policies of the local government and its intentions regarding future development and change.

Why is a Comprehensive Plan Important?

Reason #1 The North Dakota Century Code requires that cities, townships, and counties base zoning decisions on an adopted comprehensive plan. (See citations from NDCC on the following pages.)

Reason #2 Basing decisions about zoning, development, growth, and expansion of city infrastructure on an adopted comprehensive plan helps a jurisdiction to act with consistency, preventing actions that are arbitrary. Arbitrary actions are more likely to result in legal challenges and tensions in the community.

Reason #3 The public places a greater amount of trust in public officials who refer to a publicly adopted document, developed with public involvement, in their decision-making process.

Reason #4 The process of preparing a comprehensive plan helps planning commissioners, elected officials, and decision makers learn what is important to citizens. In other words, the process of completing the plan is as important as the plan itself.

Reason#5 The plan galvanizes the leaders and citizens of the community to work towards a shared vision, and is aimed at protecting or improving the quality of life for all.

Sections of the NDCC pertaining to zoning

From NDCC Title 40, Pertaining to Municipal Government, Chapter 40-47, City Zoning

40-47-03. Regulation for zoning made for what purposes.

The regulations provided for in this chapter shall be made in accordance with a comprehensive plan and shall be designed to:

1. Lessen congestion in the streets;
2. Provide for emergency management. “Emergency management” means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment;
3. Promote health and the general welfare;
4. Provide adequate light and air
5. Prevent the overcrowding of land;
6. Avoid undue concentration of population; and
7. Facilitate adequate provisions for transportation, water, sewage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration as to the character of each district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

From NDCC Title 58, Pertaining to Townships, Chapter 58-03, Powers of Township and of Electors of the Township

58-03-12. Basis for township zoning regulations and restrictions.

The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management. “Emergency management” means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

From NDCC Title 11, Pertaining to Counties, Chapter 11-33, County Zoning

11-33-03. Object of Regulations.

These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of nonurban areas.
2. To provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.
4. To lessen governmental expenditures.
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

What goes into a Comprehensive Plan

A Comprehensive Plan can take many forms, ranging from a policy document with no maps, a brief policy statement (as in a strictly agricultural township), a future land use map, or a document containing maps and text that address a full range of topics about a community's past, present, and future.

Some comprehensive plans consist of a policy plan with no maps. While there is nothing wrong with these types of plans, they often do not meet a community's needs when it begins experiencing an increase in development pressure. For this reason, most comprehensive plans address future land use as a main component of a comprehensive plan, and do so by providing maps and graphics that visually communicate the city's physical growth plans.

A comprehensive plan is usually a document containing text and maps that contains the following core chapters or elements:

- Community profile
- Goals, objectives, and policies
- Land use plan
- Transportation plan
- Optional elements
- Implementation plan

The following sections elaborate on these elements.

Community profile

The plan should begin with a summary of existing conditions or historical trends – a profile of the community as it exists today. These conditions are generally categorized as follows:

- Jurisdictional characteristics
- Physical characteristics
- Demographic characteristics
- Public services and facilities.

Jurisdictional characteristics relate to the local government. Each plan should provide an overview map of the study area that shows the boundaries of local jurisdiction (i.e., municipal boundary or county boundary), extraterritorial jurisdictions, and neighboring jurisdictions that might be affected by the plan. For example, a county jurisdictional map should clearly differentiate areas of county jurisdiction from non-jurisdictional areas within the county, including the extents of

all incorporated cities, tribal governments, townships that exercise local zoning authority, and state or federal lands. The jurisdictional element should also reference the existing zoning map.

Physical characteristics describe the natural environment and the built environment. Physical features are features which can be mapped. Many of these data can be obtained from the North Dakota GIS Hub. Example physical characteristics include:

- Existing land use
- Wetlands, water bodies, and floodplains
- Soil characteristics
- Natural features
- Topography
- Historical sites
- Parks and open spaces
- Transportation system (roadways, airport, rail, sidewalks, trails, transit)
- Other physical characteristics unique to the community
- Parcel characteristics

The county assessor maintains comprehensive property records for tax assessment purposes. County tax parcels data (cadastral data) usually contains information about property value, housing type, housing tenure, age of structure, and more. This dataset is typically maintained in shapefile or excel format. It contains parcel ID numbers, so it can be mapped in GIS. Mapping the parcel attributes is often the most efficient way to assess existing land use. It is also useful for locating vacant or underutilized properties.

Demographic characteristics are characteristics of the population. They are essential for understanding the structure of the population and identifying trends over time. Data from the US Census and the American Community Survey are available from American Fact Finder. In addition, North Dakota Compass provides a variety of data that is specific to the state.

Demographic data is often communicated in graphs or charts, as well as text or maps. Many jurisdictions review data for the regional and/or state population in addition to their own as point of reference. Example demographic characteristics include:

- Population
- Age and Sex cohorts

- Race and Ethnicity
- Poverty and Income
- Employment characteristics
- Industry characteristics (wage, sector)
- Housing tenure (ownership versus rental)
- Housing occupancy/vacancy rates

Public services and facilities are institutions and infrastructure that organize or perform essential community activities. They include the following:

- Law enforcement
- Fire department
- Emergency services
- Transit systems
- Recreation facilities
- Educational institutions
- Street/highway maintenance
- Water supply and water distribution system
- Sanitary sewer and waste water treatment
- Storm water management system and retention/detention facilities

Goals, objectives, and policies

One of the first planning tasks is to define the goals and objectives for the plan. All plans should be guided by a set of broad, long-term goals that are determined with public input. Some communities choose to refine the scope of these goals by adding more specific objectives or policies. These terms are often used interchangeably, but there is some distinction.

Goals are broad statements of a community's desires and are directed at the long term. They describe what community members would like to achieve with regards to land use, economic development, housing, and other elements of the plan. Since goals are broad, value-based statements, they do not need to be measurable.

Objectives are more specific statements that further establish a direction for the community. They can be measurable or timebound because of their specificity. There may be multiple objectives that apply to a goal.

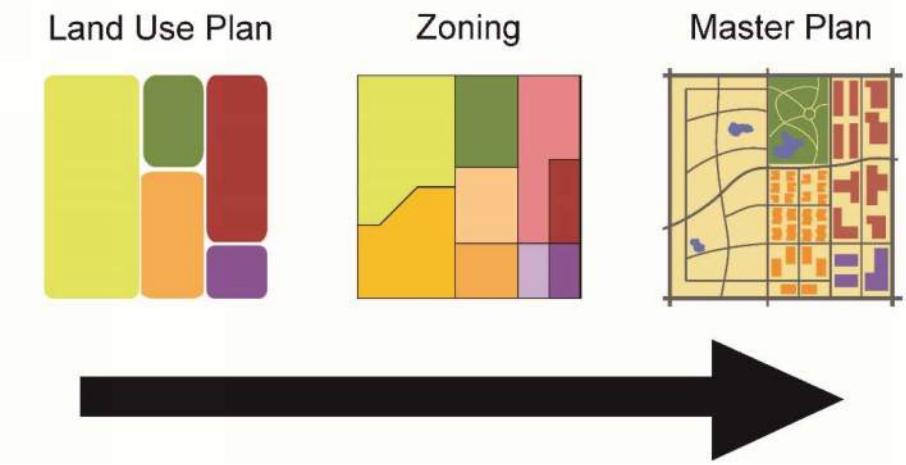
Policies define how the local government will act in different situations. For example, they may reference incentives or regulations, or describe a planning process. Policies are not always used in comprehensive plans because they can be confused with specific actions identified in the Implementation Element (see the end of this Unit).

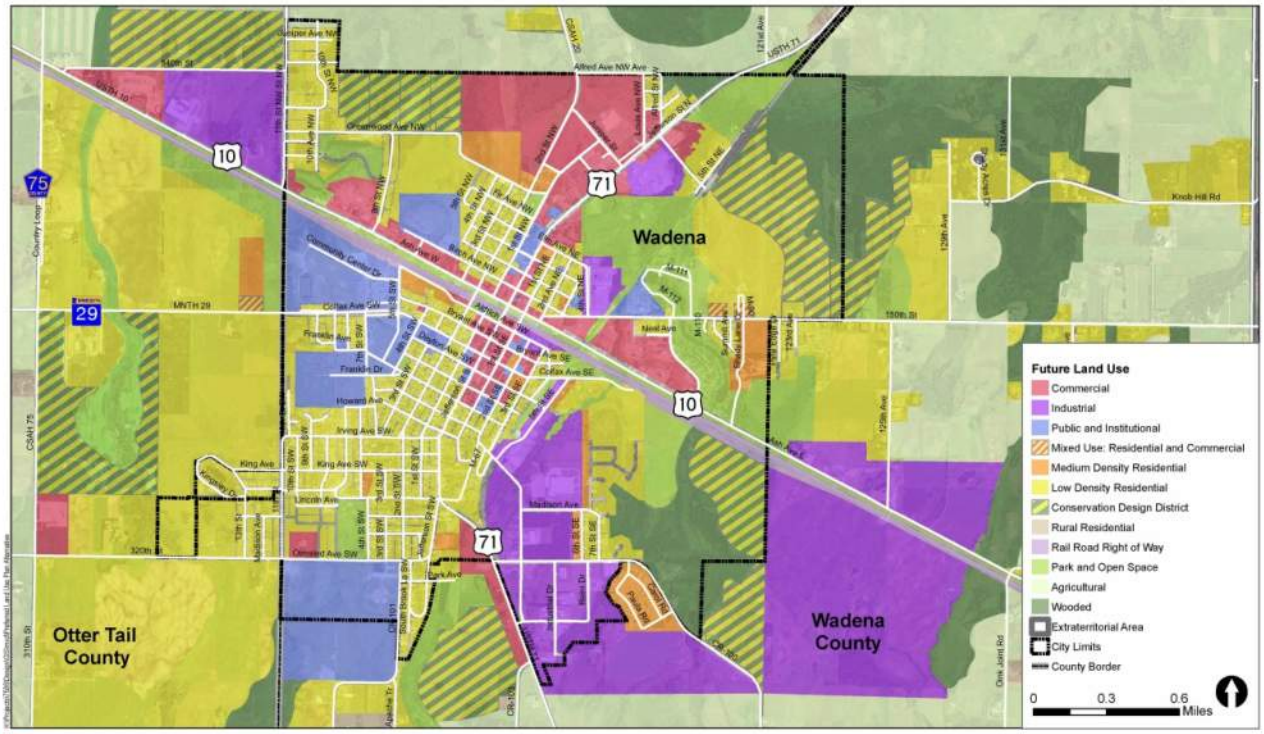
> **Example Goal:** *Development will proceed in an orderly, efficient manner*
>
> **Corresponding Objective:** *Development is encouraged within the growth areas identified in the comprehensive plan.*
>
> **Example Policy:** *The City/County government will target capital improvements and infrastructure toward designated growth areas, and provide a higher level of service to these areas.*

Land Use Plan

Why include a future land use plan?

The land use plan is the fundamental component of the comprehensive plan. The land use plan impacts all other aspects of planning, from housing to transportation to economic development. As such, it is one of the primary tools for implementing the community's comprehensive vision.





Preferred Future Land Use Plan
Wadena Comprehensive Plan
City of Wadena, Minnesota

Figure 1

Other benefits of the land use plan include:

- The future land use plan becomes the guide for future zoning decisions. It addresses land use compatibility and land use transitions that improve land use compatibility that protect existing property investments.
- Completing a land use plan helps a community think through the process of city growth.
- The plan provides opportunity to coordinate future land uses with infrastructure planning.
- The plan communicates expectations for future development to prospective residents, businesses, and developers about both the land in which they are interested, and adjacent land.
- The process of completing the plan and helps establish a vision for the future of the community.
- The process of completing the land use plan helps to identify growth area priorities.

- The land use plan can identify existing areas of development that a community wants to redevelop with a different land use over time.
- The land use plan helps a community quantify a jurisdiction's POTENTIAL for growth. Since existing physical conditions, such as water, floodplain or topography, are not always suitable for development, a community can determine the potential number of future acres within each land use category. That information can be translated to the number of households and potential population growth. Similarly, commercial and industrial acreage can be calculated along with estimates of the number of potential resulting jobs.

Land Use Planning Considerations

Community planners should consider the following:

a. Address the **entire jurisdiction**, even if most of the future designation is agricultural. This establishes your ability to direct growth to areas where you can serve it best.

b. Clearly show the most up-to-date **boundaries** of the jurisdiction on the land use map.

c. Cities need to identify the boundaries of their **extraterritorial area (ETA)** and include that area in their land use plan. The map should show the ETA boundaries, as defined by the NDCC, or as agreed upon between the city and the township or county.

d. Townships and counties also need to show city boundaries and ETA boundaries for municipalities within their jurisdiction.

e. Is it acceptable to show **Agricultural** land use designation on a future land use plan?

   Absolutely. County and township plans will have a majority of agricultural area, while city plans typically have a smaller amount of future agricultural area in the outer portions of their ETA. This may be the manner in which the community designates the **urban growth boundary** for a certain number of years. An urban growth boundary identifies the first tier of growth within which the city can reasonably expect to provide services within a certain period of time (usually no more than 15 years).

f. Show future land uses on the map using a **standardized color scheme**. Some plans will use a more detailed stratification of colors, but the general categories are shown below:

   - Yellow = Low Density Residential

- Orange = Medium or High Density Residential
- Red = Commercial
- Green = Park and Open Space
- Tan, gray or a different shade of green = Agricultural
- Blue = Public/Institutional
- Purple = Industrial

g. **Land Use Transitions** - How exact do the lines between one land use and another need to be?

   In certain situations, a hard and fast change from one land use to another is important, such as from one side of a roadway to another, or when the land use transition corresponds to an existing land use.

   In other cases, the presence of a land use transition is more important than the precise location of where that transition takes place. In these areas, the transition can be adjusted to work with a more detailed master plan or development proposal for a certain area.

   Keep in mind that once the location of the land use transition is established, it will influence the location of the transition on adjacent properties.

h. The relationship to **existing and future roadways**

   Avoid placing residential land uses (especially low density residential uses) next to existing or future highways and urban arterial roadways. If this cannot be avoided, you may want to consider showing a buffer on the plan, such as a tree planting easement or greenway/buffer along the corridor.

   Incompatible land uses along an existing or future roadway corridor often result in public opposition to future roadway widening or the extension of a roadway, making it difficult for the community to provide the needed roadway capacity and connectivity.

i. **Acreages of Land Uses** – When establishing the acreages of land uses on the plan, it is important to consider that, in a city environment, approximately 25% of the acreage typically becomes public infrastructure (street right of way, other public works, etc.).

Typically, you can expect the following amount of development for each acre of land use:

Land Use	Description	Amount of Development Per Acre (*approximate*)
Rural Residential	Single Family	1 Dwelling Unit/Acre or multiple acres
Low Density Residential	Single Family, Twin Homes	3-8 Dwelling Units/Acre
Medium Density Residential	Townhomes, Low-Rise Condominiums	8-14 Dwelling Units/Acre
High Density Residential	Apartments, Condominiums	15 or more Dwelling Units/Acre
Commercial (retail sales and service)	Big box retail, retail sales and service, strip commercial, clinics, offices, hotels, etc.	10,000 square feet per acre
Office	Office buildings, medical offices, service providers	10,000 to 20,000 square feet per acre
Industrial	Office/Showroom, manufacturing, warehouse, truck terminal, etc.	4,000 to 15,000 square feet
Oil Field Industrial	Pipe yards, truck parking areas, etc.	Little to no building square footage – outdoor storage only

Keep in mind that these are typical ranges for developments in North Dakota. In large urbanized areas, it is normal to see higher levels of multiple family, commercial, office, and industrial development per acre. On the other end of the spectrum, rural residential developments often consist of an acre or more per residence, and oil related industrial development may consist of nothing but outdoor storage, with little to no building square footage.

Build-thru Concept

The comprehensive plan provides a blueprint for managing growth in an orderly, efficient manner. In North Dakota cities and towns, new development usually occurs on the urban/rural fringe. Fringe growth areas should be carefully managed through consistent application of planning and zoning controls, so that cities can extend municipal services and utilities in a cost-effective manner. One planning strategy for fringe areas is the build-thru concept.

The build-thru concept allows residential development of a rural nature to occur in areas that are not likely to be provided with urban services within the timeframe of the comprehensive plan (typically beyond 10 years). At least 50 percent of **net developable acreage** is preserved for future development. Preserving half of the developable land within each tract or section enables the city to extend urban roads and utilities in the future, and preserves the possibility that future development can occur at densities which are sufficient to finance the infrastructure extensions. This open space can continue to be used for agriculture or recreation while it is held for future development.

The initial residential developments are set up with on-site water (in some cases could be rural water) and wastewater systems (septic systems), but are designed in a way that gives landowners the opportunity to hook up to future city services when they become available. The minimum lot size in which a private wastewater treatment system may be installed in 40,000 square feet (0.91 acre), per North Dakota Century Code. The initial lots can be larger than 40,000 square feet, but planners should keep in mind that the intent is to ultimately integrate residential development of an urban character, which is typically 3-5 units per acre, so it is good practice to limit the size of the initial lots, unless the community thinks they will be subdivided in the future.

The build-thru plan must address several points. First, the planning process must emphasize communication. When a city creates a build-thru plan and develops new zoning or subdivision regulations to implement the plan, it should work closely with the county and/or township to ensure that staff have a solid understanding of the intent of the build-thru district and the land use controls that are needed to implement the plan. If any part of the build-thru area is located within the outer half of the city's extraterritorial area (ETA), the county and/or township would have joint authority to exercise zoning and subdivision controls.

Second, the build-thru plan must clearly define what constitutes **net developable acreage**. City ordinances should strictly limit development on wetlands, floodplains, and steep slopes. These are "primary" avoidance areas that should not be included when calculating the 50 percent requirement. There may also be "secondary" avoidance areas, such as coulees, that are not regulated by state or local ordinance, but which the community would like to conserve. It is important to clearly define

Gross acreage - *the total acreage in a tract or section.*

Non-developable acreage - *All acreage which is deducted from gross acreage and excluded from build-thru calculations (wetlands, floodplains, etc.).*

Net developable acreage – *the acreage that remains when non-developable acreage is deducted from gross acreage. At least half of the net developable acreage must be conserved for future development.*

Conserved development area – *the fraction of the build-thru area that is conserved for future development.*

**If you have GIS capabilities, calculate the non-developable acreage, net developable acreage, and conserved development area for each section in the build-thru area. Provide this information in your comprehensive plan so landowners/developers are aware of opportunities and limitations when they apply for development.*

these criteria so that all stakeholders understand which areas are developable and which are not.

Finally, to implement the build-thru plan, local governments must adopt supportive land use controls, which are enacted through zoning and subdivision regulations. A local policy framework could address the following:

a. To coordinate each development proposal within the build-thru framework, require applicants in the build-thru zone to illustrate an **area plan** for the entire tract or section that is impacted by the application. This plan should clearly show the land which will initially be developed, all **non-developable acreage**, and the land to be conserved for future development. These areas should be consistent with areas as shown on the future land use plan. The **area plan** should also show the relationship of the proposed build-thru development to adjacent properties, and address how the proposal relates to or influences existing agricultural operations and prospective build-thru proposals on those properties. It should describe how conservation/agricultural areas will be used and managed until the remaining land is filled in with urban development.

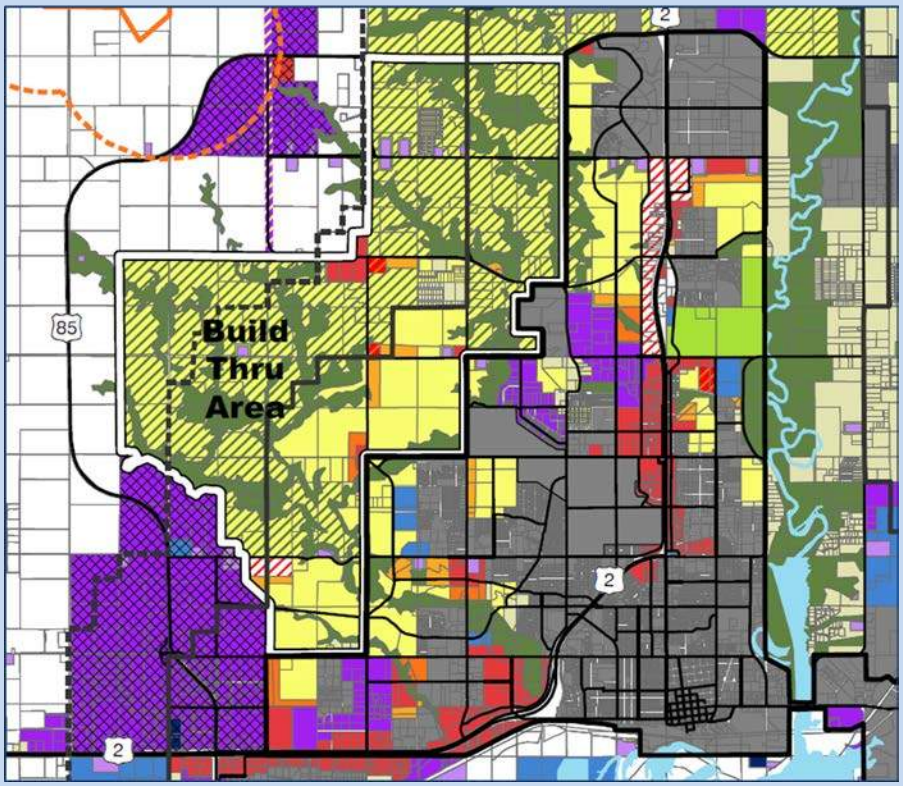
b. To facilitate future extension of city utilities, require any plat in the build-thru zone to demonstrate (visually on maps) that future water and sewer lines can be provided to serve urban development.

c. To maintain open pathways for future development, require that the **conserved developable area** within the section is entirely contiguous, or set a minimum acreage requirement for each contiguous developable area.

d. To maintain developments and developable land, establish requirements for homeowner associations and/or covenants, conditions, or restrictions that will run with the land and be tied to the subdivision.

e. To ensure the plan works as intended, stipulate the type and density/intensity of uses (medium density residential, for example) that are ultimately expected for the areas which are identified for future urban development, and specify that these areas can only be further subdivided to accommodate those uses.

The City of Williston used the build-thru concept in its 2017 Comprehensive Plan Update. It created a new land use category to apply this method. The Comprehensive Plan specifies that build-thru areas will likely be zoned as R1-E (Rural Estate District) and PUD (Planned Unit Development Overlay). The Rural Estate District is suitable for initial low-density development, while the PUD Overlay provides the necessary flexibility for transitioning to more urban-style development. Williston's future land use map identifies the build-thru category in a yellow/green hatch, and adjacent non-developable areas in green. These areas are deducted from the set-aside calculations.



Main Street Initiative

Throughout his campaign and first term in office, Governor Doug Burgum has promoted the Main Street Initiative as centerpiece to his agenda. A key message of the Initiative is that downtown plays a central role in shaping the quality of life in communities across North Dakota. Vibrant communities set the stage for economic prosperity, providing critical amenities that make North Dakota more competitive at attracting and retaining a 21st Century workforce.

The Main Street Initiative encourages cities to invest in their "main street" – i.e., downtown. This is not a new concept for larger communities. For example, Dickinson, Minot, and Williston each have a zoning district that encourages mixed-use, higher-density development in Downtown. Thus, the Main Street Initiative may

be more valuable to smaller communities that are underutilizing their downtown areas, and which face pressure to approve fringe development. Utilizing existing infrastructure and encouraging economic development downtown is a smart move for smaller communities that have difficulty financing infrastructure expansion and maintenance.

Municipalities' comprehensive plans can address downtown/Main Street in the land use plan, the transportation plan, an economic development chapter, or a special downtown element. Note that the Main Street Initiative does not provide a new source of funding, but that it encourages communities to leverage existing state and federal resources to improve their downtowns.

Program Goals

Three pillars constitute the framework of the Main Street Initiative:

1. Healthy, vibrant communities
2. 21st Century workforce
3. Smart, efficient infrastructure

The first pillar refers to the elements that create a sense of place and opportunity – arts and culture, diverse dining and retail, streetscaping, beautification, etc. The second pillar focuses on economic goals – workforce development, entrepreneurship, and economic diversification. The last pillar describes financial and efficiency goals. Investments should be people-focused, data-driven, and based on sound fiscal policy.

Implementing Main Street Improvements through Planning and Zoning

With the State's renewed focus on urban planning, downtown takes on a larger role in the comprehensive plan. Your plan for downtown should reference the three pillars of the Main Street Initiative, identify specific goals and objectives for downtown, and implementation measures to achieve the goals.

Vibrant downtowns are attractive and lively. More than a collection of buildings and streets, they are defined by human activity. Think of the "18-hour city" – downtown should contain a thoughtful mix of land uses, including a variety of businesses with staggered operating hours, and housing to support activity throughout the day, Monday through Sunday. The comprehensive plan can define steps to work toward this mix. For example, your city code may need to be modified to become more flexible by allowing a number of different uses (could be commercial and residential) by right/without a public hearing. Perhaps the code could be amended to support temporary businesses, such as seasonal operators or street vendors, that need to test the waters before they make a larger investment.

The comprehensive plan could include design recommendations that address building facades, historic buildings, streetscaping, or alleyways. It should prioritize funding for downtown improvements and identify potential state, federal, and local

revenue sources. Remember, focusing on downtown in the comprehensive plan improves your chances of securing grants to implement the plan. Further, the process of completing the plan can build support for local investment tools, such as a self-funding business improvement district or a local option sales tax.

Street Mix (streetmix.net) *is a simple, free web tool for visualizing right-of-way alternatives and generating discussion. You can use the tool to modify dimensions for travel lanes, parking, sidewalks, and more. Even slight reductions to vehicle lane widths can greatly improve the look and feel of a place, improving walkability and increasing pedestrian activity.*

There are other strategies to promote pedestrian activity – perhaps the public right-of-way could be reconfigured with a wider sidewalk. Street maintenance is an opportunity not just to reconstruct, but to reconfigure the roadway to better accommodate pedestrians. Communicating your objectives for the look and feel of Main Street in the comprehensive plan will facilitate coordination with the primary highway jurisdiction, typically the North Dakota Department of Transportation (or county).

Quantifying the pros and cons of development alternatives provides a rational basis for planning. One of the objectives of the Main Street Initiative is to further the use of the data to influence local plan-making. The degree to which each community incorporates study in their planning efforts will depend on the size of the community and the resources it has. For example, the plan could review property valuation trends, examine or recommend a downtown market study, review downtown parking needs and utilization, or analyze local business receipts. Reference other plans as needed. As the Main Street Initiative gains momentum, there will be more local examples to serve as a planning model for your community.

There are several tools to implement downtown revitalization efforts, including the following:

- North Dakota Renaissance Zone Program – this program combines state and local tax benefits to incentivize downtown development and revitalization.
- Tax Increment Financing (TIF) – this tool capitalizes future property tax benefits (the incremental increase in value that results from development) to finance up-front development costs. TIF is intended for redeveloping "blighted" properties, or financing development that would not occur but for the application of the tool.
- Historic preservation – the State Historical Society of North Dakota offers rehabilitation tax credits for depreciable buildings which are listed on the National Register of Historic Places, either individually or as contributing buildings within a Historic District.

These are just some of the financing options that can be used to implement the Main Street Initiative. The comprehensive planning process provides an opportunity to survey the public about their desires for downtown and discuss potential implementation tools at a high level.

Transportation Plan

The transportation plan is another essential component of the comprehensive plan. Your community's future transportation system will be heavily influenced by future land use, and must be designed to serve the future land use arrangement that is depicted in the comprehensive plan. The scope of the transportation plan depends on the size of your community, its potential for growth, the unique needs of your community, and your budget. The NDDOT's Local Planning Resource Guide is a good reference.

At a minimum, the transportation plan must identify desired improvements to existing roadways and depict future street connections into new growth areas. Other topics include:

Functional Classification – Roads are characterized by their function. Arterial roads move high-volume traffic across long distances at high speeds. Local roads move low-traffic volumes across short distances at low speeds. Collector roads funnel traffic from local roads to the arterial system. Roadway function usually corresponds to adjacent land use (i.e., local streets serve residential neighborhoods). The transportation plan should include maps of the existing and proposed functional classification for your roadway system. Calculate the total miles and percent mileage for each roadway type. This will help you assess your construction and maintenance

needs, prioritize a list of improvements, and secure right-of-way for future projects. The Federal Highway Administration provides the following guidelines for functional classification:

- Principal Arterial: 3-11% of system total
- Minor Arterial: 2-6%
- Major Collector: 8-19%
- Minor Collector: 3-15%
- Local: 62-74%

Access Management – Access management refers to access spacing guidelines that are designed to enhance travel safety. These guidelines vary for arterials, collectors, and local roads. Each situation will be different, depending on traffic volumes, turn lanes, traffic control, etc. For example, driveways should not be placed too close to intersections, so an area of commercial land use should be large enough to allow enough distance between an intersection and property access.

Trails and Sidewalks – Trails and sidewalks are an important piece of the travel network. The transportation plan should identify existing pedestrian and bicycle facilities that need repair, and desirable future facilities to link with the existing system and serve new growth areas.

Traffic Volumes/Traffic Forecasting – Many transportation planning decisions hinge on traffic volumes. For example, traffic volumes are used to demonstrate that a signal is warranted. They give an indication when gravel roads should be converted to pavement (and sometimes vice versa). Traffic forecasts provide insight to inform decisions regarding roadway expansion and road diets. All county transportation plan and most city plans should map existing traffic volumes and, if possible, future traffic forecasts.

Further study – The comprehensive plan cannot possibly cover every issue, but it can set the stage for additional studies to develop the transportation plan in greater These specific studies can be completed following adoption of the plan.

- Corridor studies
- Traffic control studies
- Alignment studies
- Traffic impact studies
- Feasibility studies

Other Plan Components

Other Plan Components can include, but are not limited to:

a. Identify existing pedestrian and bicycle facilities that need repair, and desirable future facilities.

b. Community Facilities and Services

- Water treatment, waste water treatment, utilities
- Community buildings, public buildings
- Public services (law enforcement, fire protection, public works, planning, administration, etc.)

c. Parks and Open Spaces

d. Nature and Environment

e. Housing

f. Cultural and Historical Resources (historical neighborhoods, buildings, historical sites)

Implementation Plan

The implementation plan identifies the following:

- Specific actions to achieve goals and objectives
- Time frames for each step (short-range, medium-range, and long-range)
- Agencies, departments, and collaborations needed to implement the plan

Other Types of Plans

Master Plans (a term used in the ND Century Code)

This is an outdated term for a Comprehensive Plan. These days, master plans usually refer to a more detailed physical layout of an area of future development or redevelopment (e.g. a downtown master plan).

Growth Management Plans (can serve the purpose of a Comprehensive Plan)

Communities that do not have a Comprehensive Plan may wish to complete a growth management plan, which simply addresses the physical growth of the community through the completion of a land use plan, and ensures that priority

growth areas can be served with utilities without insurmountable expenditures of costly infrastructure components.

A growth management plan guides the city in their zoning decisions, and should be adopted with a resolution identifying it as the city's comprehensive plan or as a component of an existing or future comprehensive plan.

The ability of the water treatment and waste water treatment facilities to accommodate future growth would also typically be documented in a Growth Management Plan.

Strategic Plans

Strategic plans are typically aimed at a specific topic or geographic area. Examples could include an airport area development plan, a job growth plan, a corridor study, a boulevard tree replacement plan, a specific type of housing strategy, or a detailed development or redevelopment plan for a certain area. Any issue or effort that requires organization, stakeholder input, an implementation plan, and support from the public and elected officials could be examined in a strategic plan.


THE PRESERVE: MASTER PLAN
COM/OFFICE
6.9 Acres ±
COM/OFFICE
6.0 Acres ±
24.8 Acres ±
COM/
OFFICE/MF
8.2 Acres ±
Sheyenne River
24TH AVE E
POND
29th Ave E.
ELEMENTARY
SCHOOL
SITE
PARK SITE
4TH ST E
2.2 Acres ±
11 Acres ±
Veterans Blvd
29th Ave E.
8th St. E
7th St. E
30th Ave Ct E.
6th St. E.
POND
South Pond Court
31st Ave E
6th St. E
7th St. E
8th St. E
5th St. E
15.37 Acres ±
Foxtail Drive
3.01 Acres ±
32nd Ave E.
KEY
LAND USE
ACREAGE (Approx.)
Commercial
75.2 Acres
High Density Residential
13.9 Acres
Medium Density Residential
16.5 Acres
Single-Family Residential
90.8 Acres
Park and Open Space
15.8 Acres
School
10 Acres
Pond
15 Acres
Signature Collector Street
Parcel
City Boundary
SRF
Consulting Group, Inc.
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Unit 3
Jurisdictional Mapping

Planning and Zoning Guide

Unit 3 – Jurisdictional Mapping

Extraterritorial Zoning Authority (ETA/ETJ)

North Dakota cities are allowed to extend their zoning authority beyond their corporate boundaries for a distance proportional to their population, to an area of extraterritorial authority (ETA) or extraterritorial jurisdiction (ETJ). (These terms are equivalent, and both are used in North Dakota.) The purpose of this extended authority is to allow communities to grow in an orderly manner. The outer half of the ETA is an area of joint jurisdiction. The distances defining the extent of the ETA are measured from the corporate boundary. The distances are defined in Chapter 40-47-01.1 of the NDCC (see below).

- Cities with up to 4,999 residents = one mile (the outer half-mile is in the joint jurisdictional areas)
- Cities with 5,000 to 24,999 residents = two miles (the outer mile is in the joint jurisdictional area)
- Cities with 25,000 or more residents = four miles (the outer two miles are in the joint jurisdictional area)

From NDCC Title 40, Pertaining to Determination of the ETA, Chapter 47-01.1

1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:

(1) One mile [1.61 kilometers] if the city has a population of fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.

(2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.

(3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.

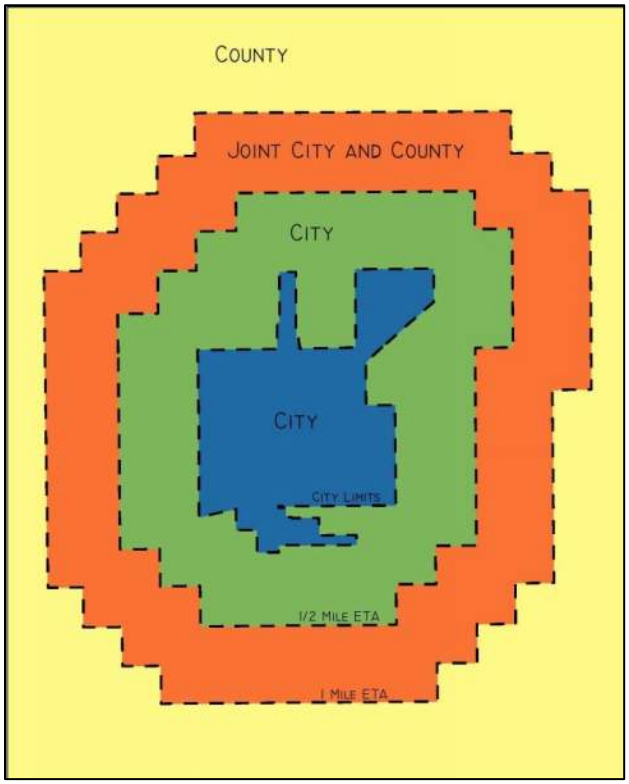
In the joint jurisdictional area which is the outer half of the ETA, authority is shared with the "other political subdivision". The other political subdivision is usually a county, but it could also be an organized township that has zoning authority. The other political subdivision is not another city.

From NDCC Title 40-47-01.1.(11): As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

There is flexibility to adjust locations of the jurisdictional boundary between the city and the other political subdivision. Both must agree to do so.

From NDCC Title 40-47-01.1.(1)(c): The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.

A city has sole zoning jurisdiction over the inner half of the ETA. In the outer half, that authority is shared. Before our state legislature adopted the joint jurisdiction rules, cities had sole jurisdiction over the entire ETA and had approved subdivision plats throughout it. The new law allows cities to retain their zoning authority within those sections of land (the entire square mile) where they had approved a plat.



From NDCC, Title 40, Chapter 47-01.1

40-47-01.1.(1)(b): Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.

-and-

40-47-01.1.(3): Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation.

Currently, if a new plat is proposed for one of those sections in the outer half of the ETA where an earlier plat had been approved by the city (before May 2009), the determination on that new plat is a joint effort between the city and the other political subdivision (county or township). The city is the lead jurisdiction and will review the proposed plat, process it through the city planning commission and city council or city commission.

From NDCC Title 40, Chapter 47-01.1

. . . For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction.

The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of
the city is final. . .

After a vote of the city's governing body, the city will notify the other jurisdiction (county or township) of the city's decision. If the county or township disagrees with the city's decision, they have 30 days to request negotiation. If negotiation is not requested, the city's decision stands.

This same process also applies to other types of development applications or zoning proposals such as conditional or special use permits, variances, and any other zoning or development related issue that is covered by a city's zoning ordinance. The city has full zoning authority, plat approval authority, and zoning enforcement authority in those sections of land where they had approved a plat (or a site plan) prior to May of 2009. The city receives applications, issues permits, and collects fees for them.

But not all of the sections of land within the outer half of the ETA had a city-approved subdivision plat (or site plan) prior to May of 2009. In those sections, the county or township has zoning authority and is the lead jurisdiction. The same process applies.

If a new plat is proposed for one of those sections in the outer half of the ETA where an earlier plat (or site plan) had not been approved by the city before May 2009, the determination on the new plat is still a joint effort between the city and either the county or township. But the county or township is now the lead jurisdiction. They will review the proposed plat, process it through their planning and zoning commission and their elected board.

From NDCC Title 40, Chapter 47-01.1

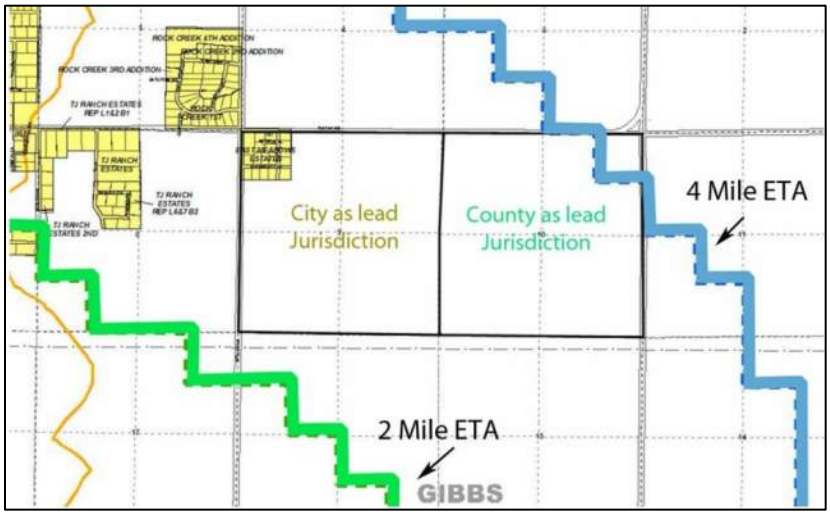
. . . For a decision to be final, the other political subdivision shall give written notice to the city.

The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. . . .

After a vote of the governing body of the county or township, the city will be notified of the decision. If the city disagrees with the decision, they have 30-days to request negotiation. If negotiation is not requested, the county or township decision stands.

Just as cities have full zoning authority on sections of land in which they had approved developments prior to May of 2009, counties and townships have full zoning authority over the remainder of the sections in the outer half of the ETA.

Area of Joint Jurisdiction



If one political subdivision disagrees with a decision of the other political subdivision and requests negotiation as described above, it triggers a mediation process and the dispute is submitted to a committee. A governor-appointed mediator presides over the committee and if they cannot achieve consensus, the dispute will be resolved by the county commission.

Expanding a City's Extraterritorial Zoning Authority

From NDCC Title 40, Chapter 47-01.1

40-47-01.1.(8): For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.

As the population of a small city grows over 5,000 people, that city can extend its ETA from one to two miles. As the population of a medium city grows over 25,000, that city can extend its ETA from two to four miles. Recall that the size of the ETA is proportional to a city's population. A city's population is determined by the census.

When a city is getting ready to extend its ETA, they will rezone the area that has been under the jurisdiction of the county or in some cases, a township. The zoning will change from the county (or township) zoning designation to the city designation. Areas that currently fall under county Agricultural District Zoning can be converted to city Agricultural Zoning, or some other zoning district if appropriate. The zoning change will mean that the rules will change. In cases where the county (or township) has not established zoning for an area around a city, the new zoning can become official by the adoption of an ordinance or resolution. In cases where the county has established zoning around the city, a zoning transition meeting must be held as indicated below:

From NDCC, Title 40, Chapter 47-01.1

40-47-01.1.(5): A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.

Remember, the size of the ETA is proportional to the city's population:

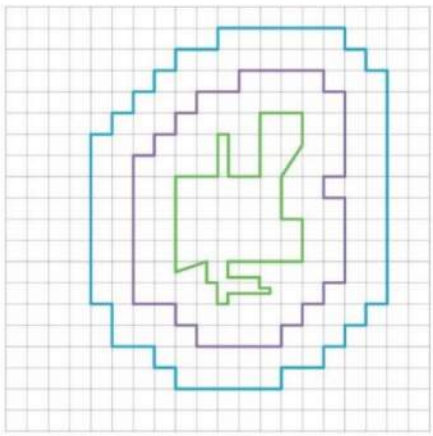
Cities with up to 4,999 residents – *1 mile (the outer ½ mile is in the joint jurisdictional area)*

Cities with 5,000 to 24,999 residents – *2 miles (the outer mile is in the* joint jurisdictional area)

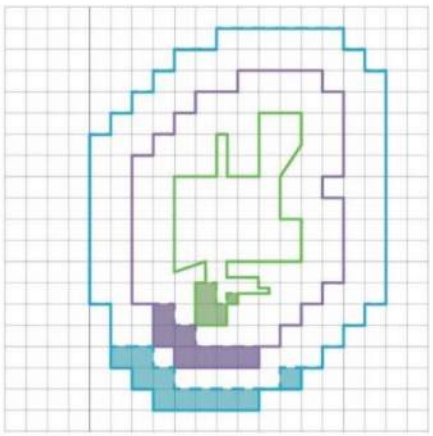
Cities with 25,000 residents or more – *4 miles (the outer 2 miles are in the joint jurisdictional area)*

If a city's ETA is expanded as a result of population increase after May of 2009, the area that has been under joint jurisdiction will now be under the sole jurisdiction of the city, and a new area of joint jurisdiction will be created farther out. In that new area the county or township will be the lead jurisdiction as described earlier.

Incremental expansions of the ETA can occur to correspond with annexations because the ETA is defined as a distance outward from the corporate boundary. Note, however, that the ETA is not automatically revised as a consequence of annexation, unless this is defined by resolution. Instead, the ETA should be explicitly defined at the time of annexation, during which the city and county are already engaged in open discussions about the ramifications of annexation. The process for revising the ETA boundary is similar as the process for initially defining the ETA boundary, discussed in the following section.



Original City Limits and Extraterritorial Area



New City Limits and Extraterritorial Area after Annexation

Note that for ETA zoning considerations, when you are dealing with strip annexations, which can connect a remote subdivision to a city with a narrow strip of land (usually along a roadway), that strip must be at least 100-feet wide as required below.

From NDCC, Title 40, Chapter 47-01.1

40-47-01.1.(9): When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.

Defining the ETA Line

The extent of the ETA is determined by a distance outward from the corporate boundary (also known as the corporate limits or city limits). That distance is either one mile, two miles, or four miles, depending on the city's population.

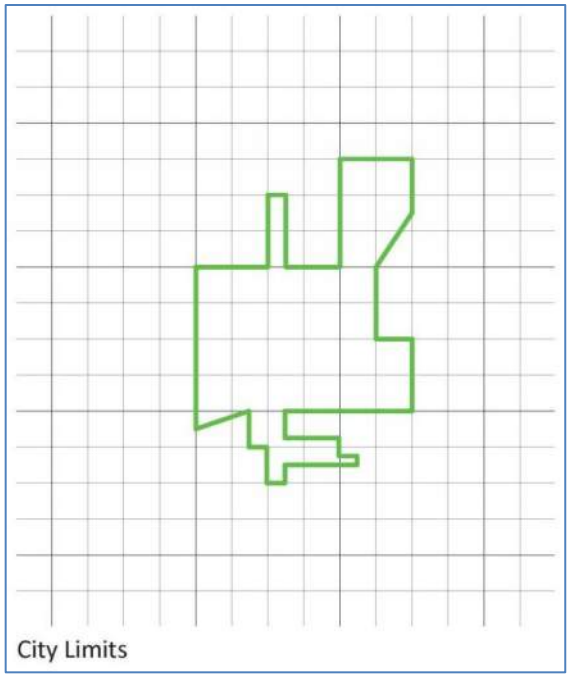
Rarely will the corporate boundary be a perfect rectangle. If that were the case, defining the ETA would be simple. The NDCC establishes the method for defining the ETA line for irregularly shaped corporate boundaries.

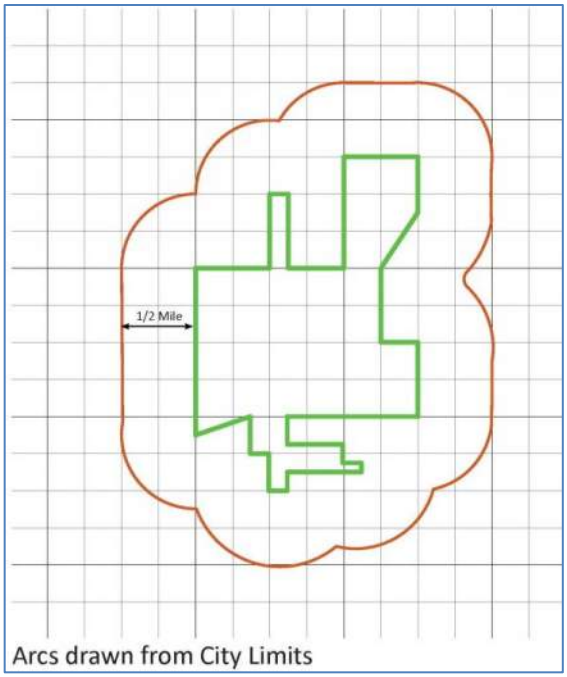
From NDCC, Title 40, Chapter 47-01.1

40-47-01.1.(1)(a): A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance [*one, two, or four-miles*] of the corporate limits of the city:

40-47-01.1.(10): For the purposes of this section, a section or a quarter quarter section is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

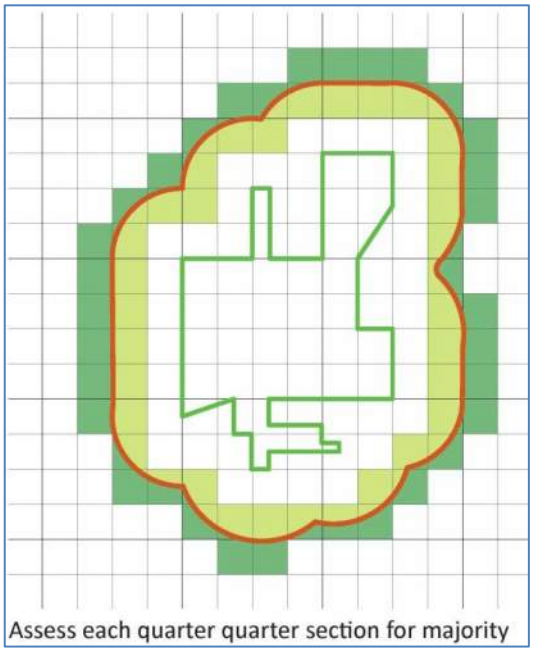
1 From each outer corner of the corporate boundary, and at midpoints between corners of the corporate boundary, an arc of prescribed length will be drawn. The map upon which the line is drawn will show all quarter quarter sections (square 40-acre tracts) within each square mile of land.


City Limits



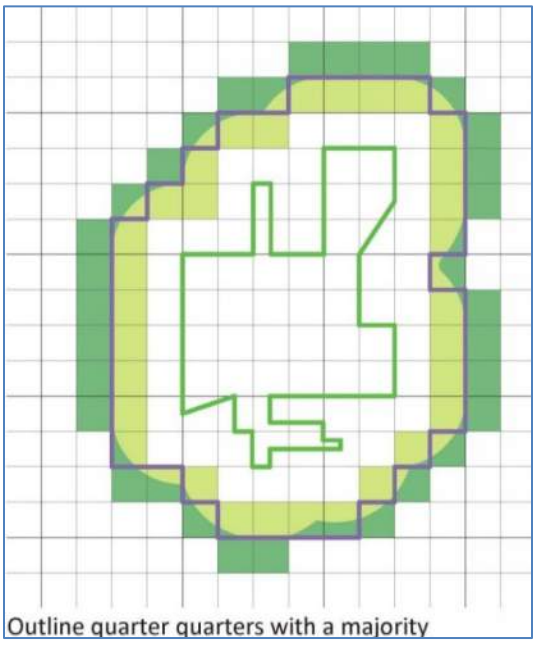
Arcs drawn from City Limits

2 As the arc passes through each 40-acre tract, it will usually be easy to see which side of the line contains the most acreage of that tract.



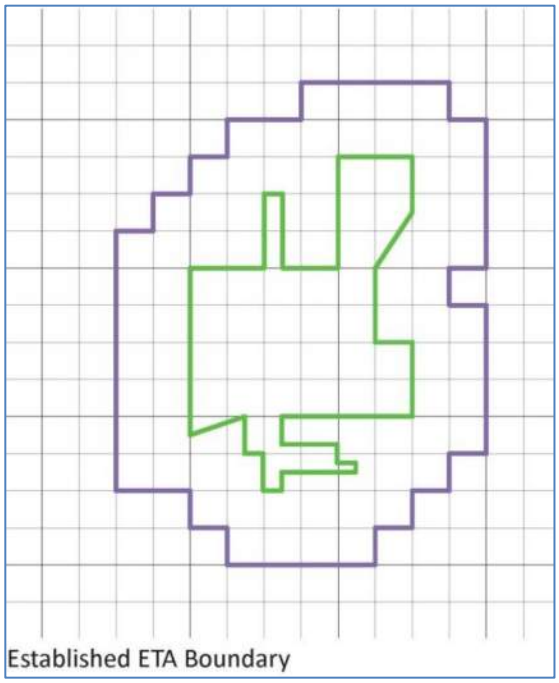
Assess each quarter quarter section for majority

3 If the majority area is outside the line, the entire 40-acre tract will be outside the ETA. If the majority of the area is inside the line, the entire 40-acre tract will be inside the ETA.

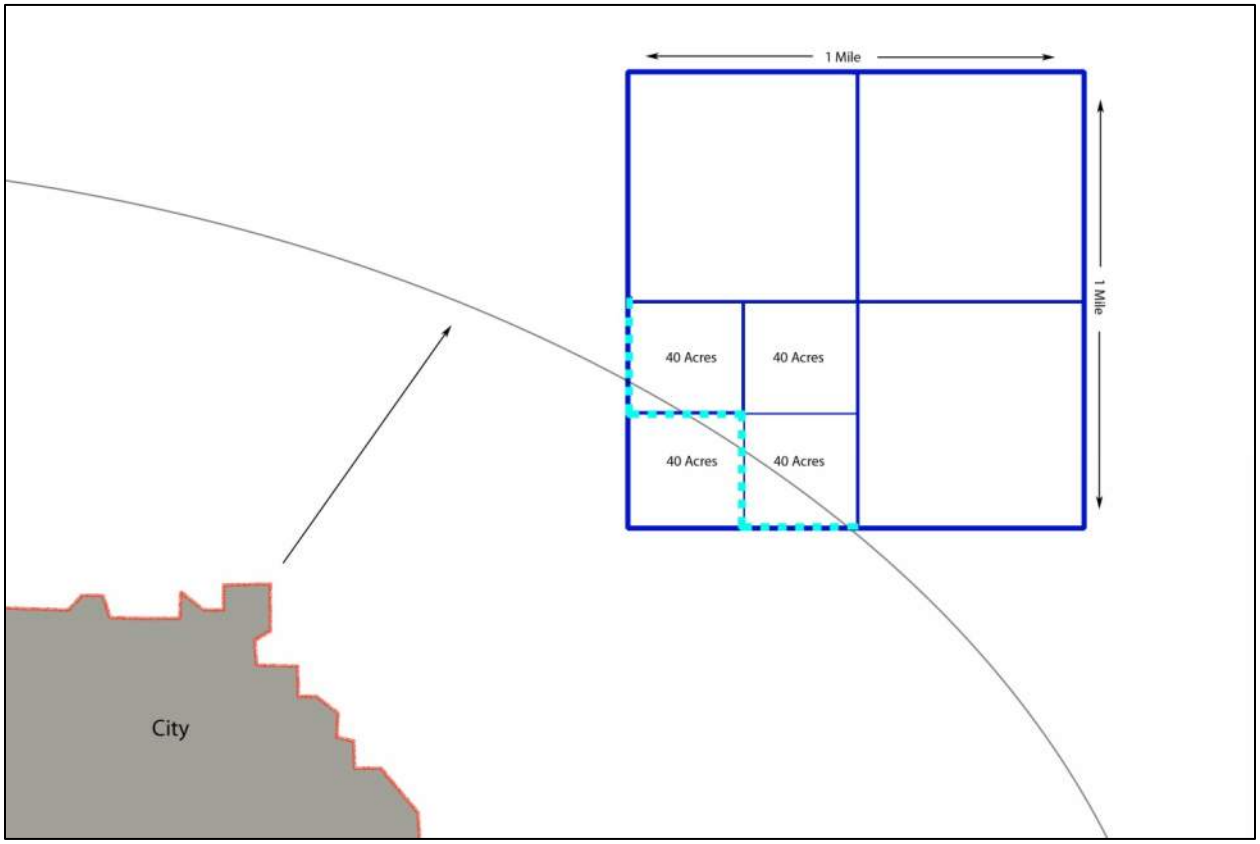


Outline quarter quarters with a majority

4 The ETA boundary for the municipality is now determined, and can be mapped.



Locating the Line



Joint jurisdiction requirements for the outer half of the ETA require definition of the ETA midpoint line. That line is defined in the same way as explained above.

After the 40-acre boundaries are defined and the ETA line is initially established, check where those lines pass through platted subdivisions. If the line cuts through a platted lot in a subdivision, the jurisdiction for that entire lot will be determined by which side of the line the majority of that lot is located in. A subdivision lot cannot straddle an ETA line, the entire lot will be in one jurisdiction.

From NDCC, Title 40, Chapter 47

40-47-01.1.(4): If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

There will be rare instances where it is very difficult to determine which side of the line a lot or tract belongs on. The line will seem to split the lot evenly with equal areas on each side. In those cases it will be beneficial to enlist the services of a registered professional land surveyor.

Overlapping Extraterritorial Area

Cities that are close to one another may find that their potential ETAs overlap. This has been the case in several North Dakota communities, such as Bismarck and Lincoln, and Fargo with West Fargo, Frontier, Reiles Acres, North River, and Briarwood. In these cases, the cities have created ETA agreements that establish the boundary of ETA jurisdiction between the communities. The ETA agreements need to be adopted and signed by elected officials from each community.

Once an ETA agreement has been established, it is generally understood that the ETA boundaries represent the future growth areas of each city respectively. See the following NDCC language:

40-51.2-02.2: Annexation of land in the extraterritorial zoning or subdivision regulation authority of another city.

A city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city by ordinance or resolution unless:

1. Written consent is received from the governing body of the other city; or
2. The annexation is ordered by an administrative law judge in accordance with this chapter.

The NDCC requires that if one city annexes into the other city's agreed upon ETA, they must seek agreement of that city. If the other city does not agree, the two cities must enter into mediation. If mediation is not successful, the matter goes before an administrative law judge, who will review the issues of all stakeholders and make a decision. The NDCC identifies eight factors that the administrative law judge is required to consider in making a decision about the annexation. These factors are defined in NDCC Chapter 40-51.2 (See Unit 10, NDCC – City).

Annexations

All annexation proceedings are regulated by state law. The North Dakota Century Code addresses annexations in Chapter 40-51.2, "Annexation and Exclusion of Territory". Full documentation is provided in Unit 10.

Implications of Annexing or Not Annexing

As a community considers its decisions with respect to annexation, it is important to understand the consequences of physical expansion as well as the consequences of not expanding.

Tax Base

As a population base grows within a certain region, government facilities, health care organizations, religious and educational institutions grow to serve the growing population. Most of these facilities choose to locate within the corporate limits of the city that already serves as the regional hub for other government, economic and social activity. As a result, these cities typically experience an expansion in tax exempt development. Many communities serve as the economic and social hub of the region as well as the location of local, county and state government facilities, churches, schools, and religious institutions. These facilities serve the community and add to convenience and quality of life.

As a city grows in population, the city also has the opportunity to strengthen its tax base through new or expanded retail sales and service businesses, industries, and financial institutions. These new developments help to build the city's tax base, providing city and county government with the funds to carry out basic municipal services, such as police and fire service, street maintenance, and other city functions. They also help to supplement the tax base generated by residential growth, which generates less tax revenue per acre than most commercial and industrial development.

It is very important that as the population of a region grows, its core city continues to have the ability to expand its tax base to help offset the growth of many tax exempt uses that naturally occur. These tax exempt uses are important to the quality of life in a community. In addition to those mentioned above, they may also include non-

profit agency facilities and medical institutions, which sometimes become non-profit organizations, making them exempt from property taxes.

If a city becomes landlocked, and limited in its ability to physically grow, it will severely limit its own ability to expand its tax base. As new growth areas become available outside city limits, residents will look to those areas for new housing opportunities. Businesses and industries will have no choice but to seek land outside the city for new development sites. While redevelopment of dilapidated and underutilized properties is an important role for any city, and should be pursued in the interest of increasing the city's tax base, it should not be solely relied upon to offset a tax base that is declining due to aging development and growth of tax exempt uses.

In the interests of all residents of the region, whether inside or outside city limits, the business climate and financial health of the city and county are enhanced when cities ensure their ability to physically grow and accommodate businesses, housing, and institutional land uses, ensuring a diverse and robust tax base. This ultimately reduces the property tax burden of residents and businesses of the city, as the burden of tax exempt uses can be shared by a larger tax base.

Before your municipality considers annexation, review the characteristics of the study area:

Land Area – *how many acres/square miles will be added to the city?*

Population – *what is the estimated present and future population of the study area?*

Land Use/Buildings – *how many dwelling units, commercial, and industrial establishments will be added to the city?*

Land use will affect the financial outlook of annexation. For example, if the annexed area is entirely residential, the marginal property tax revenue may be less than the costs of extending services to the annexed territory. To make up the difference, the city would have to increase taxes throughout its entire jurisdiction.

Financial Equity in the Region

It is important for city leaders to recognize that as the region grows in population their community will experience many impacts that will require investments in city infrastructure and facilities. For example, as the region's population grows, traffic volumes will increase in the community, which will remain the primary destination for the regional population for education, health care, jobs, shopping, governmental services, etc. This will result in the need for increased roadway maintenance, traffic control, and eventually, roadway reconstruction and additional roadway capacity.

The city will have some level of financial responsibility for these improvements, ranging from 100 percent to some smaller percentage (as low as 10 to 20 percent in some cases) on roads for which the county or state are partially responsible. Maintaining a tax base that is proportionally comparable to the amount of financial responsibility the city will have in keeping up with the demands of the regional population and business growth is key to the city's future financial health.

Efficient Use of Land

City water and sewer services allow for more efficient use of land. On-site septic systems and drain fields are not needed when sanitary sewer is available, resulting in the ability to construct more housing units and more square footage per acre. This reduces the footprint of non-agricultural land uses in the surrounding area. There will always be homeowners who choose to live in a rural subdivision and businesses that, for one reason or another, feel they are best situated in a non-urban area. However, creating an environment where most non-agricultural development activity has ample opportunities to occur inside city limits will help to create a more efficient land use pattern within the urbanized area and in the region as a whole.

On-site septic systems require at least one acre per dwelling unit for residential development, while residential development served by city sewer services averages between four and five dwelling units per acre, with multiple family developments having a far higher density. Commercial developments using on-site septic systems also require more acreage to accommodate an on-site drain field for waste water. These businesses frequently experience failures of their drain field in a shorter period of time than dwelling units. This is due to the fact that some businesses have little water use except employee and/or customer restrooms. In these cases, the bacteria load is greater than in a household, where waste water is generated by a variety of sources, such as showers, clothes washing, dishwashing, and other activities that dilute the bacteria load in the waste water. This results in the need for even more land for a replacement drain field.

City water utilities are sized to provide the volume of water needed for fire fighting with pumper trucks, which draw water from hydrants connected to the city's water pipes. This provides a reliable source of water for fire protection, and eliminates the need for tanker trucks. Development on the rural water system must rely on the use of tanker trucks, as the smaller size of rural water service pipes does not provide water volumes adequate for effective fire fighting. If built to city standards, with adequate water reserves and city sewer services, areas on rural water service can be equipped with hydrants.

In an area as vast as western North Dakota, some may argue that efficient land use is not a valid concern. However, given the increased oil activity in the Bakken, Tyler, and Three Forks Formations, development inside city limits helps to prevent

sprawling forms of rural development from affecting farmland, wildlife habitat, and potential drilling areas.

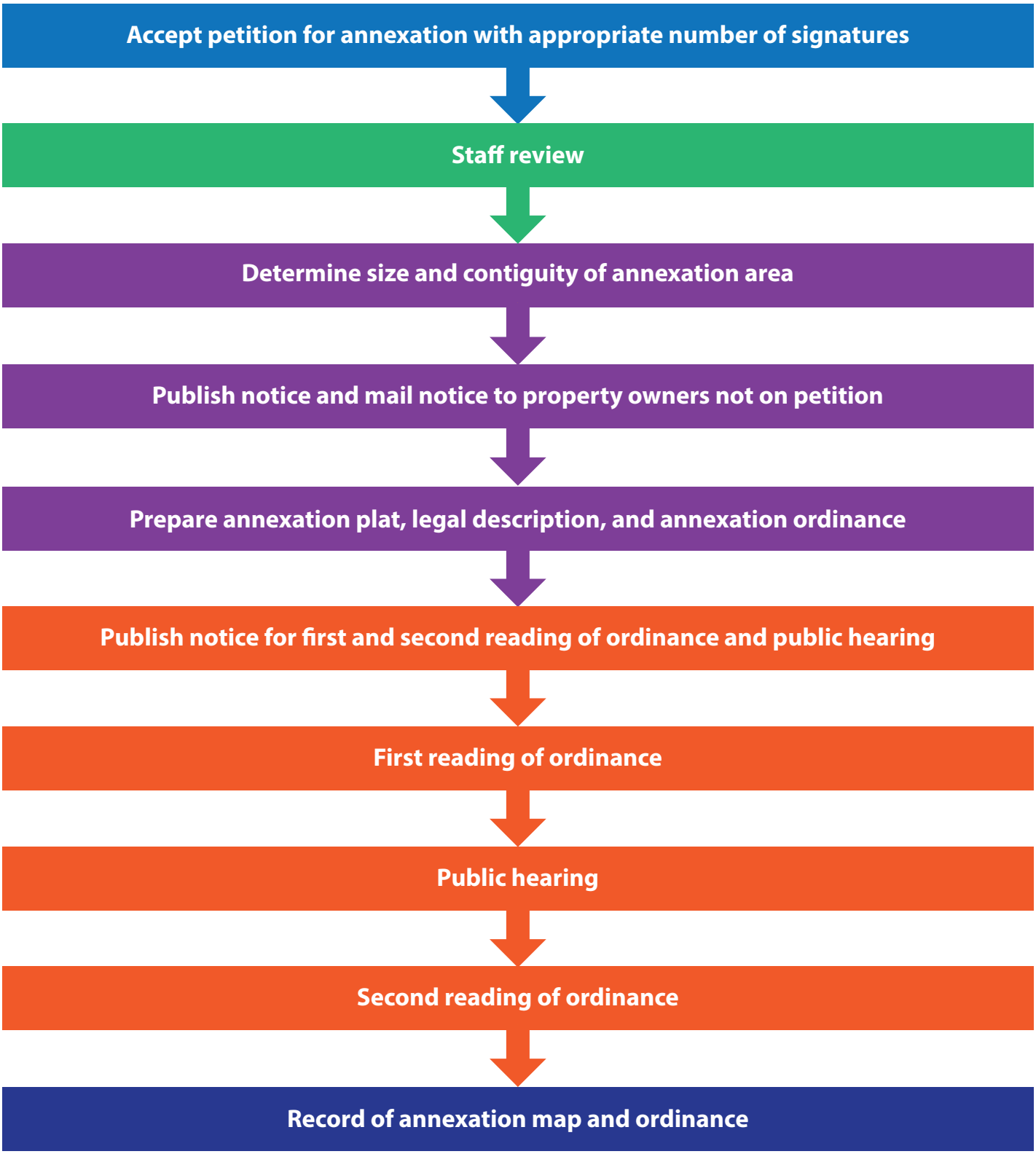
Process of Annexation

There are two primary processes of annexation. They include:

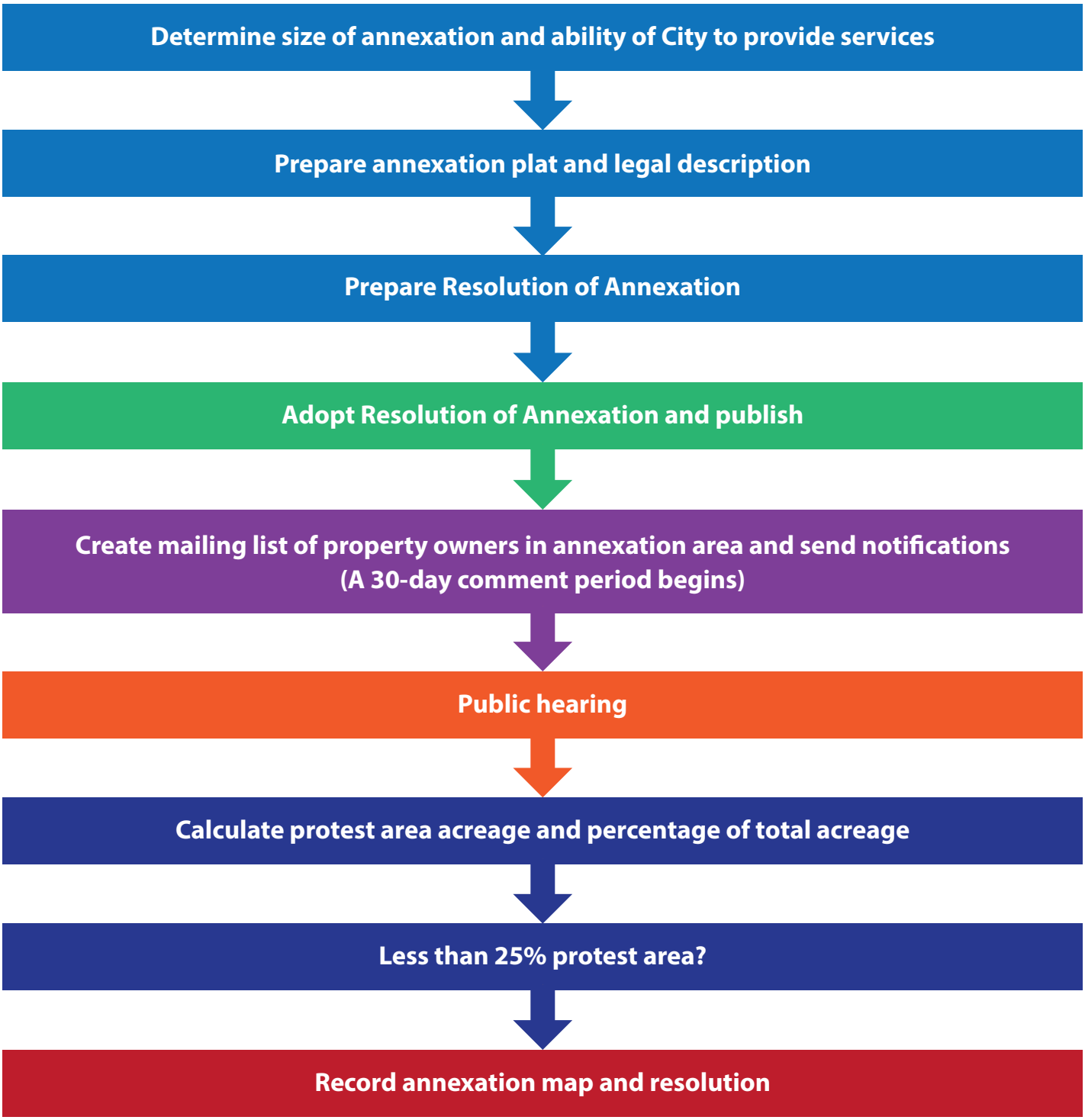
- Annexation by Petition (annexation by ordinance)
- Annexation by Resolution

Most cities prefer to proceed with annexation by ordinance, which is possible only after the city has received "a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths in assessed value of the property in any territory contiguous or adjacent to any incorporated municipality and not embraced within the limits thereof" (ND Century Code, Section 40-51.2-03.). This is advantageous in that it retains good working relationships between the city and property owners in the growth area. However, there are times when wide support for annexation is not demonstrated by the submittal of petitions, but it is in the city's best interest to annex a certain area. In these cases, the city may have received a petition representing only a small tract of property or a non-contiguous piece of property. More acreage is needed to establish contiguity, or to establish an area large enough to make the future extension of city services worthwhile. Under these circumstances, the city must annex by resolution (see ND Century Code, Section 40-51.2-07), which is likely to generate some level of protest from property owners within the annexation area. As long as protests do not exceed more than one-fourth of the acreage proposed to be annexed, the city's annexation by resolution can completed, and the adopted annexation plat can be filed with the county recorder. The processes of annexation, by ordinance and by resolution, are shown in the following flow charts.

Annexation by Petition



Annexation by Resolution



City of Bismarck and Burleigh County ETJ Agreement

The ETJ agreement between the City of Bismarck and Burleigh County, adopted in 2014, is included in the following pages as a example for planners and administrators of local government.

BISMARCK & BURLEIGH COUNTY
2013 EXTRATERRITORIAL JURISDICTION AGREEMENT

AGREEMENT between THE CITY OF BISMARCK, a Municipal Corporation, hereinafter referred to as "Bismarck", and BURLEIGH COUNTY, hereinafter referred to as "Burleigh".

WHEREAS, Sections 11-33.01, 11-33.2-02, 40-47-01.1, and 40-48-18, of the North Dakota Century Code provide for the jurisdiction of Bismarck and Burleigh over the zoning and subdividing of land and generally provide that Bismarck would have sole extraterritorial authority within two miles of its corporate limits in any direction, and that Bismarck and Burleigh would have joint jurisdiction within the area from two miles and four miles of Bismarck's corporate limits in any direction, and

WHEREAS, Section 54-21.3-05 of the North Dakota Century Code, Title 14, Sections 14-04-19 and 14-05-07, and Title 14.1, Section 14.1-01-01 of the Code of Ordinances of the City of Bismarck further provide for the jurisdiction of Bismarck over the issuance of building permits, the management and enforcement of storm water regulations, and the administration of floodplain regulations and generally provide that Bismarck would have sole extraterritorial authority for such activities within four miles of its corporate limits in any direction, and

WHEREAS, Bismarck and Burleigh wish to modify the extraterritorial boundary between the two political subdivisions, and

WHEREAS, Section 40-47-01.1 of the North Dakota Century Code provides that the two political subdivisions may control their authority pursuant to a written agreement and that Bismarck and Burleigh have reached such agreement,

NOW, THEREFORE, IT IS AGREED between Bismarck and Burleigh that the sole extraterritorial zoning, building permit, floodplain administration, and storm water management and enforcement jurisdiction of Bismarck and the area of sole zoning, building permit, floodplain administration, and storm water management and enforcement jurisdiction of Burleigh shall be as shown in Exhibit "A" attached hereto and by reference made a part of hereof.

IT IS FURTHER AGREED between Bismarck and Burleigh that the practice of forwarding proposed subdivision plats that are located within Bismarck's extraterritorial jurisdiction, to the Board of County Commissioners for the purpose of procuring approval of roadway dedications, will be continued.

IT IS FURTHER AGREED between Bismarck and Burleigh that both parties will retain a fully-certified Building Official to perform such building permit, code enforcement and floodplain administration duties within their jurisdictions.

IT IS FURTHER AGREED that the terms of the agreement shall go into effect on January 1, 2014 for a period of two years. The agreement shall automatically renew for successive two-year terms.

IT IS FURTHER AGREED that this agreement may be cancelled by either party upon at least a six month written notice, or may be amended at any time upon written agreement of both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

BY: _____
President, Board of City Commissioners

ATTEST: _____
Asst. City Administrator

DATE: 10-8-13

BY: _____
Chair, Board of County Commissioners

ATTEST: _____
County Auditor

DATE: 9/26/13

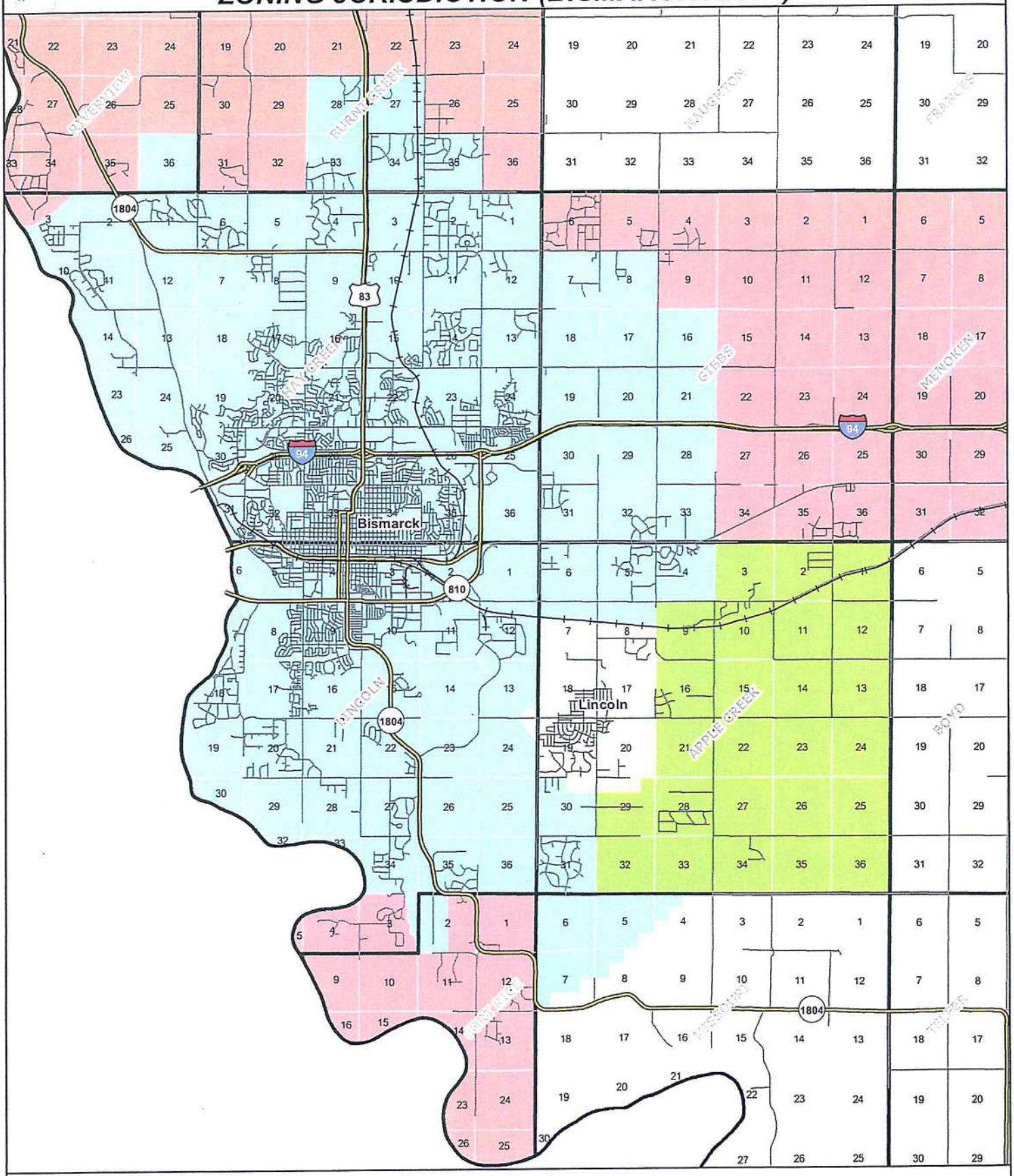
EXHIBIT A

BURLEIGH COUNTY, NORTH DAKOTA

ZONING JURISDICTION (BISMARCK AREA)

N

09/26/2013



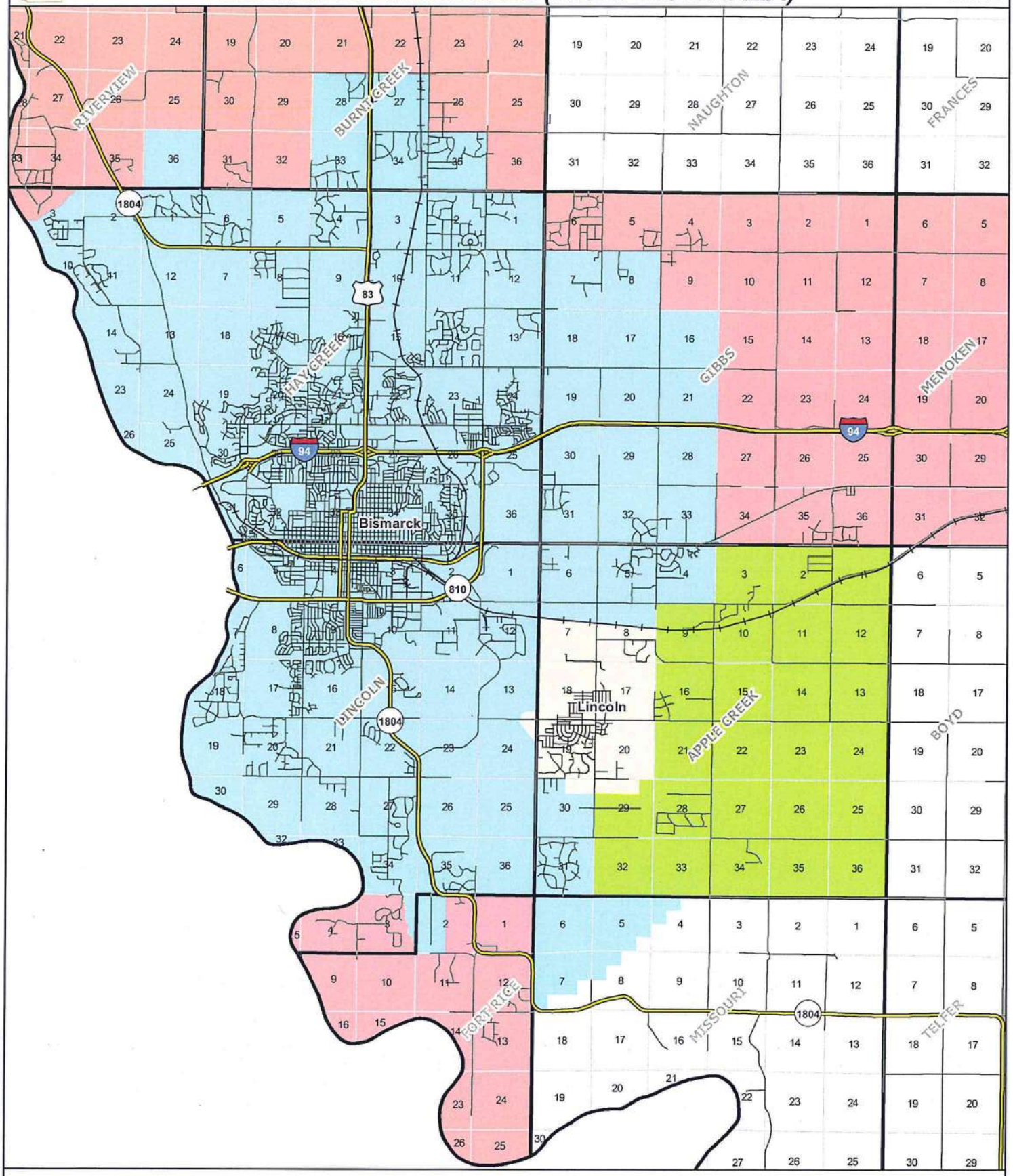
Apple Creek Township Zoning | Burleigh County Zoning | City of Bismarck Zoning | City of Lincoln Zoning | Other Township Zoning | Political Township Boundary

BURLEIGH COUNTY, NORTH DAKOTA

ZONING JURISDICTION (BISMARCK AREA)

N

09/26/2013



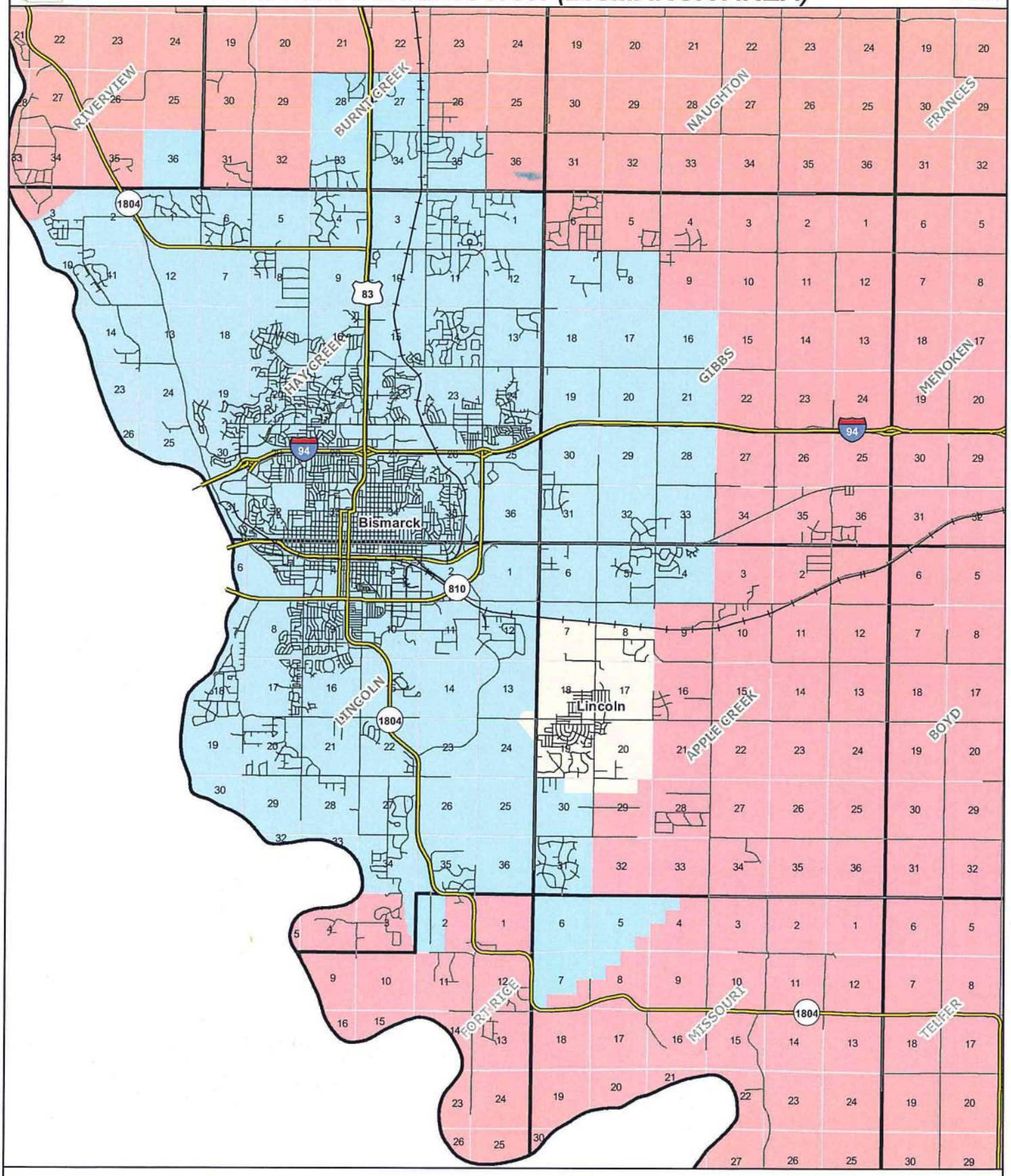
Apple Creek Township Zoning | Burleigh County Zoning | City of Bismarck Zoning | City of Lincoln Zoning | Other Township Zoning | Political Township Boundary

BURLEIGH COUNTY, NORTH DAKOTA

PLATTING JURISDICTION (BISMARCK AREA)

N

09/26/2013

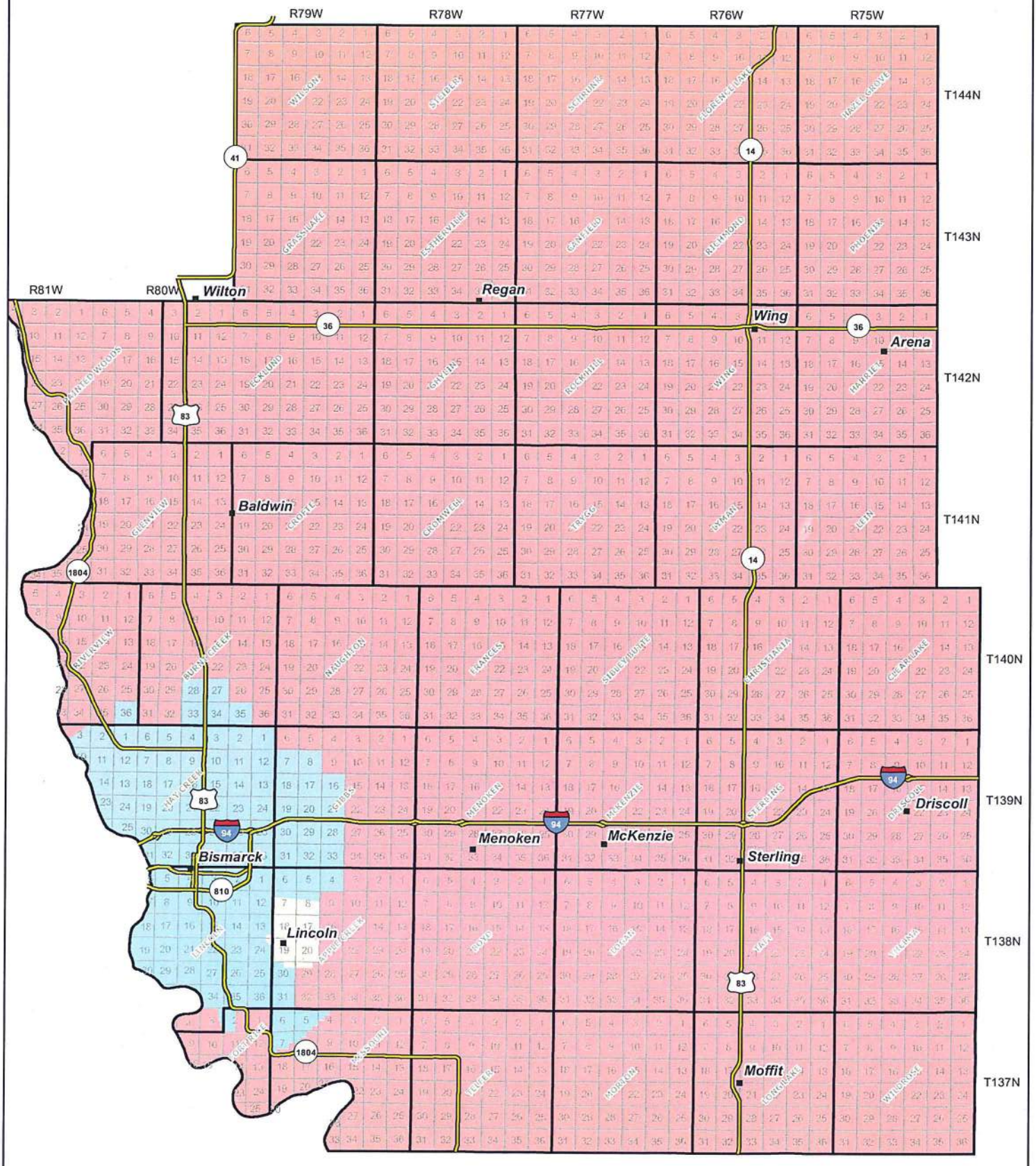


Burleigh County Platting | City of Bismarck Platting | City of Lincoln Platting | Political Township Boundary

BURLEIGH COUNTY, NORTH DAKOTA
PLATTING JURISDICTION

N

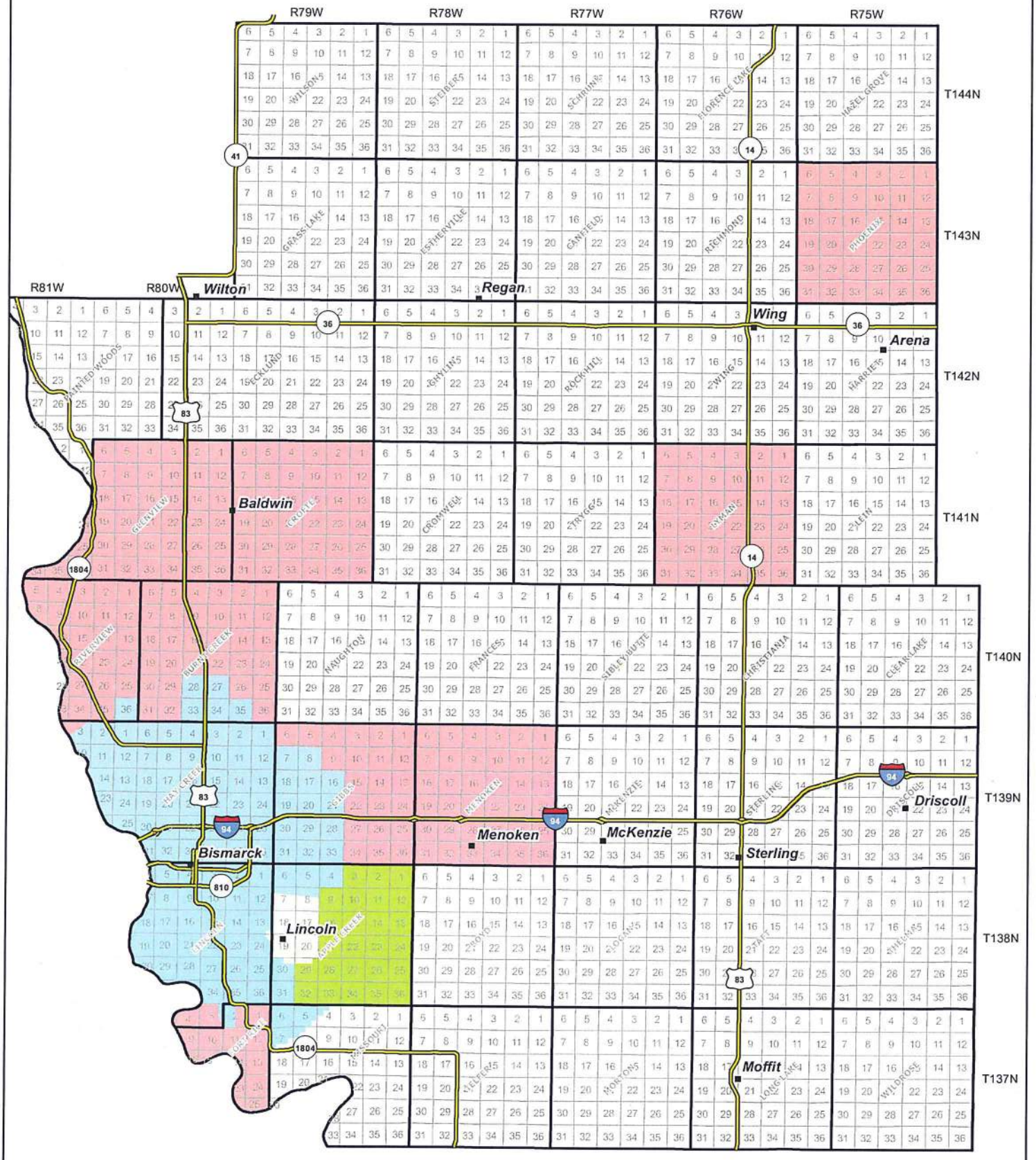
09/26/2013



BURLEIGH COUNTY, NORTH DAKOTA
ZONING JURISDICTION

N

09/26/2013



Apple Creek Township Zoning | Burleigh County Zoning | City of Bismarck Zoning | City of Lincoln Zoning | Other Township Zoning | Political Township Boundary

Unit 4
Zoning

Planning and Zoning Guide

Unit 4 – Zoning

What is Zoning?

Zoning is a tool that allows a local jurisdiction to regulate the use of land in a manner that protects the general health, safety, and welfare of the community. The zoning ordinance represents a portion of a local government's regulatory authority.

The Comprehensive Plan, as described in Unit 2, is a "blueprint" for the future of a community. A community's zoning code is a major implementation tool to ensure the community changes and evolves in a manner consistent with the vision represented in the Comprehensive Plan.

Attitudes on the Application of Zoning Ordinances

It is perfectly normal to receive objections towards this concept of telling people what they can and cannot do with their own property, and you will often be in a position to defend it. Sometimes it's not enough to say "I don't make the rules, I'm just the messenger, so don't shoot the messenger." When you are faced with someone who is very cynical about the local government's authority over land use, it is sometimes enlightening to explain it in this way:

The biggest investment most people will ever make in their lives is in their home and property. Zoning protects property values by regulating what can occur next door. Without zoning controls, your next-door neighbor could start raising hogs . . . which would depreciate your property value and quality of life.

It's also difficult to have to tell somebody "no" – that they can't do something because it's not allowed. Although it is difficult, it's better to stick to the rules and tell them up front what your zoning ordinance requires. It's much easier in the long run. Avoiding it will make it worse later, and bending the rules can become a slippery slope. Once you tell somebody they can deviate from the code, you have now set a new precedent and the word travels fast. Eventually more people will expect that they can argue with you and succeed. Not everything can be negotiable. It's natural to want to accommodate people and be polite but bending the rules can result in digging yourself into a deep hole.

Enabling Legislation

Zoning Authority is granted to local governments in the North Dakota Century Code (NDCC). Cities, counties, and organized townships are "enabled" by statute to regulate land use. The "enabling legislation" can be found for each branch of local government in the following sections of the NDCC:

City Enabling Legislation:

§40-47-01. Cities may zone - Application of regulations.

For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

County Enabling Legislation:

§11-33-01. County power to regulate property.

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

Township Enabling Legislation:

§58-03-11. Establishment of zoning districts - Uniformity.

For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

Regional Commissions:

§11-35-01. Regional commissions - Appointment - Powers.

The governing boards of counties, cities, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members, namely, one from the board of county commissioners, two from the rural region affected, and two from the city, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region must be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, cities, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures must be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court in accordance with the procedure provided in section 28-34-01.

Fundamentals of a Zoning Ordinance

Some ordinance regulations will apply uniformly to all districts but the basic framework of a zoning ordinance includes specific regulatory requirements for each zoning district. Each zoning district is different in character. Regulations for a single-family residential district, or low-intensity land use, are very different from regulations for a heavy industrial district, or high-intensity land use.

Definitions

A "definitions" section is a standard ordinance component. Definitions of terms can also be somewhat regulatory in nature and help differentiate land uses. Here are two examples from the City of Killdeer.

- ***Commercial above-ground fuel storage:*** *Any individual tank or group of tanks utilized for commercial purposes, storing combustible and flammable liquids as defined by NFPA 30 (National Fire Protection Association, Flammable and Combustible Liquids Code).*
- ***Temporary crew housing facility:*** *A Temporary Crew Housing Facility (TCHF) is well-planned and specifically designed to provide lodging. In many cases it will also offer meals, limited recreational activities, and other services for the benefit and well-being of its residents. Most TCHFs will utilize pre-manufactured, individual housing units which are transported to the site…. Allowed dwelling types in a TCHF include modular homes and manufactured homes…. the majority of residents of a TCHF are typically nonresidents with jobs in cyclical or temporary industries…. A TCHF is not a hotel, motel, recreational vehicle park, mobile home park, or campground. A TCHF is not a facility that provides parking and hookups for individually owned recreational vehicles, fifth wheels, camper trailers, pop-up campers, pickup trucks with on-board campers or similar units. A TCHF is not a conventional "stick-built" on-site structure or group of structures. A TCHF is not intended for permanent or long-term habitation.*

Zoning Districts

Each zoning district will have its own section or chapter in your zoning ordinance. It's appropriate to have a general description of the purpose and intended character of each zoning district at the beginning.

Permitted Uses

After the description of the purpose and intent of the zoning district, the next key section will be the list of "permitted uses". Permitted uses, which are sometimes known as "uses by right" do not require special approvals by the Planning Commission or elected officials. They are allowed to occur anywhere in the zoning district, subject to the height, bulk, and density and other parameters for that district.

Some permitted uses automatically come with standard conditions of approval. For example, schools may be permitted, subject to a maximum number of students. If that condition is not met, the use becomes a conditional use, subject to a public hearing before the Planning Commission.

Conditional Uses (also known as Special Uses)

In addition to the list of "Permitted Uses" each zoning district will also have a list of "Conditional Uses". Unlike permitted uses, conditional uses are not automatically allowed; they require a public hearing and special approval. A conditional use may or may not be appropriate. It depends on the location and the compatibility.

Some local governments have a tendency to treat anything that isn't a permitted use as a conditional or special use. This is not appropriate. Only uses that are specifically listed should be considered as conditional or special uses.

Some conditional/special uses have standard conditions of approval. For example:

- A telecommunications tower may have standard conditions that address the minimum distance of the tower from a residential zoning district. The conditions placed on the permit by the Planning Commission may exceed that distance if it is determined to be in the best interests of the public.
- A semi-truck parking area may have a requirement for an all-weather surface when adjacent to a paved road.
- A pet boarding facility may have a standard condition requiring it to be a minimum of 300 feet from a residentially zoned property, as measured between the nearest pet enclosure and the property line of the closest line of the residential zoning district.

Application requests for approval of a conditional use permit (CUP) or special use permit (SUP) require a higher level of information than zoning change requests. The information provided should include a site plan and written information about the proposed building(s) and the use and operation of the site in order to provide the commissioners with a clear picture of what is being proposed.

The commission has the authority to impose any additional conditions they deem necessary. In some communities, the CUP or SUP runs with the property, and does not have a sunset. This is more common with modern zoning ordinances. In the case of older ordinances, SUPs and CUPs sometimes have time limitations placed on them, or renewal requirements. This is particularly appropriate in the case of oil related uses that are expected to be temporary in nature.

It is a good practice for commissioners to include a condition of approval requiring the development to be constructed as illustrated on the documents provided by the applicant and presented at the public hearing. This way you get what you have approved and not something totally different. This makes it easier on your building official or zoning administrator when they are inspecting the project. The staff reviewing the building permit documents will need to determine if variations constitute a reason to bring the application back to the Planning Commission for a modification to the CUP or SUP.

Nonconforming Uses and Structures

It is important to clearly define nonconformities as a means to gradually phase out undesirable uses over time, with minimal impacts to the property owner. Nonconforming uses are generally allowed to receive maintenance and repairs but they cannot expand. If a nonconforming use ceases to exist for one year or more, it cannot be brought back (based on most codes).

When zoning is established or changed, the ordinance or zoning districts cannot eliminate land uses or structures already in existence. For example, if a warehouse or truck terminal exists in an area that becomes rezoned as Neighborhood Commercial zoning, it would most likely not be a permitted or conditional use. Therefore, it would become a legal nonconforming use, provided it was legal and conforming when they it was initially constructed. Uses that are were not permitted or approved with an SUP or CUP when initially constructed should not be treated with the protected status granted to legal nonconforming uses.

Legal nonconforming uses, or "grandfathered" uses, have protected status as long as they are not changed, expanded or improved. In other words, they are allowed to continue in their current use, as long as the use is not expanded or improved upon. Expansion or improvement over and above the original extent of the land use would result in an illegal use, and zoning enforcement would need to be initiated to remove the expansion or improvement. Maintenance is allowed, but alterations to structures, expansions of the structures, changes to the nature of the business, expansion of the use, or the addition of new equipment that isn't a replacement but an expansion to the use of the property should not be allowed for legal nonconforming uses. There is a fine line between maintenance and expansion, and sometimes the owner and operator of a legal nonconforming use will attempt to expand without permission, or will expand in a manner that is presented to the local government as "maintenance".

If the structure of a nonconforming use is damaged or destroyed by fire or some other occurrence, the zoning ordinance should state that it cannot be rebuilt if destroyed beyond a certain percentage of the structural value prior to the damage. Many ordinances will state something like the following text from the Fargo Land Development Code:

> *"If a structure devoted in whole or in part to a nonconforming use is damaged or destroyed by any means, to the extent of more than 50 percent of its structural value prior to the damage, that structure may not be restored unless the structure and the use thereof thereafter complies with all regulations of the zoning district in which it is located. The determination of reduced structural valuation shall be made by the City. If the damage or destruction represents 50 percent or less of the structure's value prior to the damage, repair and restoration is allowed, provided that a building permit must be obtained within 6 months of the damage and restoration must begin within 1 year of the date of damage."*

Similarly, if the nonconforming use is discontinued or abandoned for an identified period of time, which should be established within the zoning ordinance (many

communities use one year, but a shorter period of time such as six months would also be acceptable), the subsequent use of the property must conform to the zoning of the site. A date is typically established and stated in the zoning ordinance after which a use would be considered legal nonconforming.

Nonconforming structures consist of buildings that are not in conformance with the zoning ordinance in some capacity. This relates to characteristics of the primary structure on the site, such as the height, setbacks, or lot coverage of the building. It may also relate to the size or setbacks of accessory buildings. Similar to legal nonconforming uses, legal nonconforming structures have protected status provided they were legal and conforming when they were constructed. Expansion or alteration that expands the extent of the non-conformity should not be allowed. If the building is destroyed beyond a certain percentage of the structural value, it should not be allowed to be rebuilt with the previous nonconforming characteristics. A strict approach, which is often used by local governments, is that a nonconforming structure may simply not be expanded. A date is typically established after which the structure would be considered legal nonconforming.

If it's not listed, it's not allowed.

Unless your ordinance says otherwise, if it's not listed, it's not allowed. To make this clear, the ordinance can simply state that "other uses which are not listed are not allowed."

Some ordinances will define a process where the zoning administrator is authorized to make a determination on whether a particular unnamed use is allowed. Also, newer formats of zoning codes will reference broader categories of uses. If there is a request (which may surface as an application for a building permit) for a land use that is not included on the list of permitted uses and is also not included on the list of conditional or special uses, then it is not allowed. A building permit cannot be issued and the applicant will have to wait.

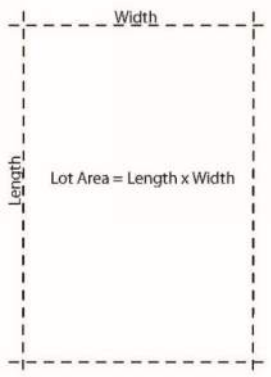
The planning commission should determine whether it is appropriate to add the requested use to the list of permitted or conditional uses in that particular zoning district. If the planning commission does not feel the use is appropriate for a particular zoning district, their reasoning should be documented in the minutes of the meeting. If they are inclined to agree that it could be appropriate, either as a permitted use or as a special or conditional use, then the ordinance can be amended to make the change and that use can be added to one of the lists. In either case their reasoning should be documented.

Dimensional Standards

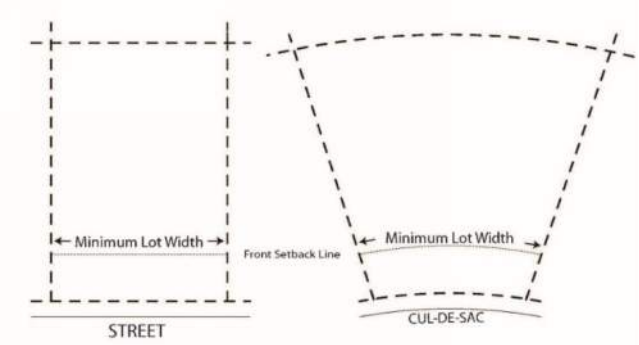
Other normal components of each zoning district are standards which regulate the height, bulk, and density of development.

Dimensions and areas are stated for the following general items:

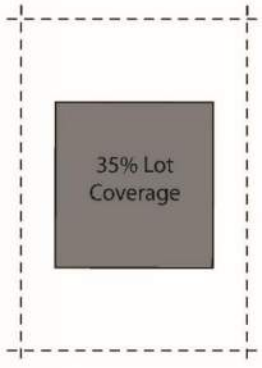
Minimum lot area



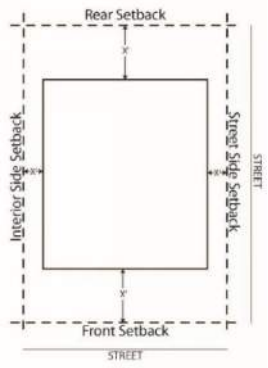
Minimum lot width



Maximum lot coverage



Front, side, and rear-yard building setback distances



Structural height limits

Structural height is usually determined based on the point that is halfway between the peak of the roof and the eaves.

Determining which lot line is the "front" is an integral part in reviewing the dimensional standards of a proposed development. The acronym "PLACE" can assist in the determination of the front setback.

Pedestrian Access – How would pedestrians enter the site to use the building?

Length of Lot – How are lots configured on that street (short and deep, or wide and shallow)?

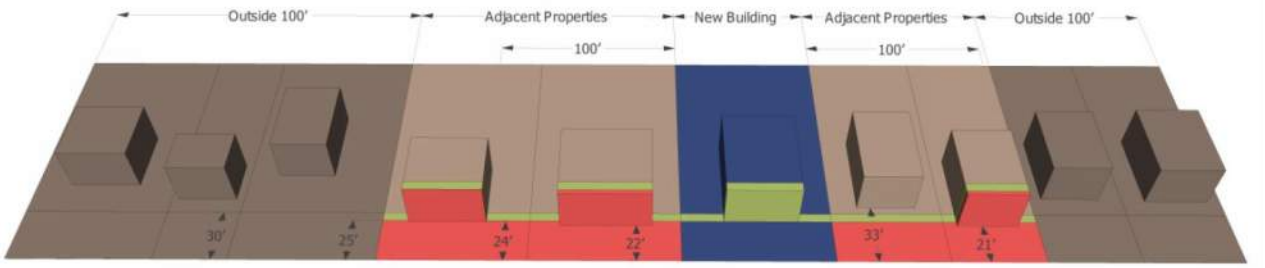
Addressed – Which street is the property addressed from?

Car Access – How would vehicles enter the site for use of the building?

Existing Setbacks – Where are the existing front setbacks for surrounding lots?

Not all five criteria will be met for a specific lot, so the lot line meeting the greater number of criteria would typically be considered the front. Often, this is a matter of common sense. It is not appropriate for an applicant to "choose" which side of the lot is the front simply to better accommodate the desired layout of their development. It is more important for the development to fit into the context of the overall neighborhood.

Setback Averaging is a technique that can be used to ensure front setback consistency throughout a neighborhood, and should be used if the setbacks of the surrounding properties vary from the allowed setback. A front setback can be determined for an infill lot by averaging the existing setbacks from the lots within 100' (or some other agreed upon dimension). This average will become the setback for the new building.



Mixed Use Districts

Mixed use districts allow for a variety of land uses. Mixed use districts are almost always appropriate in downtown areas, and are sometimes appropriate in university or college neighborhoods, or anywhere where a mixture of residential, commercial, and office uses are desired. Typically the district includes heightened development standards such as architectural guidelines.

Variances

Your zoning ordinance should clearly define what a variance is and the procedure for requesting a variance. A variance is not a magic wand that can be used to nullify or circumvent any regulation. It is a specific mechanism to be used in special situations, and pertains mainly to providing relief or "variation" from the dimensional standards of the zoning ordinance. See the definition below:

> Variance – *A regulatory tool which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to increase the financial return.*

For example:

- A variance may be granted to adjust the building setback distance on a lot that has been affected by a roadway widening or a railroad spur (an action not of the property owner's knowledge when the property was acquired and not caused by an action of the property owner).
- A variance may be appropriate on a lot that has been reduced in size due to a flood control project or a lift station.

A variance should not be used to allow a change in land use, as land use changes should be addressed through zoning map amendments or through the use of a CUP/SUP, where appropriate.

In North Dakota cities, a Board of Adjustment will make determinations on variances.

> **§40-47-01.**
>
> . . . Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. . . .

In counties, the zoning commission and the board of county commissioners are involved in decisions on variances.

> **§11-33-01.**
>
> . . . The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. . . .

In townships, the zoning commission and the board of township supervisors are involved in decisions on variances.

> **§58-03-13.**
>
> A zoning commission established under this section and a board of township supervisors shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission or board.

Off-Street Parking and On-Site Circulation

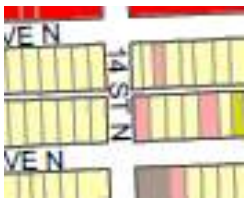
Another typical section of the zoning ordinance will establish the size of parking lots needed for businesses. The number of parking spaces are typically determined by the floor area and use of the building. In some cases, such as churches, the number of seats will determined the required parking spaces. Parking requirements for schools are often established based on the number of employees or the number of students expected at the school.

Many zoning ordinances include a requirement that on-site circulation area is designed to accommodate the maneuvering of trucks making deliveries and pick-ups. This prevents trucks from blocking the street as they back into or out of the site.

Paving of parking lots and/or loading and delivery areas can be made mandatory if the jurisdiction so desires. This is strongly recommended, as it reduces the amount of dust in the air and prevents mud from being dragged out onto the street.

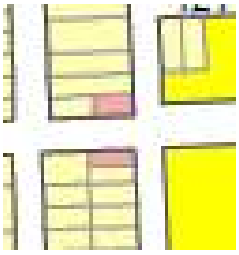
Spot Zoning

Spot zoning is not considered a good practice, as it introduces what would be or could become an incompatible land use. It involves the zoning of one lot with a zoning district that is different from all of the surrounding lots. The facing image illustrates spot zoning on the map, with commercial lots located in a residential neighborhood.



Spot zoning commercial

Often, modern exclusionary zoning does not promote a mixture of uses that make neighborhoods interesting and walkable. Many cities have adopted a neighborhood commercial district to allow for limited-scale commercial uses within a residential setting. This application should not be construed as simply spot zoning. Promoting walkability and mixed-use are valid reasons to make zoning changes that would otherwise have the appearance of spot zoning. The facing image illustrates the use of a different zoning district to allow two neighborhood businesses. Note that the commercial properties are located on adjacent street corners. This is a more natural arrangement for neighborhood commercial, as opposed to the previous spot zoning example.



Neighborhood commercial uses? Not necessarily spot zoning

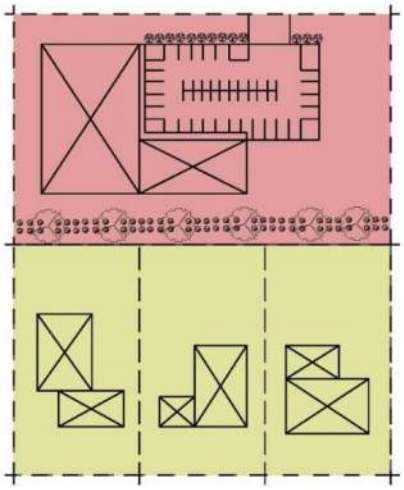
Sometimes, a zoning map that appears to have spot zoning is simply the efforts of planners and city officials to solve a problem. In the map below, the darker yellow zoning districts reflect a zoning district that was created to allow for smaller lots, to allow lot splits on twin home lots previously constructed by the Housing Authority. As legal nonconforming properties, the prospective owners could not get mortgages to purchase the properties. To allow these homes to be sold to qualifying home owners, a zoning solution was created so they would be legal and conforming lots and structures.

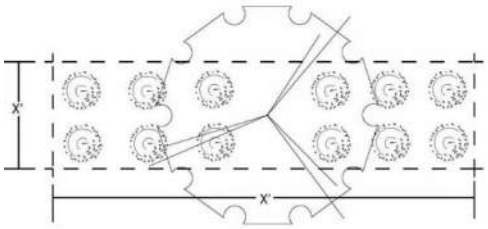
Solving a nonconformity problem.

Landscaping and Screening

Landscaping requirements do more than just enhance the visual environment. If there are no requirements for landscaping, many businesses will not voluntarily install it.

Screening and buffering standards will establish the criteria for creating separations between land uses of differing intensity. Land use buffers can range from a fence or shrubbery to an earthen berm, six-feet high, with trees. The magnitude of the buffer is proportional to the difference of adjacent land uses. In other words, if two land uses are fairly compatible, the required buffer is narrower than it would be if the two adjacent land uses are normally incompatible (such as residential next to industrial).





Setbacks from Oil Wells

As the world around us continues to change, in the interest of public health, safety and welfare, our ordinances will be adapted to address new and emerging issues.

Oil and natural gas wells can present risks that may impact people, property, the environment beyond the edges of the immediate drilling site or established well site.

To allow for safe separations between wells and inhabited areas, setback distances for proposed wells can be established in your zoning ordinance. But the setback requirements cannot only apply to proposed wells. Corresponding setbacks should be established for any proposed developments near existing wells.

For property around existing wells, any new subdivision should be subject to a reverse-setback which would be the same distance as required for new wells proposed near existing subdivisions.

The table on the following page provides some information on setbacks applied by various jurisdictions.

Oil Well and Exploration (Seismograph) Setback Information

Jurisdiction	Setback from Structure	Setback from Dwelling	Setback from Zone	Setback from ROW	Setback from Streams
Dickinson, ND	100' (from any structure not necessary for a well)	300' (also includes buildings for institutional use)	NA	100'	NA
Williston, ND	NA	*If within 300' from dwellings, businesses, public buildings, drilling rig to be enclosed on all sides	300' from residential, commercial, park, and open space districts	NA	NA
Killdeer, ND	NA	New pads: 1,000' from dwellings. Addition to existing pads: 500'	New pads: 1,000' from residential, commercial, and recreation district. Addition to existing pads: 500'	NA	NA
NDCC 38-08-05	NA	500'. *If within 500', the commission may impose such conditions on the permit as the commission deems reasonably necessary to minimize impact to the owner of the dwelling	NA	NA	NA
Ventura County, CA	500' (from any structure not necessary for well operation, with allowances to reduce to 100')	Dwelling cannot be constructed within 800' of well, if unavoidable includes allowances to minimum 100'	NA	100'	100' (includes streams, marshes, lakes, and intermittent bodies of water)
Watford City, ND	Regulated as Conditional Use, no setback specified. Seismograph survey shot holes no less than 100' from occupied buildings.				

Overlay Zones

Conditional Overlay Zones

If allowed by your ordinance, Conditional Overlay (CO) districts provide for flexible development standards that can be tailored to individual projects or areas of concern. The purposes of the CO districts are:

- Ensure land use compatibility when there is a special or unusual concern that two adjacent zoning districts may be incompatible where they come together;
- Ensure a more gradual transition from one zoning district to another;
- Address unusual sites or land uses with special requirements; and
- Set parameters for development in unusual situations.

A CO district can be applied as an overlay to any underlying zoning district. It is used to modify and restrict the normal property development standards of the underlying zoning district. Usually, the purpose of the CO would be to increase setbacks or restrict driveway locations to help reduce the impact of one zoning district on an adjacent property. As an example, the Fargo Land Development Code limits the use of CO districts to the following:

1. Prohibiting otherwise permitted or conditional uses and accessory uses or making a permitted use a conditional use;
2. Decreasing the number or average density of dwelling units that may be constructed on the site or limiting the size of nonresidential buildings that may be placed on a site;
3. Increasing minimum lot size or lot width;
4. Increasing minimum yard and setback requirements; and
5. Restricting access to abutting properties and nearby roads.
6. Creating and enhancing design standards, landscaping requirements, and pedestrian and vehicular traffic guidelines and standards for development within the district.

Gateway / Corridor Overlay Zones

A gateway overlay zone can be applied as an overlay to any base zoning district, and is typically applied to roadway corridors that serve as entrances to the community. The gateway overlay zone provides for the following increased development standards to improve the appearance of the corridor and present a positive image of the community. Standards addressed in a gateway overlay zone can include:

1. Landscape buffers of parking lots and circulation areas;

2. Limitation on building materials (e.g. prohibition of metal siding, cinder block, etc.)

3. Other architectural standards (building façade variation, building orientation)

4. Sign ordinance standards aimed at improved sign aesthetics

5. Limitations on outdoor storage (placement, fencing, prohibit in front yard)

6. Primary Building Orientation/Pedestrian Access

In some cases, a corridor overlay zone can be established for a corridor that is of special concern. This might consist of a corridor undergoing redevelopment, or a new arterial in the community where there is an interest in preserving the aesthetics of the corridor to a higher degree than other corridors. In rural areas, a corridor overlay zone might be desirable along a scenic highway or a roadway with historical features.

Historical Overlay Zone

A historical overlay (HO) zoning district can be established and applied over any base zoning district. Some communities limit the application of these zones to historically or culturally significant areas that have been designated by the US Department of the Interior, the ND State Historical Society or the local elected body. That declaration can be made by the local elected body in conjunction with the establishment of the HO zoning district.

In some cases, an HO will be applied to areas surrounding areas of historic or cultural significance, in order to ensure that the overall area remains in keeping with the historic properties or sites. The HO zoning district is intended to preserve the historical qualities of buildings or sites within the district. Documentation of the properties that have historical qualities should be completed prior to establishment of the district, and the overlay regulations would be aimed at preserving the qualities that make it historically or culturally significant.

By establishing an HO, the community is acknowledging that the area is a historic resource, deserving of special attention for preservation and protection, and that by preserving that resource, a sense of place is preserved, and the quality of life is enhanced for residents and visitors.

Since a historic overlay zone affects existing properties rather than newly developing properties, it is important to have public involvement in the establishment of the district. Once established, the HO can require special review and certificates of appropriateness for prior to issuance of building, demolition, or sign permits.

Floodplain Ordinances

Floodplain ordinances can also be applied as a zoning overlay, with underlying base zoning districts. Their primary purpose is to prevent development or placement of any form of structure that would be located within flood prone areas (i.e. 100 year floodplain). Setbacks from the documented edge of the floodplain or from the banks

of a stream or river (if the 100-year floodplain is within the banks) are usually the primary feature of a floodplain ordinance. The lowest opening of a building relative to the base flood elevation is another application. Limitations to ground cover modification (i.e. limitation on removal of trees and vegetation) can help prevent erosion and stabilize the stream banks. Limitations on various forms of outdoor storage are also appropriate. The State Water Commission may be available to assist in developing a new floodplain ordinance or updating an outdated ordinance.

Planned Unit Development (PUD)

A PUD district can take various forms. Some local governments use PUDs as separate forms of zoning, while others use them as an overlay to an underlying base zoning district. Use of a PUD as an overlay is a preferred method, because it provides for some level of consistency with surrounding properties.

The purpose of a PUD is to provide for flexibility of site design, and to some extent, flexibility of land use, not otherwise allowed by underlying zoning districts. The advantage of a PUD is that it allows for:

- Greater flexibility in architectural design, placement of buildings, use/preservation of open spaces and natural areas, and other site design features;
- More efficient use of public infrastructure and public services;
- A higher level of investment in property and improved appearance of the property or the provision of a public or private amenity in exchange for flexibility in development standards

Since a PUD typically addresses the details of site development, site plans and at least preliminary building plans are required at the time of the staff review and public hearings. PUD applications should also require a developer's statement of intent, describing the project and the reason a PUD is needed as an overlay to the underlying zoning district.

Sections that should be addressed in the zoning ordinance relative to PUDs include:

- Standards eligible for modification – in other words, there should be some limits set to the extent of PUD modifications that an applicant can request. They may include land use, mixtures of land use, lot size, density of dwelling units, setbacks, height, building coverage, parking, landscaping, buffering requirements;
- Roadway access – the ability to limit site access to a collector street or arterial as opposed to a local street due to density or trip generation;
- Open space requirements – the ordinance could establish a minimum threshold of open space.

The process for reviewing and approving a PUD, including the public notification requirements and public hearings, should be outlined in the zoning ordinance.

Amending the Ordinance Text

A zoning ordinance is a living document and should continue to evolve as the times change and the community advances. New laws and novel uses will necessitate changes to the code. (See the update of medical marijuana regulations on page 26.) Ordinance changes will be needed. Old language will be deleted. New items will be added and improvements will be made. The process for amending a zoning ordinance is based on the process used to create the original ordinance. The ordinance itself must define the process for amendments in accordance with the NDCC.

> **§ 40-47-04. Determining and enforcing regulations - Public hearing and notice thereof – Publication of regulations, restrictions, and boundaries.**
>
> 1. The governing body of a city which uses zoning regulations shall provide for the manner in which the regulations and restrictions must be established, enforced, or supplemented, and for the manner in which the boundaries of the districts must be established and from time to time changed. . . .

When amending the ordinance, a public hearing is required to obtain community input.

> **§40-47-04.**
>
> . . . A copy of each proposed regulation, restriction, or boundary must be filed with the city auditor. No regulation, restriction, or boundary may become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard . . .

Prior to the public hearing, the publication of a meeting notice is required. The notice will contain a summary or brief description of the proposed amendment in accordance with item "c." below:

> **§40-47-04.**
>
> . . . Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice must contain the following items:
>
> a. The time and place of the hearing.
>
> b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
>
> c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.

Once an ordinance amendment is approved, a copy is filed with the auditor and another notice is published in the paper

§40-47-04.

. . . 2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall cause notice of the same to be published in the official newspaper of the city. The notice must describe the nature, scope, and purpose of the regulation, restriction, or boundary and must state the times at which it will be available to the public for inspection and copying at the office of the city auditor. . . .

When making determinations on ordinance amendments, the minutes of the meeting should clearly reflect the reasons for the decision, regardless of whether it is approved or denied.

§40-47-04.

. . . 3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board. . . .

The NDCC establishes a process for protesting zoning ordinance amendments. If a protest is filed in accordance with the NDCC, the amendment can only be adopted by a ¾ supermajority of the city council or commission.

§40-47-05. Amendments to or repeals of zoning regulations - Protest - Required vote for passage.

Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:

1. Of the area of the lots included in such proposed change; or

2. Of the area adjacent, extending one hundred fifty feet [45.72 meters] from the area to be changed, excluding the width of streets, the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city.

The provisions of section 40-47-04 relating to public hearings, official notice, and publication of regulations, restrictions, and boundaries shall apply equally to all changes or amendments provided in this section; provided, that protests in writing must be filed with the city auditor prior to the time set for the hearing.

Care should be taken when integrating an amendment into the ordinance document so it fits well within the existing text, not only to match the formatting, but the location should be consistent with the subject matter and content of existing ordinance language. Be sure to check for contradictory language so the new amendment does not create confusion. Ideally, the proposed amendment would include corresponding omissions of any existing contradictory language.

Zoning Enforcement

Zoning enforcement in small communities or in rural areas can be awkward because everybody knows everybody else and most people prefer to avoid confrontational situations.

The majority of zoning violations are unintentional. The violators do not know they are doing anything wrong. Sometimes all it takes is to inform them and they will voluntarily correct it.

In other instances, it won't be that easy. Here is a good practice to follow:

Use a Diplomatic Approach – First Contact

1. The zoning enforcement officer should knock on the door and speak to the property owner face-to-face, rather than by phone.

2. It is important for the enforcement officer to identify themselves and present a business card.

3. Confirm that they are the property owner rather than a tenant (if they are renting the property, inform them of the violation but let them know you will be contacting the property owner).

4. Explain what the issue is. Tell them you understand they may not know that the zoning regulations do not allow whatever the violation is. Give them an opportunity to tell you they didn't know they were breaking any rules. Hopefully they will agree to take care of it.

5. Be prepared to explain the basis of the regulation. Don't tell them you are just the messenger and that you don't make the rules. This diminishes the importance and is counterproductive.

6. Ask them how soon they can remedy the situation. Try to get a solid commitment from them. Depending on the severity of the violation, one month may be too long to wait. A couple of weeks should be adequate.

7. If they do not voluntarily agree to fix the problem, don't argue with them, just reaffirm that it is a violation.

8. Take some photos of the violation but try to do so without intimidating the property owner.

9. Follow-up the first contact with a letter. The letter can simply restate the violation in regular language and confirm that the property owner agreed to fix it by a mutually agreed upon timeframe. Thank them for doing so. Include an excerpt from your regulations to show which section of the code has been violated.

10. As the deadline for compliance approaches, you can drive by the location and check the status to see if they've fixed it yet. If nothing has been done, you can phone them and ask.

11. If they have a legitimate excuse, it may be appropriate to extend the deadline. Document the phone conversation.

Dial it Up a Notch

Prepare to send an official Notice and Order. The language of the Notice and Order is more formal than the first letter. This is where you will describe the violation, cite the section of the zoning ordinance that is being violated, and give them a firm deadline to meet compliance with the regulation. The letter can include a "cc" to your jurisdiction's attorney.

If the deadline listed on the Notice and Order passes and nothing has been done, turn it over to your city attorney or county state's attorney for prosecution. Provide your attorney with the photos, letters, and any records of phone conversations.

Pick your Battles

In a perfect world, your local government attorney would address zoning violations quickly and efficiently. However some attorneys are reluctant to prosecute zoning violations. If that's the case in your jurisdiction, you will have to be careful. It's best to maintain a good rapport with your attorney and know in advance whether the attorney will follow-through and support your enforcement. It may be beneficial to discuss a particular violation and enforcement matter with your attorney in advance of taking any action. Make sure you both concur on the interpretation of the ordinance and you have a rock solid case.

If you follow procedures and send out the Notice and Order, you will need your attorney to back you up. Without this support, the word will travel fast that there are no consequences for zoning violations and your credibility will suffer.

What if enforcement hasn't been practiced?

If zoning violations have not been enforced for many years in your jurisdiction and now there is a need to institute enforcement, you may wish to have your elected commissioners adopt a resolution. This resolution will function to neutralize any claims by future violators who wish to point towards a past violation that occurred elsewhere, and was never enforced. The resolution will be a tool to insulate your jurisdiction from legal challenges of acting in an arbitrary and capricious manner. Again, you will need to have your local attorney completely on board before starting this.

Turning Over a New Leaf

The resolution can acknowledge that zoning violations have not been actively enforced in the past. But now, beginning at a specified (indicate the date) indicate that the jurisdiction will practice even-handed enforcement to uphold the zoning ordinance regulations.

Practicality and Even-handedness

Sometimes when the heavy hammer of enforcement is authorized, everything can start looking like a nail. It is advisable for your enforcement officer to exercise some restraint and not get too enthusiastic about insignificant zoning violations, but that can be a tough call. What may seem insignificant to one person may be a very significant problem for another. Egregious and blatant violations should be addressed swiftly but your zoning enforcement officer does not have to go on patrol, looking for any and every violation. It is very important to respond to citizen complaints. Complainers can remain anonymous.

40-47-12. Instituting action to restrain, correct, or abate violations.

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under the authority conferred by this chapter, the proper local authorities of the city, in addition to other remedies, may institute any appropriate action or proceeding:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

2. To restrain, correct, or abate such violation;

3. To prevent the occupancy of the building, structure, or land; or

4. To prevent any illegal act, conduct, business, or use in or about such premises.

Zoning Alternatives and Other Tools

Rural Alternatives

Some rural communities adopt a flexible zoning scheme as an alternative to standard use-based zoning. For example, the Dunn County ordinance includes a Rural Preservation District, a Municipal Development District, a Rural Development District, and others. Each district allows a variety of residential, commercial, and industrial uses as permitted or conditional uses. The intent of the Rural Preservation District is to preserve prime areas for farming, ranching, and rural tourism. The intent of the Municipal Development District is to encourage development within incorporated municipalities. Meanwhile, the Rural Development District is used to focus a limited amount of uses which cannot be accommodated in the Municipal Development District into clusters of higher density, in areas where public services and infrastructure can be

provided. Dunn County's scheme prioritizes broad development considerations – growth versus conservation, the ability to provide public services, etc. – over separation of uses. This is appropriate for low-density settings, where use conflicts may not be the most pressing issue.

Conservation Design Districts

Conservation Design Districts (CDD) can be applied to new residential developments that may occur near protected or valuable natural resources or farmland. In rural areas or fringe growth areas of a city, large lot rural developments are often proposed, with lots of at least an acre in size, and individual on-site septic systems. In these developments, natural features of the land are often destroyed or become inaccessible to the public. The developments also require lengthy streets to serve all lots in the development. The function of a CDD is to preserve natural features, areas not suitable for development, or agricultural land as well as to lessen the impacts of development on the natural environment. Typical designs utilize clusters of houses on smaller lots situated around community open space or natural features. The advantages of CDD include shorter street lengths and the same number of lots as provided for in the large lot rural residential development pattern, with natural amenities shared by all residents.

Existing Conditions **Conventional Rural Design** **Conservation Design District**

A conservation design district may occur in an annexed area where city services are available, or they may occur in places that are not directly adjacent to city boundaries and therefore do not have city water or sanitary sewer available. Sometimes the natural characteristics of the land are the reason why city services have not been extended into such an area. In these cases, the entire subdivision is serviced by a community well and community septic system often times with a spray field for the release of gray water, instead of individual well and septic systems. It is important that these systems are constructed with the understanding and means that if/when public facilities are extended into the area the community systems will be hooked up to the city's water and or sanitary sewer system. For these reasons, an orderly annexation agreement is typically recommended at the time of zoning and subdivision.

Residential Protection Buffers

Residential protection buffers apply to any zoning district on sites that are adjacent to residential zoning districts. They also apply to multiple family (high density) zoning districts that abut low density residential districts.

If a rezoning of property places residential zoning adjacent to a property that is already developed as a non-residential site, the buffering requirements would need to be met on the residential property.

Form Based Zoning

This type of zoning is being used more and more in urban areas to bring vitality back to the urban environment. It involves the regulation of the form of buildings, usually establishing "maximum" setbacks rather than minimum setbacks to create more of a pedestrian friendly environment. Land uses are less restricted than building form, with the intent of encouraging a mixture of households, jobs, and shopping in the same area.

Who else can regulate land use?

State Authority

Although the state and federal governments do not exercise zoning authority, they can limit local land use authority. In some areas, the State assumes entire regulatory responsibility. For example, North Dakota Century Code does not allow counties to regulate oil and gas facilities. This responsibility falls to the North Dakota Industrial Commission (See the table of Attorney General Opinions on the following page.)

Private Authority

Other land use regulations, called covenants, can apply to specific neighborhoods or subdivisions. Covenants are a set of private, customized neighborhood rules. These rules do not fall under the purview of a local government. Covenants are typically created by the original developer of a subdivision and are filed at the county recorder's office. Covenants can include rules for minimum floor areas of houses, roof pitch, and sometimes even colors. Most covenants allow for changes to be made to them, based on a majority vote of the lot owners.

Covenants can be more restrictive but not less restrictive than the local zoning ordinances. For example, if the zoning ordinance establishes a minimum front-yard setback distance of 25-feet, covenants can require a greater or more restrictive front-yard setback of 35 or 40-feet, but not less than 25-feet. Note that covenants are separate from zoning ordinances and they are not created by or enforceable by local governments. Although covenants are private rules for private neighborhoods, it is not uncommon for residents to report covenant violations to their local government staff, expecting local government assistance with an enforcement action. Enforcement of covenants is entirely a matter to be handled by the local neighborhood organization.

They will need to hire their own attorney and pursue it without assistance from local government staff.

Attorney General Opinions

Subject	Date	Opinion Number
Abandoned motor vehicle zoning ordinances – city extraterritorial jurisdiction	*03/13/14* *05/21/04*	*2014-L-06* *2004-L-34*
Agriculture – effect of county zoning	*11/20/12*	*2012-L-34*
Building code – relationship to zoning	*11/08/95*	*95-F-11*
City extraterritorial authority – effect on county liquor license	*10/24/97*	*97-F-10*
City extraterritorial authority – effect on county zoning	*03/13/14* *10/28/96*	*2014-L-06* *96-L-188*
City extraterritorial authority – hearing, map	05/16/95	95-L-112
City extraterritorial authority – overlap of authority, landowner rights	12/27/96	96-L-246
Cities – newly annexed lands	04/24/02	2002-L-24
Comprehensive plan	06/10/01	2001-L-17
Conservation – nonprofit corporation, county authority	12/21/99	99-L-128
Corporate farming – land acquired for conservation by nonprofit corporation, county zoning and authority	12/21/99	99-L-128
County – may not regulate hunting through zoning	11/04/03	2003-L-48
County -transfer of township authority	05/17/99	99-F-07
County zoning – authority regarding conservation ownership by nonprofit corporation	12/21/99	99-L-128
County zoning – conflict of interest, appearance of impropriety doctrine	03/09/95	95-L-60
County zoning – effect of city extraterritorial authority	03/13/14 10/28/96 05/16/95	2014-L-06 96-L-188 95-L-112
County zoning – may not prohibit farming or ranching	11/20/12	2012-L-12
County zoning – regulating animal feeding operation	10/04/05	2005-L-27
County zoning- subdivision plat approval	03/24/93	93-F-04
Diffused surface water runoff – management	08/10/05	2005-L-19
Flood insurance program – adoption of flood insurance study and rate map, incorporation by reference…	10/29/04	2004-L-66
Liabilities	06/01/01	2001-L-17
Meeting – subject to open meeting law	05/02/08	2008-0-10
Oil and gas drilling – county zoning preempted by Industrial Commission	02/05/10	2010-L-01
Open records law applies	02/17/04	2004-0-05
Solid waste disposal facilities – townships may impose tipping fees	08/24/93	93-F-13
State land – city has no zoning authority unless granted by state	04/06/98	98-L-38
Township – commission includes supervisors and two members from affected cities, if any	05/26/06	2006-L-18
Township – commission membership when appointment from municipality is required	11/24/06	2006-L-37
Township – filing zoning ordinance with county auditor, vote by electors at annual meeting	10/18/94	94-F-30
Township – transfer of authority to county	05/17/99	99-F-07

Medical Marijuana Regulations – NDCC Update

North Dakota legalized medical marijuana in November 2016. The new law has introduced two new land uses, medical marijuana growers/producers and dispensaries, which the legislation refers to as "compassion centers." Regulation is broadly the purview of the North Dakota Department of Health (NDDoH), which currently limits the State to two growers/producers and eight dispensaries. The eight dispensaries will be located in eight regions established by the Department of Health.

The North Dakota Century Code has been amended to describe in detail the legal requirements for compassion centers and for qualifying patients who consume medical marijuana. NDCC Chapter 19 41.1 governs the industry from seed to sale, ensuring that all transactions only occur between licensed parties. However, planning staff should account for these uses when updating their zoning ordinances. Local governments can use zoning to regulate the time, place, and manner of activities at compassion centers, as they would for similar uses.

Place

Marijuana is a controlled substance which is treated differently than most other crops and horticultural products. Even though compassion centers are highly controlled, they are potentially attractive targets for crime, given that they possess large amounts of a controlled substance. Therefore, compassion centers must be zoned appropriately, and separated from incompatible zones and land uses. Consider the following:

- **Zoning** – Locate dispensaries in commercial or light industrial zones. Locate growers/manufacturers in agricultural or industrial areas. A manufacturer could be permitted in the agricultural district as an exclusive farm use, multiple-use agriculture, or a conditional use.
- **Setbacks** – Separate compassion centers from incompatible uses, such as schools and residences. State law requires a minimum setback of 1,000 feet from schools, colleges, and universities. Other uses could include daycares, places of worship, public parks, community centers, and homeless shelters, if local law enforcement perceives that compassion centers pose an increased risk to those uses.
- **Municipal Oversight** – Locate dispensaries within city limits to maintain municipal oversight. If agricultural zoning is applied to a grower/manufacturer, this use would typically be located in the unincorporated county.
- **Access/Visibility** – Locate dispensaries in areas with high traffic and good visibility to ensure access for qualifying patients and reduce the risk of crime.

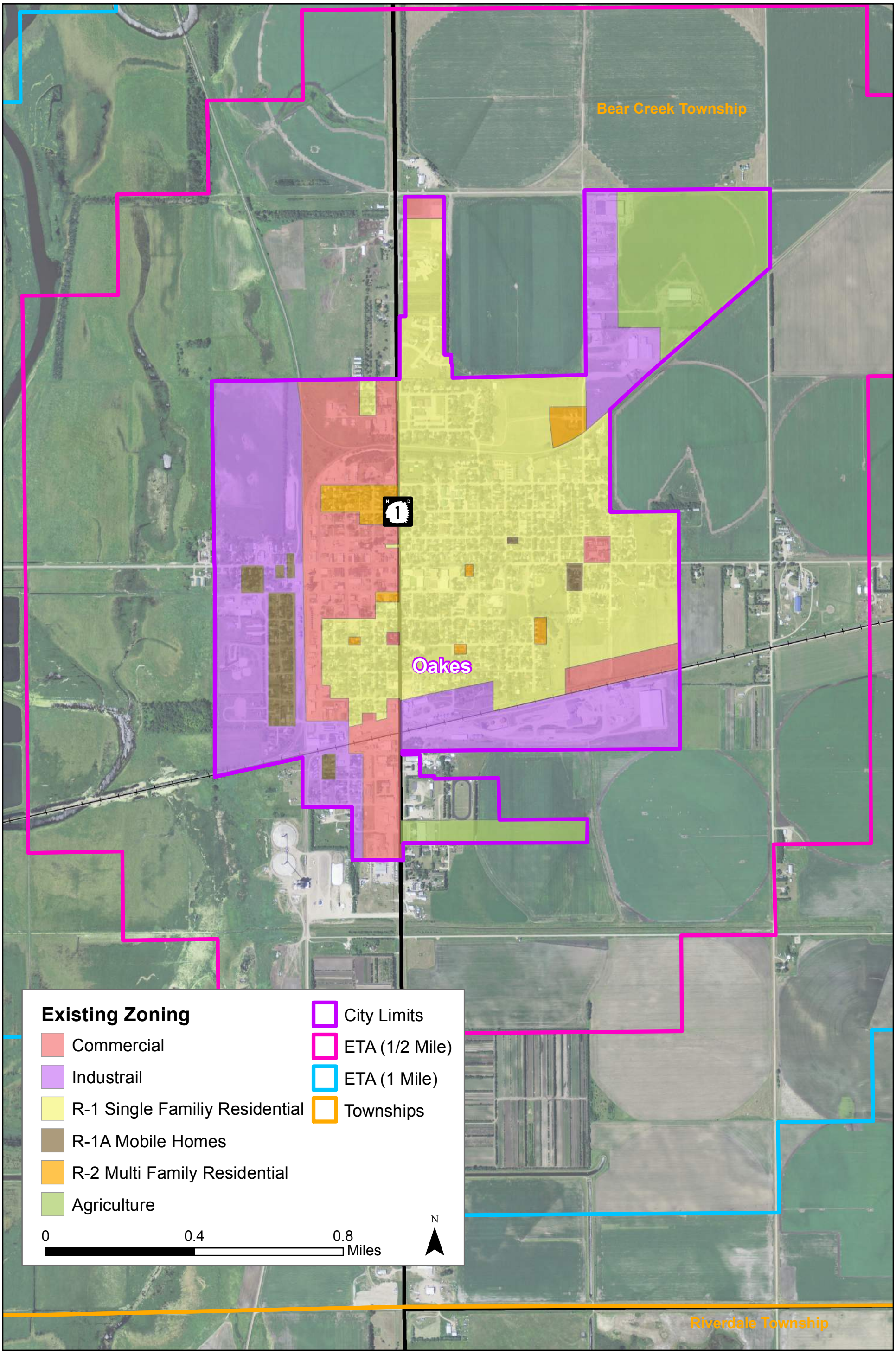
Manner

State legislation has created thorough regulations which broadly address the manner of compassion center operations. Nevertheless, there are elements of compassion center operations that can and should be addressed by local governments. Consider the following:

- **Public health and welfare** – Control emission of dust, fumes, vapors, and odors. These should be contained within the site. Cultivation and processing should take place in an enclosed area (i.e., a greenhouse).
- **Site characteristics** – While a dispensary is best located in a high visibility area, facility advertising should be subdued. Prohibit outdoor display of merchandise. Adopt minimalist signage. Signage could be placed so that it is inconspicuous – i.e., not visible from the street.
- **Conditional Use** – Designating compassion centers as a conditional use allows for thorough review and provides greater flexibility for local governments to address the unique aspects of compassion centers within their zoning framework.
- **Minors** – Minors (age less than 19) should be expressly prohibited at dispensaries, except for qualifying patients who are accompanied by a parent or legal guardian.

Time

Local governments can reasonably restrict the hours of operation for dispensaries and production facilities.



City of Oakes, North Dakota

Vision West ND

Figure 1

CHAPTER SIX
ZONING - LAND USE PLANNING

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ZONING - LAND USE PLANNING

ARTICLE 1 - PLANNING AND ZONING COMMISSION

6.0101 Planning Commission Created

There is hereby created a planning commission consisting of five members to be appointed by the Mayor, with the approval of the City Council. The Mayor, the engineer and city attorney shall be ex-officio members thereof. (Source: North Dakota Century Code Section 40-48-03)

6.0102 Terms, Compensation, Meetings

The terms of the members, their compensation, and meetings shall be as provided by Chapter 40-48 of the North Dakota Century Code.

6.0103 Ex-Officio Zoning Commission

The planning commission shall also serve as the zoning commission of the City to hold hearings, make reports and recommendations as to the boundaries of the various original districts and appropriate regulations to be enforced therein, and for changes in or supplements thereto. (Source: North Dakota Century Code Section 40-47-06)

ARTICLE 2 - DEFINITIONS

6.0201 Definitions

For the purpose of this chapter the following words and phrases shall have the meanings herein given:

1. "Accessory Use or Building" is a subordinate use or building or portion of the main building, customarily incident to and located on the same lot with the main use or building.

2. "Alley" means any public way intersecting a City block or portion thereof and recorded with the City Auditor's office.

3. "Alteration" as applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

4. "Building" is a structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers and other roofed structure on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition "roof" shall include an awning or other similar covering, whether or not permanent in nature.

5. “Building Line” is the line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level.

6. “Curb Level” means the level established for the curb in front of a building, measured at the center of such front, and where no curb level has been established, the City engineer shall establish such curb level or its equivalent for the purpose of this article;

7. “Depth of Rear Yard” refers to the mean distance between the rear line of the building and the center line of the alley, if an alley exists, otherwise to the rear lot line;

10. “Depth of Lot” refers to the mean distance between the front street line and the rear lot line;

11. “Dwelling” is a building designed or used as the living quarters for one or more families.

12. “Dwelling House” is a detached house designed for an occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.

13. “Dwelling Unit” is one or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.

14. “Dwelling, Multi-Family” is a dwelling or group of dwellings on one plot containing separate living units for three or more families, but which have joint services or facilities for both.

15. “Family” is an group of two (2) or more people related by blood, marriage, or adoption.

16. “Garage, Private” is a building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.

17. “Grade” means the surface of the ground, court, lawn, yard or sidewalks adjoining a building; the established grade is the grade of the street curb lines fixed by the City of Oakes; the natural grade is the undisturbed natural surface of the ground; the finished grade is the surface of the ground, court, lawn, or yard, after filling or grading to desired elevation or elevations around a building or structure; but where the finished grade is below the level of the adjoining street, the established grade shall be deemed the finished grade;

18. “Half Story” means the portion of a building immediately under a sloping roof which has the point of intersection of the top line of the rafters and the face of the walls not to exceed three (3) feet above the top floor level;

19. “Height of Building” means the vertical distance from the top of the curb at the middle of the building or the ground level at the front of the building to the average height of the roof; in case of a mansard roof, to the top of the deck; in case of a flat roof, to the top of the highest enclosure wall;

20. “Hotel or Motel” means a building where lodging is provided for transient guests and having ten (10) or more sleeping rooms;

21. “Lot” is a parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.

22. “Mobile Home” is a designed or manufactured home to be used with wheels that will be set upon and located on a foundation. The footings of the foundation will be four feet underground, and the footings themselves will be 16 inches wide, six inches deep with two #4 rebars and an underground depth of four feet.”

23. “Non-conforming Use” is a building, structure or use of land existing at the time of the enactment of this chapter and which does not conform to the regulations of the district in which it is located.

24. “Property Line” is the line beginning and ending at the distance equal to half the measurement of the plotted street or alley or the pinned markers.

25. “Setback Building Line” is a building line back of the street line. Distance a structure can be located in adjacent to property lines.

26. “Street” means a public highway designated as a street, avenue, boulevard, place, court or road on the official records on file with the County Registrar.

27. “Structure” is anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

28. “Structural Alterations” means any change in the supporting members of a building such as bearing walls or partitions, columns, beams, or girders, excepting such alteration as may be required for the safety of the building.

29. “Use” is the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

30. “Yard” is an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.

31. “Yard, Front” is an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot.

32. “Yard, Rear” is an open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

33. "Yard, Side" is an open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.

ARTICLE 3 - ESTABLISHMENT OF DISTRICTS

6.0301 Use and Area Districts Established

For the purposes of this chapter, the City is hereby divided into use districts and area districts as provided hereafter.

6.0302 Maps and Boundaries

The location and boundaries of the zoning districts are hereby established as shown on the map entitled "Zoning Map of Oakes" on file at City Hall. The City Auditor shall regularly update the "Zoning Map of Oakes" to show any changes in the zoning boundary lines resulting from amendments to the ordinances.

Location of District Boundaries:

The following rules shall apply with respect to the boundaries of the zoning districts

6.0303 Annexed Property

Property which has not been included within a district and which has become a part of the City by annexation shall automatically be classified as lying and being in the unplatted district until such classification has been changed by an amendment to the zoning ordinances as prescribed by law. Agricultural land that is annexed shall stay unplatted until developed.

ARTICLE 4 - APPLICATION OF REGULATIONS

6.0401 Application of Regulations

Except as provided in this chapter:

1. Conformity of Buildings and Land. No building, structure or premises shall be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged or altered except in conformity with the regulations herein specified for the district, as shown on the official map, in which it is located.

ARTICLE 5 - NON-CONFORMING USES

6.0501 Non-Conforming Uses

The lawful use of any building, structure or land existing at the time of the enactment of this chapter may be continued, although such use does not conform with the provisions of this chapter, provided the following conditions are met

1. Alterations. A non-conforming building or structure may be altered, improved or reconstructed provided such work is not to an extent exceeding in aggregate cost twenty-five percent (25%) of the assessed value of the building or structure, unless the building or structure is changed to a conforming use.

2. Extension. A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building or structure which existed prior to the enactment of this ordinance shall not be deemed the extension of such non-conforming use.

3. Changes. No non-conforming building, structure or use shall be changed to another non-conforming sue.

4. Abandonment. A non-conforming use of a building or premises which has been abandoned shall not thereafter be returned to such non-conforming use.

5. Unlawful Use Not Authorized. Nothing in this chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this chapter. Any property determined to be dangerous or in need of demolition or improvement must be in compliance within ten (10) days of notice. (See Chapter 10 Article 4)

6. Certificate of Non-Conforming Use. Upon the effective date of this chapter, the zoning administrator shall issue a "Certificate of Non-Conforming Use" to all owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.

   a. In accordance with the provisions of this section no use of land, buildings or structures shall be made other than that specified on the "Certificate of Non-Conforming Use," unless said use shall be in conformity with the provisions of the use zone in which the property is located.

   b. A copy of each "Certificate of Non-Conforming Use" shall be filed with the office of the zoning administrator. No permit or license shall be issued to any property for which a "Certificate of Non-Conforming Use" has been issued until said permit or license has been approved by the zoning commission.

7. District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any non-conforming uses existing therein.

ARTICLE 6 - USE DISTRICTS

6.0601 Use Districts

The City is hereby divided into the following Use Districts to be known as:

R-1	Residential Districts, Single-Family and Two-Family
R-1A	Residential Districts, Mobile Homes
C	Commercial Districts
I	Industrial Districts
U	Unplatted

6.0602 R-1 - Residential Districts – Single-Family and Two-Family

R-1 Use:
In a single-family district, all new buildings, and alterations of existing buildings, shall be used exclusively, and exclusively constructed, designed and arranged for, one or more of the following purposes:

1. Dwelling houses occupied by single and two family (duplex) buildings.
2. Publicly owned and operated buildings including fire and police stations and other public service facilities.
3. Churches and parish houses.
4. Public and private schools.
5. Hospitals, clinics, nursing and rest homes, and homes for the aged.
6. Playgrounds, parks, golf courses and other public recreation facilities.
7. Cemeteries.

R-1 Conditional Use:
The City Council may authorize the following conditional uses in the R-1 – Residential Districts:

1. Mortuary, funeral homes
2. Multi-family dwellings

R-1 Accessory Use and Buildings:
The following accessory uses and buildings are permitted in residential districts:

1. Professional office for a physician, clergyman, architect, engineer, attorney or similar professional person residing in such main building.
2. Home Occupation (Cottage Industry). Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no more than 5 non-residents help and no trading in merchandise is carried on.
3. Gardens.
4. Any other accessory use customarily incident to a use authorized in a residential district.
5. Private garages and Accessory Buildings,
    a. A garage which has an entrance on a side street must be at least ten (10) feet from the side of the lot line and the side of the garage must be at least than ten (10) feet from the alley line.
    b. A garage which has an entrance from an alley must be at least fifteen (15) feet from the alley line.
    c. An accessory building must be located at least five (5) from any other lot line.
    d. No separate accessory building shall be erected within five (5) feet of any other building
    e. The size of an accessory building shall be no larger than 30 feet by 40 feet or 1,200 square feet. Anything exceeding these limits will require a variance from the Oakes City Council.
    f. The height of the detached building shall not exceed one story of ~~12~~ 10 (ten) feet tall and shall not exceed a height of 25 (twenty five) feet. Anything exceeding these limits will require a variance from the Oakes City Council.
    g. In all instances, such measurements shall be made from the eaves.
    h. No accessory building shall be allowed on any utility easement.

R-1 Area and Density Regulations:

In any use district no residence building shall hereafter be erected, established or altered on a lot having a lot area of not less than the square feet required as follows:

1. Minimum frontage of 75 feet
2. No structures shall occupy more than fifty (50) percent of an inside lot nor more than sixty (60) percent of a corner lot.
3. There shall be no more than 3 (three) accessory buildings

R-1 Building Height:

1. No single dwelling shall exceed two and one-half (2 ½) stories or 35 feet.

R-1 Yard Requirements:

1. Measured from the front property line, a front yard of not less than twenty (20) feet.
2. Measured from the rear property line, a rear yard of not less than twenty (20) feet.
3. Measured from the side property line, a side yard on each of not less than five (5) feet.

R-1 Parking Requirements:

1. Each single or two=family (duplex) dwelling shall have off-street parking spaces for two (2) automobiles. All parking stalls shall be completely within the confines of the lot.
2. Off-Street Parking—See Section 6.0702

R-1 Supplementary Regulations:

1. Visibility at intersections--On a corner lot in any residential district, nothing shall be erected, placed, or allowed to grow in such a manner as to materially impede vision.
2. It is recommended that all new residential development have underground electrical hookups.
3. Those listed in Section 6.0701- Supplementary District Regulations.

6.0603 R-1A, Residential District (Mobile Homes):

R-1A Use:

It is the purpose of the R-1A District to set aside areas wherein mobile homes can be placed in a safe and healthful environment with due regard to their necessity as residential dwelling unit.

1. All uses permitted in the R-1, Residential District
2. Mobile Home Parks. Mobile homes shall only be permitted in the R1-A District unless otherwise specified in the provisions of this ordinance. No new mobile home park may be established, or no existing mobile home park may be expanded or modified unless zoned Mobile Home District (R-1A).
    a. All mobile home parks are required to have underground electrical hookups.

R-1A Conditional Uses:

1. Home occupation

R-1A General Rules:

1. Accessory structures such as a storage shed, windbreak, or entryway shall be at least 10 feet from the nearest adjoining mobile home
2. No mobile home shall be parked closer than 10 feet to a private interior roadway and it must have clear access to said roadway
3. Primary entrance and exit roadways shall connect to a dedicated public right-of-way and shall not be less than 36 feet wide from flow line to flow line
4. Off-street parking shall be provided for each mobile home lot

5. Service and utility buildings, garbage and trash containers, racks and rack locations, rodent and insect control, water and sewer provisions, shall meet the approval of the State Health Department

R-1A Accessory Use and Buildings:

1. Same as applied in R-1, Residential District

R-1A Area and Density Requirements:

1. Minimum lot area shall be 3500 square feet with a minimum lot width of 35 feet
2. Minimum front yard of the lot (this shall mean the entry side of the mobile home) shall be 10 feet.
3. Minimum end yard setback of lots for yards with double frontage (these are considered as the front and rear of the mobile home) shall be 8 feet at each end
4. Minimum side yards – 10 feet along the street side of interior roadways or driveways

R-1A Building Height Limits:

1. Same as applied in R-1 Residential District.

R-1A Yard Requirements:

1. Measured from the front property line, a front yard of not less than twenty-five (25) feet.
2. Measured from the rear property line, a rear yard of not less tan fifteen (15) feet except where the rear yard abuts a dedicated public right-of-way in which case the rear yard shall follow the requirements of front yard minimums.
3. Measured from the side property line, a side yard on each of not less than ten (10) feet along interior lot lines, fifteen (15) feet along public side streets.

R-1A Parking Requirements:

1. Same as applied in R-1 Residential District.

R-1A Supplementary Regulations:

1. Same as applied in R-1 Residential District.

R-1A Requirements for Mobile Home Parks:

1. When applying for this use, there shall be provided to the Zoning Administrator a plot plan by a registered engineer, architect, or qualified planner, complete in detail, meeting and showing the following requirements:
    a. The minimum free-standing area shall be at least two acres, and the density or mobile homes shall not be greater than eight to the net acres. Net acreage is defined as the acreage remaining after the deduction of the areas set aside for storage, recreation, clothes drying, garbage and trash collection points, utility and service building areas and spaces, roadways, driveways, walkways and off-street parking areas.
    b. Location and legal description.
    c. Entrance to and exit from the park.
    d. Vehicular driveways, roadways, and pedestrian walks.
    e. Plans showing signs and arrangement of mobile home lots and stands, location of roadways, service and utility buildings.
    f. Topography map showing original and final contours and provisions for drainage.
    g. Areas set aside for recreation, clothes washing and drying, storage and off-street parking.
    h. Fencing and screen planting on the premises.

i. Provisions for trash and garbage storage and removal.
j. Plans for water supply and distribution.
k. Plans for sewage collection and disposal.
l. Typical lot plan.

6.0604 R-2 - Residential Districts - Multi-Family *(Repealed February 2012)*

6.0606 Commercial District

C Use: The following buildings and uses are permitted in the commercial district:

1. Retail stores and shops, automobile, truck and farm implement sales and services.
2. Service establishments, automobile service and repair stations, car washes.
3. Business and professional offices. Financial institutions, churches, nursery for flowers or plants, animal hospitals and kennels.
4. Eating and drinking establishments, hotels, and motels.
5. Funeral homes and mortuaries.
6. Transportation services.
7. Amusement and recreational uses.
8. Wholesale businesses.
9. Apartment dwelling units.
10. Storage buildings.
11. Any other building or use similar to the uses herein listed in the type of services or goods sold.
12. Multi-family dwellings.
13. Private clubs.
14. Lodges or social buildings.
15. Hotels, motels, boarding and lodging houses.
16. Automobile parking lots.
17. Any accessory use customarily incident to a use herein listed including the use of containers for the purpose of storage of merchandise or goods used in the normal operation of the business.

C Prohibited Use:

1. Dwelling units, except for housing for the elderly, and apartments above commercial uses.
2. Manufacturing, except for production of products for sales at retail such as jewelry, eye glasses, hearing aids or products which create no odor, noise, vibration or dust when they are manufactured.
3. Storage of goods except in completely closed buildings.

C Conditional Use:

The City Council may authorize conditional uses in the C-Commercial District including but not limited to the following:

1. Warehouses.

C Accessory Use and Buildings:

The City Council may regulate accessory uses and buildings in the C-Commercial District.

C Area and Density Regulations:

There shall be a minimum lot area of 3,000 square feet with a minimum width of twenty-five (25) feet. Uses such as hotels, motels, eating and drinking establishments shall be connected to public sewer and public water.

C Building Height:

1. No structure shall exceed three (3) stories or 45 feet.

C Yard Requirements:

1. A front yard shall conform with the existing measurements in that area.
2. Measured from the rear property line, a rear yard of not less than (ten) 10 feet.
3. Measured from the side property line, a side yard on each of not less than five (5) feet or ten (10) feet on each side of the lot.

C Parking Requirements:

1. There shall be adequate provisions for off-street parking by each of the activities within the district. See Section 6.0702

C Supplementary Regulations:

1. Those listed in Section 6.0701 Supplementary District Regulations.

6.0607 I - Industrial

I Uses: The following buildings and uses are permitted in the industrial district:

1. All uses permitted in a C-Commercial District.
2. The compounding, assembly, treatment, manufacture, processing and packing of articles or materials shall be permitted in the industrial district.

I Prohibited Uses:

1. No dwelling or dwelling unit.

I Conditional Uses:

1. The City Council shall review all the permits for the future industrial development to insure adequate measures are provided for the welfare and safety of the public.

I Parking Requirements:

1. There shall be adequate provisions for off-street parking by each of the activities within the district. See Section 6.0702

I Supplementary Regulations:

1. Those listed in Section 6.0701 – Supplementary District Regulations.

6.0608 U - Unplatted

U Use:

The predominant use of land within the U-Unplatted District is agriculture and undeveloped land, for one or more of the following purposes:

1. Grain and crop farming, nurseries, green houses, and road-side stands for the sale of products which are grown on the premises.
2. Single and two family (duplex) buildings.
3. Churches and facilities related to religious institutions.
4. Golf courses, public parks, facilities, playgrounds, and other recreational uses.
5. Public and private schools.
6. Utility lines and public service facilities.
7. Home occupations.

U Conditional Use:
The City Council may authorize the following conditional uses in the U - Unplatted Districts:

1. Airports and landing strips.
2. Cemeteries.
3. Radio and television towers and accessories.
4. Processing of agricultural products provided:
    A. Side yards of not less than fifty (50) feet.
    B. Rear yard of not less then fifty (50) feet.

U Accessory Use and Buildings:
The following accessory uses and buildings are permitted in commercial districts:

1. An accessory building, or any enclosure, group or run, or any part thereof shall be located at least fifteen (15) feet from any rear or side lot line, and at least twenty (20) feet from any building used for dwelling purposes on an adjoining lot.

U Area and Density Regulations:
The City Council may regulate area and density regulations in the Unplatted District.

U Yard Requirements:

1. Measured from the front property line, a front yard of at least (twenty) 20 feet. Lots outside the city limits shall have a front yard of not less than fifty (50) feet.
2. Measured from the rear property line, a rear yard of not less than twenty (20) feet.
3. Measured from the side property line, a side yard on each of not less than five (5) feet.

U Parking Requirements:

1. There shall be adequate provisions for off-street parking by each of the activities within the district. See Section 6.0702

U Supplementary Regulations:

1. Those listed in Section 6.0701- Supplementary District Regulations.

ARTICLE 7 – AREA REGULATIONS

6.0701 Area Regulations - Supplementary District Regulations

1. Overcrowding
    a. Dwelling units shall not be occupied by more than four person per unit unless they are a family by definition.
2. Fences
    a. Notwithstanding any provisions of this ordinance, fences, walls, and hedges may be permitted in yards, or along the edge of any yard, provided that no fence, wall, or hedge along the sides or front edge of any front yard shall be over six (6) feet in height.
3. Erection of more than one principal structure on a lot
    a. Is not permitted unless yard and other dimension requirements are met for each structure.
4. Exceptions to height regulations
    a. The height limitations contained in the schedule of district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or

other accessory usually required to be placed above the roof level and not intended for human occupancy.

5. Structures to have access
    a. Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be located on lots as to provide safe and convenient access to servicing, fire-protection, and off-street parking.
6. Signs. The following regulations shall govern the location, area and type of signs permitted within the City
    a. General requirements:
        i. All signs shall be structurally safe and shall be securely anchored or otherwise fastened, suspended, or supported so that they will not be a nuisance to the safety of persons or property.
        ii. No sign, outdoor commercial advertising device or lighting device constituting a nuisance to an adjacent residential district because of lighting glare, focus, animation or flashing of a sign, lighting or advertising device shall be erected or continued in operation.
        iii. No "revolving beacon" or "fountain" signs shall be permitted in any district.
        iv. No sign in any district shall conflict in any manner with the clear and obvious appearance of public devices controlling public traffic.
        v. Ground signs shall not be located on public property except by specific approval of the City Council.
        vi. Temporary signs or banners on or over public property may be authorized by the City Council for a period not to exceed ten (10) days.
        vii. Signs projecting over a street, alley, or other public space shall project not more than ten (10) feet and be no closer than two (2) feet to a plumbline form curbline; clearance below such signs shall be a minimum of nine (9) feet.
        viii. Roadside market signs advertising produce grown and sold on the premises on which they are located. Said signs shall not remain continuously erected more than six (6) months of any calendar year.
    b. Residential Districts:
        i. One (1) identification sign shall be permitted per residential use provided such sign does not exceed two (2) square feet in area; said sign may be wall, pedestal, ground or projecting type (but not projecting over public property)
        ii. One sign of a temporary nature, such as "for sale" or "for rent", shall be permitted per residential use provided such sign does not exceed six (6) square feet and is not lighted; said sign may be wall, pedestal or ground type.
        iii. Home occupation. No sign or display other than a nameplate not more than two (2) square feet in area shall be used to indicate from the exterior that the building is being utilized in part of any purpose other that than of a dwelling.
    c. Unplatted District:
        i. Highway billboards, or other such highway oriented advertising devices shall be permitted, provided such signs and devices are located at least one thousand (1,000) feet from any existing advertising sign or device, regardless of political boundaries, width of rights-of-way, existing highways, streets, roads, or easements.
        ii. Prior to construction of any highway billboard or other such highway oriented advertising device, a building permit shall be obtained. If the

building inspector judges any sign to be in poor repair, not properly located, obstructing public rights-of-way, or in any way adjudged to constitute a public hazard or nuisance, and sign may be removed by the building inspector. Costs for removal and storage or disposal shall be paid by the permittee.

d. Public or Semi-public uses:
    i. One identification sign shall be permitted per public or semi-public use provided such sign does not exceed twenty (20) square feet in area; said sign may be wall, pedestal, ground or projecting type.
e. Commercial, Highway Service, Industrial Districts:
    i. No restrictions except the general sign requirements of Section 8-A above.

6.0702 Off-Street Parking Regulations

1. No building shall be erected, enlarged or changed in use unless there is provided on the lot or tract of land used, space for the parking of automobiles or trucks in accordance with the following minimum requirements:
    a. Residential-Two (2) parking spaces for each dwelling unit
    b. Church or School-One (1) parking space for every (5) seats in the principal gathering room plus one (1) space for each employee
    c. Private Club or Lodge-One (1) parking space for each normal attendance at club or lodge functions
    d. Hospitals-One (1) space for each two (2) patient beds (excluding bassinets) plus one (1) additional space for each doctor, plus one (1) additional space for each (2) employees, and loading and unloading space for hospital ambulance
    e. Convalescent or Nursing Home-One (1) space for each four (4) residents or patients, plus one (1) space for each two (2) employees, plus one (1) space for emergency vehicles
    f. Offices or Clinics-One (1) parking space for each one hundred (100) square feet of floor area
    g. Mortuary or Funeral Home-One (1) space for each one hundred fifty (150) square feet of floor area
    h. Theatres-One (1) space for each four (4) seats
    i. Wholesale Establishments and Business Services-One (1) space for every three hundred (300) square feet of floor area
    j. General Retail-Four (4) spaces for every one thousand (1,000) square feet of floor area
    k. Restaurants or Bars-One (1) space for each two hundred (200) square feet of floor area
    l. Hotel, Motel, or Tourist Cabin-One (1) space for each room plus two (2) additional spaces for each three (3) employees
    m. Commercial, Entertainment, and Recreation-One (1) space for each one hundred (100) square feet
    n. Industrial Uses-One (1) space for each one and one-halve (1 ½) employee on the shift of the greatest employment, plus one (1) truck space for each 7,500 square feet of gross floor area
    o. Core Commercial District-One (1) parking space shall be provided on the same lot for each six hundred (600) square feet of constructed building on the lot
    p. Mixed Uses-In cases of missed uses, the parking spaces required shall be the sum of the requirements for the various individual uses computed separately
2. Exceptions
    a. Variance approved by the City Council

ARTICLE 8 - ENFORCEMENT

6.0801 Administrative Official

1. Administrative Official. Except as otherwise provided herein the City Auditor with direction from the City Council shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued except where the provisions of this chapter have been complied with.
   Building Official. The Building Official shall be appointed by the City Council and shall administer and enforce this ordinance. Assistance from the City Council can be provided as necessary. The Building Official reviews all building permit applications, makes inspections, and files record with the City Auditor. If the Building Inspector finds that any of the provisions of this ordinance are being violated, the person responsible for such violation shall be notified in writing indicating the nature of the violation and ordering the necessary action to correct it.
   Zoning Commission. The Zoning Commission shall be appointed by the City Council (see Board of Adjustment) and shall review all petitions for amendment to the zoning ordinance and the zoning district map, and appeals by any decision of the City Council.
2. Building Permit Required. No building or structure shall be erected, added to or structurally altered until a permit therefore has been approved by the Building Inspector and issued by the City Council. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Adjustment, no such building permit or certificate of occupancy, shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter. Any residential structure for the erection of which a permit is issued must be completed within one (1) year from the date of such permit. If not completed within permitted time application must be resubmitted and regular fees plus $20.00 re-application fee must be paid. (see Rate Schedule)
   Building permit is required for any alterations or additions to a permanent or accessory structure, any new construction, concrete work, storage buildings and fences.
   The applicant must have area marked according to submitted plans and Building Official will review. City Council will approve based on recommendations by Building Official.
   Construction shall only begin once application has been approved. Building Official will be contacted with start date to complete inspection.
   a. Matter Accompanying Application. There shall be submitted with all applications for building permits a copy of the layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this ordinance.
   b. Payment of Fee of a minimum of $25.00. (See rate schedule at end of this Chapter)
   c. The City Council has the power of reversing wholly or partly or may modify any decision of the Building Inspector so long as such action is in conformity with the terms of this ordinance.
   d. All building contractors who are hired to perform construction work with the City must be a licensed contractor with the State of North Dakota. A building permit

shall not be issued to any party that does not have a licensed contractor doing the contract work for construction over the amount of $2,000.00. A person may provide his or her own labor when doing construction work on property in which he or she holds recorded title. (see NDCC Chapter 43-07)

3. Certificates of Occupancy. Building Permit will be issued upon satisfactory inspection by Building Official based on approved application by City Council and compliance with stated information on application.
4. Conditional Use Permits. The City Council may hear and decide on such conditional uses specifically authorized by the terms of this ordinance; to decide such questions as are involved in determining whether conditional uses should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this ordinance, or to deny conditional uses when not in harmony with this ordinance. No application for a conditional use shall be granted unless all the following conditions are present:
   a. A written application for a conditional use is submitted stating the grounds on which it is requested.
   b. Uses and values of the other property in the area shall in no foreseeable manner be impaired or diminished by the conditional use.
   c. Adequate utilities, access roads, drainage and other necessary site improvements have been made or are being provided.
   d. The conditional use shall conform to all applicable regulations of the district in which it is located.
   e. Notice shall be given at least seven (7) days in advance of a public hearing. Notice shall appear in the official newspaper for one publication prior to the hearing.
   f. The Notice of Hearing may be waived by the Council if it is declared an emergency by a ¾ voted of the Council then present. An emergency shall exist if immediate action necessitates Council action that will benefit the City.

ARTICLE 9 - BOARD OF ADJUSTMENT

6.0901 Creation of Board

1. Creation, Appointment and Organization. The Zoning Commission, to act as the Board of Adjustment, to be appointed by the City Council, is hereby created. Said Board shall consist of five members from within the city limits and one member from the Bear Creek Township for three-year terms. The Board shall elect a chairman from its membership, shall appoint a secretary and shall prescribe rules for the conduct of its affairs.–(Source: North Dakota Century Code Section 40-47-07)
2. Powers and Duties. The Board of Adjustment shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:
   a. Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
   b. Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. In granting any variance, the Board of Adjustment shall prescribe any

conditions that it deems to be necessary or desirable. However, no variance in the strict application of any provision of this chapter shall be granted by the Board of Adjustment unless it finds:

1) That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.
2) That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish this purpose.
3) That the granting of this variance will be in harmony with the general purpose and intent of this chapter. In addition to considering the character and use of adjoining buildings and those in the vicinity, the board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.

3. Procedure. The Board of Adjustment shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing or on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board of Adjustment shall be by resolution and recommendation made to City Council for final approval/denial, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the city auditor.
4. Notice and Hearing. No action of the Board shall be taken on any case until after due notice has been given to the parties and public hearing has been held.
5. Exception. If approval of appeal or variance being requested is filed and signed by owners:
   a. Of the area of the lots included in such proposed change;
   b. Of those immediately adjacent in the rear thereof extending 150 feet therefrom;
   c. Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.

   Notice and public hearing shall be waived for said application. The Board shall review request and approvals of owners and make recommendation to the City Council for final approval of application.

6.0902 Amendments

The City Council may, from time to time, amend this article by supplementing, changing, modifying or repealing any of the regulations, restrictions or other provisions thereof or of the district map or the districts on said map or of the boundaries of such district. A proposed amendment may be initiated by the said Board upon its own motion, or upon receipt of a request therefore from the City zoning commission or upon receipt of a zoning application filed and payment of $20.00 fee by property owners or from any interested person or persons or their agents.

1. Report by City Zoning Commission. The City Council shall require a report from the City zoning commission on a proposed amendment before taking final action thereon. The City zoning commission shall thereupon make a report and hold a public hearing. A final report shall be submitted within ninety (90) days after the time of referral of the proposed amendments to the City zoning commission unless the City Council is agreeable to an extension of time.
2. Action by City Council - Public Hearing. After the receipt of the required final report on any amendment from the City zoning commission or in the event of the failure of the City zoning commission to so report within ninety (90) days following the time of referral of the proposed amendment to the City zoning commission, the City Council shall hold a public hearing, after which the proposed amendment may be passed. Not less than fifteen (15) days notice of the time and place of holding such public hearing shall first be published in the official newspaper. A hearing shall be granted to any person interested, and the time and place specified.
3. A public hearing shall be waived if approval of amendment is filed and signed by owners of:
    a. Of the area of the lots included in such proposed change; or
    b. Of those immediately adjacent in the rear thereof extending 150 feet therefrom; or
    c. Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.
4. Vote after Protest. If a written protest against a change, supplement, modification, amendment or repeal is filed and signed by owners of twenty percent (20%) or more:
    a. Of the area of the lots included in such proposed change; or
    b. Of those immediately adjacent in the rear thereof extending 150 feet therefrom; or
    c. Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.

    The amendment shall not become effective except by the favorable vote of three-fourth (3/4) of all the members of the City Council.
5. Withdrawal of Applications. Any application filed and accepted may be withdrawn upon written request by the applicant any time prior to the submission of any public hearing notice for advertisement. If public hearing notice has been submitted for advertisement, withdrawal can be made only with the consent of either the City Zoning Commission or the City Council, whichever body has advertised the hearing.

6.0903 Enforcement

Penalty: Cease & Desist Order according to NDCC (public nuisance).

The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure or the use of any building, structure or land in violation of this article or of any regulation, order, requirement, decision or determination made under authority conferred by this article, shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the City, through any administrative officials, department, board of bureau charged with the enforcement of this article:

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

5. Building Official shall present cease & desist order pending review by the City Council.

A violation of any provision of this article or a violation of or refusal or failure to comply with any regulation, order, requirement, decision of determination made under authority conferred by this article shall be punishable as provided in the chapter entitled "Ordinances."

Building Permit Rate Schedule

FEE FOR BUILDING PERMIT

Structural Improvements under $500	$0.00
Structural Improvements of $501 to $20,000	$25.00
Each Additional $1000	$1.00
Re-Application Fee	$20.00

Article 6

Use Regulations

Section 6.03 Use Table

A. Use Categories
   All of the uses listed in Table 6.03-01 are explained in Article 6.
B. P – Uses Permitted by Right
   A "P" indicates a use that is permitted by right in the corresponding zoning district. There are no additional development standards required for these uses other than those identified in this zoning ordinance in Article 7.
C. C – Conditional Uses
   A "C" indicates a conditional use and is only allow if it is reviewed and approved as a conditional use for that zoning district. These uses are subject to all standards listed in Article 7.
D. P/C – Uses Permitted by Right but subject to conditions of Section 6.03.
   A "P/C" indicates as use that is permitted by right, through it is subject to special conditions of this section. These uses are subject to the additional standards and the standards of Article 7.
E. C/C – Conditional uses subject to specific conditions of Section 6.03.
   A "C/C" indicates a conditional use with specific conditions of this section. Additional standards may be added during the conditional use approval process.
F. - - Uses not allowed
   A "-" indicates a use that is not allowed in the respective zoning district.

Table 6.03-01 Use Table

Use	R-1	R-1A	C	I	U
Residential Uses					
Single-Family Dwellings	P	P	-	-	P
Two-Family Dwellings	P	P	-	-	P
Multi-Family Dwellings	C	-	P	-	-
Apartment Dwellings	-	-	P	P	-
Home Occupation	-	-	-	-	P
Mobile Home Parks	-	P [1]	-	-	-
Public and Institutional Uses					
Cemeteries	P	P	-	-	C
Churches and Parish Houses	P	P	-	-	P
Clinics	P	P	-	-	-
Golf Courses	P	P	-	-	P
Hospitals	P	P	-	-	-
Nursing and Rest homes	P	P	-	-	-
Playgrounds and parks	P	P	-	-	P
Public and Private Schools	P	P	-	-	P
Public Buildings	P	P	-	-	-
Commercial Uses					
Amusement and Recreational use	-	-	P	P	-
Automobile Parking Lots	-	-	P	P	-
Automobile service and repair stations	-	-	P	P	-
Automobile, truck and farm implement sales and services	-	-	P	P	-
Boarding and lodging houses	-	-	P	P	-
Business and Professional Offices	-	-	P	P	-
Financial institutions	-	-	P	P	-
Churches	-	-	P	P	-
Nursery for Flowers or Plants	-	-	P	P	-
Animal Hospitals	-	-	P	P	-
Kennels	-	-	P	P	-
Car washes	-	-	P	P	-
Eating and Drinking establishments	-	-	P	P	-
Hotels	-	-	P	P	-
Lodges or Social Buildings	-	-	P	P	-
Mortuary, Funeral Homes	C	-	P	-	-
Motels	-	-	P	P	-
Private Clubs	-	-	P	P	-
Retail stores and shops	-	-	P	P	-

Use	R-1	R-1A	C	I	U
Service establishments	-	-	P	P	-
Storage Buildings	-	-	P	P	-
Transportation Services	-	-	P	P	-
Wholesale Businesses	-	-	P	P	-
Industrial Uses					
Airports and landing strips	-	-	-	-	C
Radio and television towers and accessories	-	-	-	-	C
The compounding, assembly, treatment, manufacture, processing and packing of articles or materials	-	-	-	P	-
Utility lines and public service facilities	-	-	-	-	P
Warehouses	-	-	C	-	-
Agricultural Uses					
Green Houses	-	-	-	-	P
Grain and Crop Farming	-	-	-	-	P
Nurseries	-	-	-	-	P
Processing of agricultural products	-	-	-	-	C [2]
Road-side stands for the sale of products which are grown on the premises	-	-	-	-	P

[1] When applying for this use, there shall be provided to the Zoning Administrator a plot plan by a registered engineer, architect, or qualified planner, complete in detail, meeting and showing the following requirements:

-The minimum free-standing area shall be at least two acres, and the density or mobile homes shall not be greater than eight to the net acres. Net acreage is defined as the acreage remaining after the deduction of the areas set aside for storage, recreation, clothes drying, garbage and trash collection points, utility and service building areas and spaces, roadways, driveways, walkways and off-street parking areas.

-Location and legal description

-Entrance to and exit from the park

-Vehicular driveways, roadways, and pedestrian walks

-Plans showing signs and arrangement of mobile home lots and stands, location of roadways, service and utility buildings

-Topography map showing original and final contours and provisions for drainage

-Areas set aside for recreation, clothes washing and drying, storage and off-street parking

-Fencing and screen planting on the premises

-Provisions for trash and garbage storage and removal

-Plans for water supply and distribution

-Plans for sewage collection and disposal

-Typical lot plan

[2] Side yard setbacks shall be no less than fifty (50) feet and rear yard setbacks shall be no less than fifty (50) feet.

How to Locate Transmission Pipelines in Your Area

The National Pipeline Mapping System (NPMS) is managed by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS). The NPMS includes the locations and characteristics of hazardous liquid and gas transmission pipelines, liquefied natural gas plants and breakout tanks.

NPMS online interactive maps show pipeline facilities and the areas they traverse. This information can be a valuable tool for planning community growth and emergency response. Access to the maps requires a password, which will be provided to federal, state and local government agencies upon request. Members of the public can find contact information for pipeline companies operating in a county or postal code via the NPMS website **(http://www.npms.phmsa.dot.gov)**.

OPS Stakeholder Communications Website

Information about pipeline system construction, operation, and maintenance is available on the OPS Stakeholder Communications website. The site also provides current statistical reports on pipeline incidents and enforcement activity. Visit **http://primis.phmsa.dot.gov/comm**.

OPS Community Assistance

OPS Community Assistance and Technical Services managers are committed to improve communication with pipeline safety stakeholders and identify opportunities for improving pipeline safety, especially in the areas of public awareness and damage prevention. For more information, go to: **http://primis.phmsa.dot.gov/comm/CATS.htm.**

OPS TAG Grants

The OPS Technical Assistance Grants program offers funding to local governments to help them implement PIPA-recommended practices. For information, go to the OPS Stakeholder Communications website, under "Grants".

Know what's below. Call before you dig.

Find more information regarding PIPA and PIPA Recommended Practices, go to: PIPA-info.com or scan this QR code on your smartphone. Contact us at info@PIPA-info.com.

Land Development in Close Proximity to Transmission Pipelines

Who We Are

The Pipelines and Informed Planning Alliance (PIPA) is a collaborative initiative comprising pipeline safety stakeholders whose goal is to reduce risks and improve the safety of affected communities and transmission pipelines through the communication and implementation of PIPA-recommended practices. The PIPA-recommended practices are intended to help communities make risk-informed decisions in planning for land use and development for areas adjacent to transmission pipelines.

Pipelines and Informed Planning Alliance
PIPA-info.com

PIPA Stakeholders

PIPA stakeholders represent a wide range of interests, organizations and viewpoints on pipelines and community planning, including:

- Local, state and federal government agencies
- Emergency responders
- Public and community organizations
- Excavators and property developers
- Pipeline facility operators

PIPA-Recommended Practices and the Role of Local Governments

PIPA-recommended practices include actions to be taken by local governments to affect proposed changes in land use or new development adjacent to existing transmission pipelines. Local governments have a key role in helping ensure the safety of people, property, the environment and transmission pipeline infrastructure.

The PIPA-recommended practices are intended to help local governments enhance safety by establishing requirements that guide stakeholder communications and actions early in the planning stages. For example, PIPA-recommended practices suggest that local governments adopt ordinances that define and establish transmission pipeline consultation zones.

Another PIPA recommendation is that land use changes or development within a consultation zone require property developers/owners to consult with transmission pipeline operators early in the development process. Doing so will ensure that development plans minimize risks to the people living or working nearby, and are consistent with the needs and legal rights of developers and pipeline operators.

Communication Helps Ensure Safety

Land use changes and development near transmission pipelines can create risks to communities and to the pipeline infrastructure. Safety is a primary and common goal for all stakeholders and should be considered when decisions are made that impact life, property or the environment. Early communication among stakeholders can help.

Risk Informed Decisions

Reducing risk and improving community and pipeline safety can be challenging. Stakeholders often have differing and, sometimes, conflicting concerns. All stakeholders are best served by efficient, effective decision-making processes that involve reasonable time and expense. When each stakeholder understands the relevant interests, issues and concerns of other stakeholders, it becomes easier to communicate and collaborate to reach mutually agreeable solutions. As communities grow and evolve, we are very likely to see an increase in development near existing transmission pipelines. Communication and collaboration among stakeholders is vital to improving pipeline safety. It is important that stakeholders become risk-informed and consider adoption and implementation of PIPA-recommended practices.

Find more information regarding PIPA and the Recommended Practices at: PIPA-info.com or contact us at info@PIPA-info.com.

LAND USE & DEVELOPMENT NEAR TRANSMISSION PIPELINES CHECKLIST
FOR PLANNING, DESIGN, COMMUNICATION, PERMIT AND SITE PLAN REVIEW (May 9, 2012)
(The recommended practices for land use and development near transmission pipelines are in the PIPA Report at www.PIPA-Info.com)

I. PROPERTY DEVELOPER/OWNER INFORMATION		**PIPELINE OPERATOR CONTACT INFORMATION**
PPROPERTY DEVELOPER/OWNER NAME:		PIPELINE OPERATOR NAME:
CONTACT NAME:		CONTACT NAME:
E-MAIL:		E-MAIL:
CURRENT MAILING ADDRESS:		WORK PHONE:
City: State: Zip:		
WK PHONE:	HM PHONE:	
	MBL PHONE:	MOBILE PHONE: FAX:

II. LOCATION OF BUILDING SITE

ADDRESS: _____

CITY_____COUNTY_____STATE ____

	Proposed building encroaches onto pipeline right-of-way?		Visual evidence of pipeline markers or pipeline appurtenances?
	Approximate distance of proposed structure to transmission pipeline?		Property encumbered by a pipeline easement?

III. DESCRIPTION OF PROPOSED FACILITY TYPE & PERMIT CONDITIONS

	FACILITY TYPE		DEVELOPMENT PERMIT CONDITIONS		PUBLIC SPACE PERMIT CONDITIONS
	Parking Lot/Structure (ND11)		Consultation Zone Meeting (BL05)		Contact pipeline operator before excavation or blasting (ND25)
	Road (ND12)		One-call designer locate ticket (ND02)		Enhanced damage prevention onsite meeting for operator and property developer prior to excavation, hand digging within 2' of pipeline (BL15)
	Utilities (ND13)		Planning area enhanced safety requirements (BL06)		Pipeline operator representative on site to monitor all construction activities within the right-of-way (BL15)
	Aboveground Water Management (ND 14)				Install Temporary Markers on Edge of Transmission Pipeline Right-of-Way Prior to Construction (ND24)
	Water Supply and Sanitary Systems (ND16)				
	Residential, Mixed-Use, Commercial (ND 17)				
	Industrial Development (ND 19)				
	Institutional Facility(ND20)				
	Public Safety and Enforcement Facilities (ND21)				
	Places of Mass Public Assembly (ND 22)				

IIV. WILL THE PROPOSED DEVELOPMENT OF THE PROPERTY REQUIRE/ENTAIL ANY OF THE FOLLOWING (BL05):

	Road crossings over the pipeline?		Extensive landscaping (including irrigation systems) within the easement area?		Changing the amount of cover (by adding or removing dirt) within the easement area?
	Other utility lines crossing over or under the pipeline?		Permanent structures or paving within the easement (e.g., paving, parking lots, buildings, pedestrian paths, signage, poles, retaining walls, septic systems, basketball/tennis courts, etc.)?		Construction equipment crossing the pipeline?
	Blasting, seismic vibration testing, pile driving, or similar event which produces significant shock and/or sound waves?		Significant excavation (underground parking structures or building foundations, core samples, rock/mineral quarries, dams, etc.)?		Impounding water or building drainage ditches or other drainage facilitates?
	Fencing running parallel to (within 100 feet) or crossing the pipeline?		Storing materials, equipment, vehicles, or other items within the easement area (e.g., construction materials, junk or scrap heaps, cut timber, boats, military equipment, etc.?		

III. PIPELINE DESCRIPTION(BL05 & 06)

	Number of pipelines?		Typical operating pressure and maximum allowable operating pressure?
	Diameter and wall thickness of pipelines(s)?		Integrity assessment – condition of pipeline?
	Product(s) transported?		Timeframe of planned repairs, if any?
	Consultation Zone distance (BL05)		Planning Area distance (BL 06)
	ROW maintained free of obstructions or encroachments? (BL12, BL13)		

IIV. PRE-CONSTRUCTION MEETINGS

	CONSULTATION ZONE MEETING (BL06) (preferably prior to pre-application phase – between pipeline operator/property developer)		ENHANCED DAMAGE PREVENTION MEETING (BL15) (pipeline operator/property developer/excavator – when excavation within 10' of transmission pipeline)
	Copy of the company's development guidelines and procedures/handbook		Excavator and pipeline operator onsite meeting to determine actions or activities required to verify the location prior to excavation
	Description of pipeline operator's operation, maintenance, repair, and future replacement activities.		Communicate/document technical details of excavation work (type of equipment excavation equipment to be used, duration of the excavation project, dynamic loading over the pipeline, vibration)
	Copy of pipeline easement when applicable		Pipeline operator perform an engineering evaluation of the effects overburden/excavation activities and submit requirements for additional mitigative measures
	Maps and as-built records of the pipeline facilities or abandoned facilities (BL01, BL17)		
	Review proposed use of pipeline ROW for acceptability. (See Appendix D for examples., ND03)		

IIV. PLAN & RECORD REQUIREMENTS

	PLANNING & RECORDS RESEARCH		SITE PLAN REQUIREMENTS		LAND RECORD REQUIREMENTS
	Consider modeling of fire, explosion, or toxic release impacts that could occur during an incident for the specific land use under consideration. Egress models may also be considered. (ND17, ND19, ND21)		Location of pipeline and pipeline easement (verified with on-site markings)		Recorded development plans and final plats (ND10)
	Review pipeline operator's websites for developer guidelines. The guidelines may include information about separation between proposed structures and the pipeline. (BL03, ND02)		Location of existing, abandoned and out-of-service, and future above and belowground facilities (e.g. cathodic protection and grounding systems, vent pipeline, vaults, valve nest)		Manage, use, document, record, and retain land use records as needed (BL08) (e.g. Easement agreements (BL09), Encroachment agreements (ND26), Letters of no objection/conditional approvals (ND 27), Partial Releases (ND28))
					Blanket easements defined (ND07)
					Disclose Transmission Pipeline Easements in Real Estate Transactions (BL18)

XV. REVIEW DESIGN FOR SAFE INTEGRATION WITH THE TRANSMISSION PIPELINE (ND06)

	Consider measures to prevent excavation damage during construction and in the future (BL15, ND08, ND12, ND16, ND22, ND24)
	Review potential for other damage to the pipeline from development (e.g. run off, interference with cathodic protection) (ND11, ND12, ND13, ND14, ND16, ND17)
	Review to ensure adequate access for operations/maintenance activities (ND 11, ND12, ND13, ND 14, ND 15, ND16, ND17, , ND19, ND 20, ND21, ND22)
	Review to ensure adequate access for emergency response (BL06, ND 12, ND14, ND 16, ND 17, ND 19, ND 20, ND21, ND22, ND23)
	Review ability for a safe and timely evacuation (ND12, ND17, ND20, ND22)
	Review to maximize separation between proposed facilities the transmission pipeline. (All) • Minimum separation within the ROW to other structures? • Consider measures to minimize consequences of failure and likelihood of future excavation damage. • Are buildings clustered away from the pipelines? • Are higher-density or difficult to evacuate development located with a maximum separation from the pipeline? • Are open spaces closest to the pipeline, thereby creating a buffer?
	Review for enhanced fire endurance if needed (ND11, ND 17, ND20, ND 21, ND22)
	Review selection and design of vegetation (ND15)
	Review for potential of gas or liquid migration in the event of a release (ND13, ND14, ND16, ND19,
	Consider the effects of noise and odor of pipeline operations (ND18)
	Consider escalation of risk due to cascading effects. (ND19, ND21)
	Consider proposed use of pipeline ROW for alternative use such as green spaces, parks, golf courses, hike and bike trails, horse trails, and other recreational spaces. (ND 08 and see Appendix C for examples.)

Pipelines and Informed Planning Alliance (PIPA)

Summary Report for Elected and Appointed County Officials

Contents

Preface

The Pipelines and Informed Planning Alliance (PIPA) is a stakeholder initiative led and supported by the US Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA). PIPA's goal is to reduce risks and improve the safety of affected communities and transmission pipelines through implementation of recommended practices related to risk-informed land use and development near transmission pipelines. The PIPA recommended practices describe actions that can be taken by key stakeholders, including local government, transmission pipeline operators, property developers/owners, and real estate commissions, to enhance pipeline safety.

In December 2010, PIPA issued its report, **Partnering to Further Enhance Pipeline Safety In Communities Through Risk-Informed Land Use Planning: Final Report of Recommended Practices**. The report provides recommended practices for stakeholder implementation. The report is supplemented by the PHMSA report, **Building Safe Communities: Pipeline Risk and its Application to Local Development Decisions**. The PIPA Report and an interactive table of the PIPA-recommended practices are available online at ***www.PIPA-Info.com***.

NACo applauds the findings of the PIPA Report. It offers nearly 50 recommended practices for local communities, developers and pipeline operators to use to help reduce the safety risks that can result from the growth of communities near transmission pipelines. The recommendations can help guide land-use planning and development decisions to help protect growing communities and the existing pipeline infrastructure. The recommendations address how communities can gather information about transmission pipelines and how local planners, developers and pipeline operators should communicate during all phases of new community development to understand and minimize pipeline risks. NACo helped identify elected county officials and key county professional staff, including planners, to participate in the PIPA initiative.

This issue brief is being published in support of an agreement NACo signed with PHMSA in 2008 to help build county officials' awareness and capacity to improve transmission pipeline safety, especially through development and implementation of local land use practices. Information in this issue brief is taken directly from the PIPA Report with the purpose of conveying the report's findings and distilling the information specifically important to NACo members, including county elected and appointed officials, planners, emergency managers and other key county staff.

Background

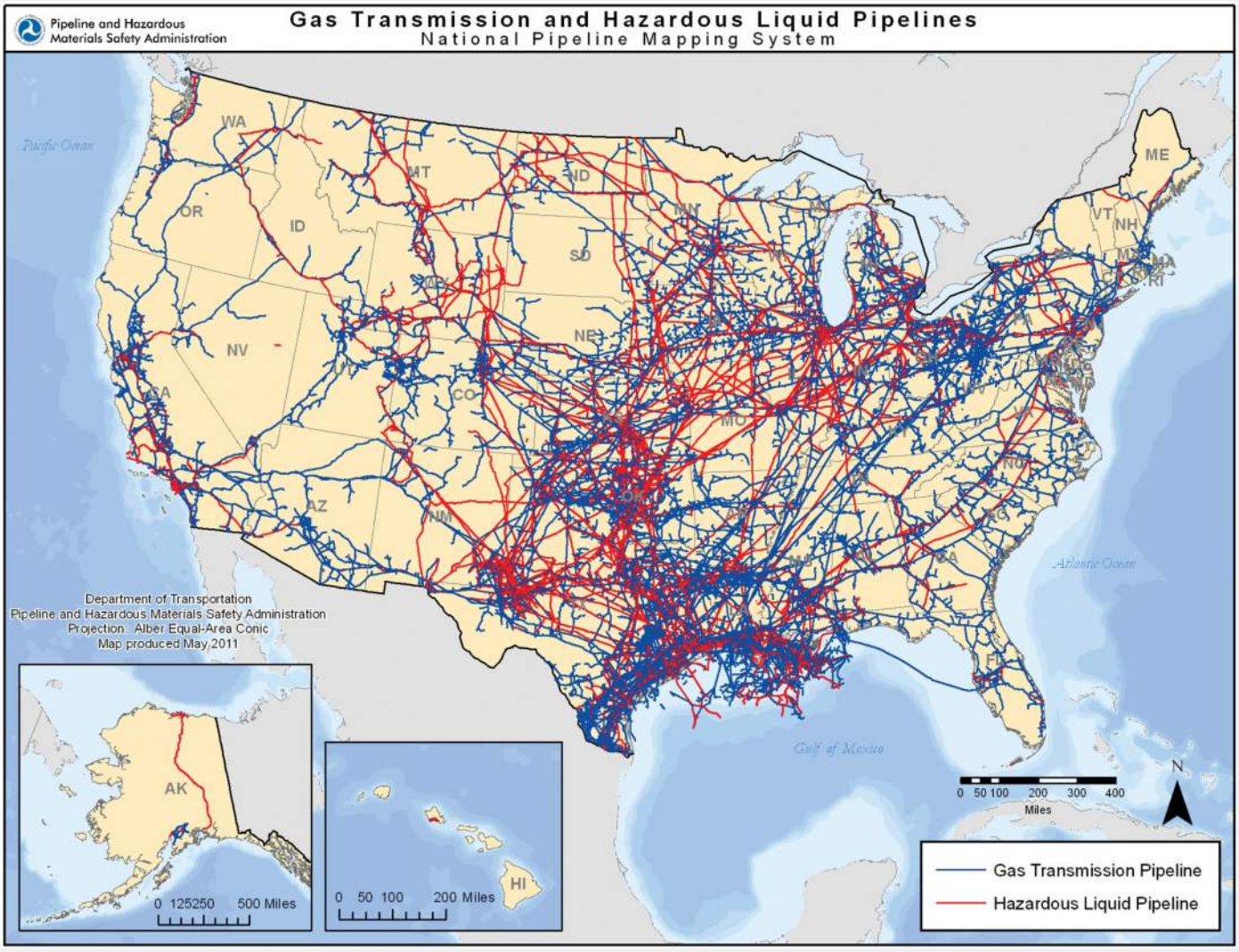
The transmission pipeline system in the United States is considered the most efficient and safest way to transport natural gas and petroleum products across the country. This network of pipelines is an essential element of our nation's energy infrastructure; it serves virtually every community by supplying their commercial, industrial and residential energy needs. Despite a relatively high degree of safety in transporting volatile gases and hazardous liquids, pipelines can pose safety and environmental hazards to local communities.

To understand the possible consequences, one needs to look no further than San Mateo County, Calif. On September 9, 2010, a 30-inch-diameter natural gas pipeline exploded in a fireball, killing seven people and leveling a residential neighborhood in the city of San Bruno, leaving hundreds homeless.

Over the past several decades, many transmission pipelines were constructed in rural areas. This provided relative protection to the pipelines and assured minimal impacts to local communities. More recently, economic growth with expanding housing and commercial development has often resulted in community encroachment on existing pipelines. Economic growth has also prompted a need for even more pipelines in order to meet growing energy demands and changing production areas. The complex national network of transmission pipelines travels through the jurisdictions of many county governments, and counties are often the first to respond when an emergency occurs due to a pipeline rupture. Counties have a responsibility to ensure the safety of their communities by enforcing good land use practices around pipelines.

Why is this important? Urbanization and population growth may bring residents closer to transmission pipeline corridors. Promoting local awareness of pipeline safety and encouraging good land use practices to protect both communities and pipelines ensures coexistence between pipelines and local communities.

Figure 1: U. S. Network of Hazardous Liquid and Natural Gas Transmission Pipelines



Regulating Pipeline Safety

PHMSA, along with its state partner agencies, regulates the safe construction, testing, operation, and maintenance of transmission pipelines. Federal pipeline safety regulations include targeted regulations for inspecting and managing the integrity of pipeline segments that have the potential to impact populated and developed areas, and regulations requiring pipeline operators to educate the public on pipeline safety.

However, local county and municipal governments (and in some cases state governments), rather than the federal government, are the most common regulators of land use and property development, including land use and development near pipelines. Local governments are increasingly required to make decisions concerning land use planning and development in the vicinity of transmission pipelines. Some local governments have enacted or are developing ordinances to regulate land use and development near transmission pipelines.

PIPA Report

As noted, the goal of the Pipelines and Informed Planning Alliance is to reduce risks and improve the safety of affected communities and transmission pipelines through implementation of recommended practices related to risk-informed land use near transmission pipelines.

Approximately 130 representative stakeholder participants undertook the work to develop the PIPA recommended practices. PHMSA plans to continue working with stakeholders to ensure that a sound implementation strategy is developed and that the PIPA recommended practices are communicated to and understood by those who need to adopt them.

The PIPA Report is organized into several important discussion areas including: the definition of key stakeholders, transmission pipelines benefits and risks, general recommended practices, and appendices which include model ordinances and technical information.

Key Stakeholders

Key stakeholders identified in the PIPA Report include the following groups that are responsible for key decision making processes that have influence on both the pipeline and the communities that surround the pipeline.

Local government officials (typically the town, city, county, borough, or parish legislative body) are responsible for the health, safety, and welfare of the residents and for establishing development regulations and zoning. However, there are many variations in the way local governments and planning processes are structured. Generally detailed recommendations on land use regulations, zoning, and in some cases comprehensive plans, are made by professional planning staff. In some jurisdictions, planning commissions either endorse or reject those recommendations. The final decision regarding land use planning is generally made by the elected local government legislative body.

The property developer/owner is responsible for project planning relating to a parcel of land. This involves gathering all available and necessary information and making decisions affecting a planned development project, such as proposed excavation, construction, or development activity, as well as developing the project plans and getting the necessary approvals and permits to ensure all zoning and construction requirements are met.

Transmission pipeline operators are responsible for the safe operation and maintenance of hazardous liquid and/or natural gas transmission pipelines. These pipelines are subject to federal pipeline safety regulations administered either directly by PHMSA or by a state agency. Operator responsibilities include taking actions to avoid pipeline damage or failure. Such actions include: periodic testing and continued maintenance of transmission pipeline facilities, development of emergency plans, performance of leak surveys, continuing surveillance, encroachment mitigation and right-of-way patrolling, and the development and implementation of damage prevention programs and public awareness programs.

Real estate commissions are generally established to protect the public interest in real estate brokerage transactions in each state. The commission may have many diverse goals and objectives. For example, one goal may be to assure that licensees are competent and morally fit to act as real estate brokers. Another goal may be to ensure that real estate licensees comply with the real estate practice standards imposed by the real estate license law and commission rules. Finally, a third goal may be to identify and address issues affecting real estate consumers and practitioners.

Transmission Pipeline Benefits and Risks

Benefits

Transmission pipelines provide benefits to the nation's general economy and security by providing efficient, cost effective, reliable, safe and secure delivery of the energy products we rely upon. Everyone in the U.S. uses and benefits from the energy and consumer products produced from natural gas and petroleum made available by pipeline transportation. They also benefit from natural gas and petroleum products used in transportation and transportation-related industries, heating homes, providing electricity, and meeting the energy needs of the U.S. armed services.

In the context of total economic impact, almost all transportation energy in this country comes from petroleum which implies the importance of transmission pipelines to the American economy. Many industries also rely on raw materials that are derived from large volumes of crude oil and natural gas delivered by transmission pipelines. A significant percentage of the economic benefits

from our core national industry sectors, including food products, pharmaceuticals, plastics and resins, industrial organic chemicals, and automotive, would not be possible without oil and natural gas energy and related feed stocks transported by transmission pipelines.

Risks

Although transmission pipeline incidents are infrequent, they present potential serious consequences that may significantly impact the public. Risks associated with transmission pipelines result from accidental releases of the transported products, or associated explosions or fires, which can impact public safety and the environment. Accidental pipeline releases can result from a variety of causes, including natural disasters, excavation and other outside force damage, internal and external corrosion, mechanical failure, and operator error.

Reducing transmission pipeline risks and enhancing safety is best achieved through proper pipeline operation and maintenance by pipeline operators. The following can also contribute significantly to reducing pipeline risks: Comprehensive and effective public awareness and damage prevention programs (Brookings County, SD Brochure) ***http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=326*** , risk-informed planning, design and construction of industrial, commercial and residential developments near transmission pipelines, and effective regulatory oversight of operators for compliance with applicable pipeline safety regulations.

Transmission pipeline failures present risks that may impact people and property beyond the edge of pipeline rights-of-way (ROW). To address these risks, some communities have imposed zoning restrictions, including fixed-distance building setbacks for development along transmission pipeline ROW. However, each situation is unique relative to the pipeline characteristics and the areas surrounding the pipeline ROW. Thus, PIPA recommends that implementing a risk-informed approach to land use planning and development and establishing good communication with the transmission pipeline operator are more appropriate than establishing a fixed-distance setback to be applied in all situations. (GIS to Manage Expanding Pipeline System within Dallas / Fort Worth Metro Area.) ***http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=327***

When weighing the potential risks of hazardous materials releases in areas proposed for development, local governments should obtain all available information and base decisions on a balanced consideration of all risks. This includes consideration of all modes of hazardous materials transportation in the area, including roads, railway transportation, and transmission pipelines. (Underground Pipeline Inventory and Assessment for Incident Management in Montgomery County, VA) ***http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=328***

Photo (c) Wendy Lyons Sunshine

Recommended Practices

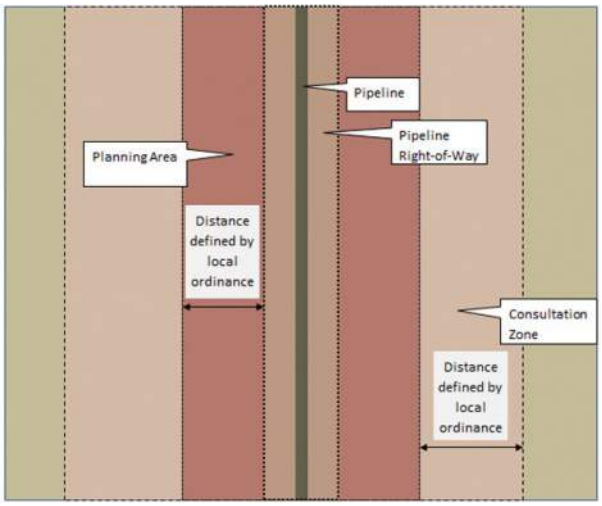
PIPA recommended practices address mapping, land records management, communications, and design and development considerations. Stakeholders in both land use planning/development and transmission pipeline safety are encouraged to become aware of and implement PIPA recommended practices as appropriate.

The recommended practices developed through the PIPA initiative are not mandated by any public or private entity. Furthermore, in some cases implementation of the recommended practices may not be feasible or cost effective. They are intended to provide guidance to pipeline operators, local officials, property owners and developers to provide for the safe use and development of land near transmission pipelines. Some local governments may want to adopt certain practices within their development regulations; others may simply encourage voluntary adoption by their local development community. Both approaches have been used by communities around the country. (Transportation Pipeline Risk Reduction Overlay District in Brookings County, SD) ***http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=326***

The PIPA recommended practices (Pages 17 - 94 of the PIPA Report) are grouped into two scenarios:

- Baseline recommended practices to be implemented by stakeholders in preparation for future land use and development, and
- New development recommended practices to be implemented by stakeholders when land use and development projects are proposed.

Two of the baseline recommended practices address consultation zones and planning areas. These are important concepts for local governments to put into practice. These two recommended practices are described and illustrated in the graphic below.



Consultation Zone-BL05 Define Transmission Pipeline Consultation Zone

Local governments should define a consultation zone to provide a mechanism to initiate a dialogue between property developers/owners and operators of nearby transmission pipelines when new land uses and property developments are being planned. Optimally, the consultation zone distance should be measured from the transmission pipeline centerline and should be based on specific pipeline characteristics and local conditions. This dialogue will serve to: (1) protect the transmission pipeline by promoting adequate consideration of the potential safety impacts of the proposed land use or property development on the pipeline; and (2) raise awareness of the potential safety impacts of the transmission pipeline on the proposed land use or development so they can be taken into account during planning and design.

Absent site-specific information, it is suggested that a standard consultation zone distance, on either side of the pipeline centerline, of 660 feet be used for natural gas transmission pipelines. For hazardous liquid pipelines (box), also absent site-specific information, it is suggested that a standard consultation zone distance in a range from 660 to 1,000 feet be considered. Again, it is recommended that communities develop and utilize site-specific distances for consultation zones, based on the unique characteristics for the pipeline and the area surrounding the pipeline. The transmission pipeline operator can be helpful and should be consulted in assisting local governments to better understand the pipeline characteristics when they develop site-specific consultation zone distances.

Hazardous liquid pipelines transport petroleum, petroleum products, or anhydrous ammonia. Petroleum includes crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas. Petroleum products are flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds. Compressed carbon dioxide is also transported via hazardous liquid pipelines.

Planning Areas-BL06 Implement New Development Planning Areas around Transmission Pipelines

Local governments should consider implementing "planning areas" to enhance safety when new land use and property development is planned near transmission pipelines. A planning area can provide for the application of additional development regulations, standards, or guidelines to ensure safety when development occurs in close proximity to a transmission pipeline.

Absent site-specific information, it is suggested that a standard planning area distance, on either side of the pipeline centerline, of 660 feet be used for natural gas transmission pipelines. For hazardous liquid pipelines, also absent site-specific information, it is

suggested that a standard planning area distance in a range from 660 to 1,000 feet be considered. The suggested standard distances are intended to apply to common pipeline sizes and pressures and do not take into account the possibility of flow of liquid or heavier than air gases. Thus, in either case it is recommended that communities develop and use site-specific distances for planning areas, based on the unique characteristics for the pipeline and the area surrounding the pipeline. The transmission pipeline operator can be helpful and should be consulted in assisting local governments to better understand the pipeline characteristics when they develop site-specific planning area distances.

Conclusion

As transmission pipeline failures may adversely affect the general public, it is important for local governments to make risk-informed decisions regarding land use planning and development in proximity to transmission pipelines. Consequently, local governments should consider the risks, including both likelihood and consequences, of transmission pipeline incidents when making such decisions. They should make full use of available resources and reference the PIPA Report.

U.S. Department of Transportation Pipeline & Hazardous Materials Safety Administration

Pipeline Safety Stakeholder Communications

Pipeline Safety Connects Us All

Consultation Zones and Planning Areas

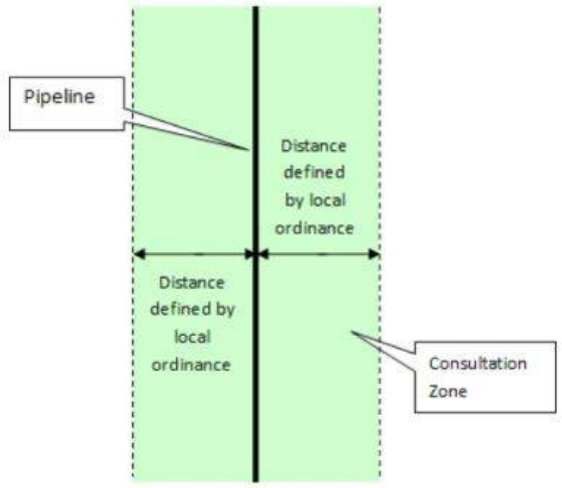
Communication Helps Ensure Safety

Land use changes and development near transmission pipelines can create risks to communities and to the pipeline infrastructure. Safety is a primary and common goal for all stakeholders and should be considered when decisions are made that impact life, property or the environment. Early communication among stakeholders can help. Doing so will ensure that development plans minimize risks to the people living or working nearby, and are consistent with the needs and legal rights of developers and pipeline operators.

Consultation Zone - Local governments should define "consultation zones" to provide mechanisms for communication between property developers/owners and operators of nearby transmission pipelines when new land uses and property developments are being planned. (PIPA Recommended Practice BL05)

Planning Area - Local governments should consider implementing "planning areas" to enhance safety when new land use and property developments are planned near transmission pipelines. (PIPA Recommended Practice BL06)

A planning area should not be construed as an unsafe area and the planning area distance is not intended to be used as a fixed setback distance. Rather, these are areas where additional development regulations, standards or guidelines to ensure safety should be considered. PIPA Recommended Practices ND11 through ND23 describe additional considerations for use within a planning area.



Consultation Zone and Planning Area Distance - Absent any site specific information, the recommended size for consultation zones and planning areas is:

- 660 feet on either side of the centerline of natural gas pipelines
- 660 – 1000 feet on either side of the centerline of hazardous liquid pipelines

However, in either case it is recommended that communities develop and utilize site-specific distances for planning areas, based on the unique characteristics for the pipeline and the area surrounding the pipeline. Generally, consultation zones and planning areas larger or smaller than the recommended default distances may be warranted.

Incorporate Consultation Zones and Planning Areas by Ordinance

The most effective way for a local government to ensure early communication among stakeholders to help them make risk-informed decisions about land use and development near transmission pipelines is to require by ordinance that such communication be conducted. PIPA developed a model ordinance which is included as Appendix B in the PIPA Report (a link to the model ordinance is provided below). Additionally, several communities have already taken steps to require by ordinance that such communications occur.

Examples of land planning ordinances and codes

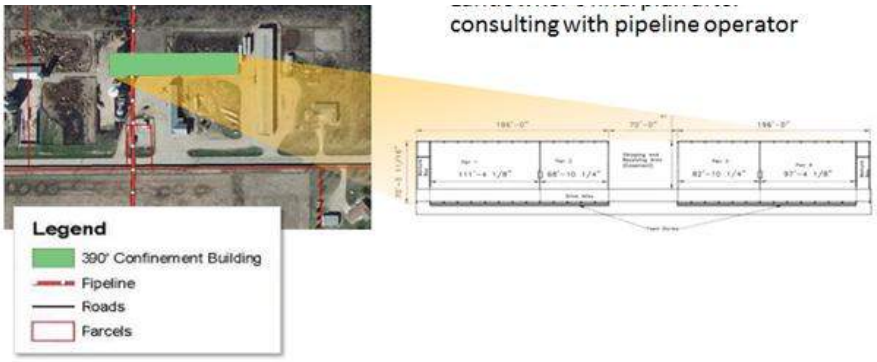
- PIPA Model Ordinance
- Brookings, South Dakota
- Whatcom County, Washington
- Austin, Texas

Land Planning Ordinance: Brookings County, SD - Transmission Pipeline Risk Reduction Overlay District

An overlay is an additional "layer" of zoning targeted to a specific area with special needs.

Brookings County adopted a

Landowner's final plan after



consultation zone and a planning zone ordinance which uses an overlay district to identify when development is planned near a transmission pipeline. The Transmission Pipeline Risk Reduction Overlay District was incorporated into the County's GIS and is used primarily when issuing zoning and building permits, to facilitate discussions among developers, landowners, and pipeline operators.

The **consultation zone** is an area within 660 feet of existing pipelines. When a building permit is requested within the consultation zone, the person requesting the permit is verbally informed that the building is being constructed near a transmission pipeline. A pipeline safety brochure is provided along with the building permit. The permit office notifies the pipeline operator of the building permit request, and the type and size of the building. The property developer/owner must initiate a consultation with the transmission pipeline operator as early as possible in the development planning process.

The **planning zone** distance is determined based on the site-specific and pipeline-specific characteristics. The planning zone is a tool to identify where new development requires a physical response. When an individual or organization requests a building permit and the location is within the planning zone then the permit office staff will request a detailed site plan – a hand rendered drawing will suffice. The building permit requestor will be given a brochure with information on the point-of-contact for the pipeline company, and the recommended land management practices for new development near existing transmission pipelines. The requestor will also be notified to contact the South Dakota One Call to have the pipeline located and marked prior to the issuance of a building permit. The individual or organization requesting the building permit must then confirm or correct the actual location of the pipeline on the site drawing.

If excavation will occur completely outside of the pipeline right-of-way, a building permit will be issued. The pipeline operator will be notified that a building permit has been issued and will be provided with the location of the construction by the permit office.

If excavation will occur inside the pipeline right-of-way, the developer must obtain a written, signed encroachment agreement from the pipeline operator. The encroachment agreement must be submitted to the building permit issuing office before a building permit will be issued. The pipeline operator will be notified that a building permit has been issued and will be provided with the location of the construction by the permit office.

Land Planning Ordinance: Whatcom County, WA – Consultation Zone Ordinance

Whatcom County's consultation zone ordinance specifies:

- No high-occupancy, hard-to-evacuate buildings such as schools, hospitals, nursing homes, etc. within 500 feet of transmission pipelines
- Consultation zone of 500 feet
- Protect easements during construction
- Verify use of one-call

SPONSORED BY: Consent
PROPOSED BY: PDS
INTRODUCTION DATE: 6/8/2010

ORDINANCE NO. 2010-033

AMENDING WCC TITLE 20, TO ADD PIPELINE SAFETY REGULATIONS

WHEREAS, Whatcom County Planning and Development Services responded to a 2007 Whatcom County Council proposal, Resolution Number 2007-034, to amend the zoning code to include pipeline safety and development changes, as processed under case file number ZON2007-00014.

WHEREAS, due to other priorities, Whatcom County Planning and Development Services first reviewed this amendment and public hearing in early 2010.

WHEREAS, Pursuant to RCW 36.70A.106, a Notification for 60-Day Review of Development Regulation Amendment was submitted to the State of Washington, Department of Commerce on February 2, 2010.

WHEREAS, a determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on February 8, 2010, case number SEP2010-00012.

WHEREAS, the SEPA DNS Legal Notice was published one time in the Bellingham Herald on February 8, 2010.

WHEREAS, Notice of the proposed Planning Commission Public Hearing was published in the Bellingham Herald on March 14, 2010.

WHEREAS, Planning staff prepared a staff report dated March 15, 2010, summarizing the proposal, background information, amendment analysis, findings of fact and reasons for action, conclusions, and recommendations of ordinance language.

WHEREAS, the Whatcom County Planning Commission held a public hearing on March 25, 2010, and voted to form a subcommittee to prepare draft ordinance language for consideration.

WHEREAS, the Whatcom County Planning Commission subcommittee held public meetings on March 29th, April 7th, and April 14th, 2010, and prepared a draft ordinance for review by the Planning Commission at their April 22, 2010 public hearing.

WHEREAS, the Whatcom County Planning Commission held a public hearing on April 22, 2010, and modified the draft ordinance and invited further public comment.

Land Planning Ordinance: Austin, TX

Austin's Municipal Code 25-2-516, "Land Use Development" specifies:

- "Use requiring evacuation assistance" prohibited within 500 feet of a pipeline
- New construction within 200 feet of a pipeline must meet enhanced building code
- No structures or excavation within "restricted pipeline area" within 25feet of a pipeline
- Residential lots less than 1 acre cannot include a "restricted pipeline area"

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§ 25-2-492 Site Development Regulations
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§ 25-2-511 Dwelling Unit Occupancy Limit
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Unit 5
Subdivision Regulations

Planning and Zoning Guide

Unit 5 – Subdivision Plats

What is a Subdivision Plat?

A subdivision plat is a map, drawn to scale, that defines the boundaries of lots, blocks, streets, and easements for a section of land that is subdivided for development purposes, pursuant to NDCC Section 40-48-01(2) or Section NDCC 11-33.2-01.

A subdivision plat is not an Auditor's Plat (or Plat of Irregular Description). An Auditor's Plat is suitable for property transfers but not for development purposes. An Auditor's plat is made for taxation purposes at the request of the County Auditor in accordance with Section 57-02-39 NDCC.

Subdivisions are defined similarly in the NDCC for cities and counties.

Cities

NDCC 40-48-01(2).
. . . "Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

Counties

NDCC 11-33.2-01
. . . "subdivision" means the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

Processing a Subdivision Plat

Platting is a required process for obtaining local government approval of a property subdivision. Platting (or replatting) is required to divide or merge lots for development or sale, and to dedicate or vacate right-of-way and easements. Moreover, the subdivision process is a golden opportunity to:

- influence the overall character of neighborhoods
- ensure safe, efficient traffic circulation

- reinforce comp plan objectives
- protect residential and other uses from incompatible encroachments
- ensure the orderly extension and integration of public improvements and utilities

The Pre-application Meeting

Before a plat is submitted, sit down with the developer to discuss it informally. The developer should know what is expected before committing the time and expense of preparing a subdivision plat. One of the goals of the pre-application meeting is to avoid project redesign in later stages. The pre-application step can be a requirement of your subdivision regulations.

The pre-application meeting is an early opportunity to determine how the developer's concept fits within existing development or related plans. This process may trigger further actions and review. For example, a zoning change could be needed in conjunction with the proposed plat.

To get the most out of the pre-application meeting, you can provide the developer with information about fees, scheduling, and submittal deadlines; a copy of your subdivision regulations; and a list of items to be shown on the plat. Flow charts and checklists are useful aids. Developers appreciate being informed of what the jurisdiction expects; they don't like surprises.

The Preliminary Plat and Final Plat

After the pre-application meeting, two plats will be submitted, a preliminary plat and a final plat. The first submittal, the preliminary plat, is more detailed than the final plat. It shows features such as elevation contours, wetlands, and existing structures which are not included on the final plat. Documenting these features is part of adequate, efficient review, which ensures that the subdivision is properly integrated into the surrounding environment.

Meet early – *Developers don't like surprises, so let them know about your requirements and review procedures up front. This will lead to a smoother review process with fewer headaches on all sides.*

The preliminary plat is like a working model. Significant effort may be required of the developer at the preliminary plat level to prepare a map with necessary detail. Most discussions between staff and the developer will also occur at the preliminary platting stage.

Once a preliminary plat is deemed suitable, the final plat should not require a lot of additional scrutiny. The final plat is "cleaner" than the preliminary plat, with no contours, structures, or other existing features. The most important elements of the final plat are the property boundary distances and locations, rights-of-way, easements and lot areas. If the final plat is eventually approved, that will be the official plat and the only one that gets recorded or filed with the County Recorder.

Examples of the preliminary plat and final plat are given at the end of this unit.

Plat Review

Your processing schedule for placing a preliminary plat on your planning commission's agenda should allow enough time to properly review a plat. If you are receiving a high volume of proposed plats, you can adjust the schedule, but it is important that the review period is uniform and consistent with all plats.

The use of a checklist helps with the staff's review process. The same checklist can be provided to the developer at the pre-application meeting. In addition to a staff review of the checklist items, it's also a good practice to have a committee to review plats before it is on the Planning Commission agenda. An example checklist is provided at the end of this unit.

Major plats should be reviewed by a committee of public representatives who will be impacted by the development – for example, those who have an obligation to provide services or infrastructure. This committee may include representatives from the following groups:

- each of the utilities which will be serving the property
- the city or county engineer (public works)
- the police or sheriff's department, fire, and emergency services providers
- school district

Each member of the plat review committee should receive a full-size copy of the proposed preliminary plat one week in advance of the plat review meeting so they have an opportunity to review it prior to the meeting. The developer will need to provide as many copies as are necessary to distribute to each committee member.

Sometimes the preliminary plat is fine as submitted. Other times revisions may be required. If the review process reveals problems with the plat, let the developer know as soon as you have completed the review. If the preliminary plat requires changes, it can be resubmitted prior to the planning commission meeting. Input from the plat review committee can be forwarded to the Planning Commission. Keep notes of comments at plat review meetings.

If the preliminary plat is suitable, the Planning Commission can vote to schedule the public hearing on the final plat. If not, they can recommend revisions. It is in the developer's own interest to abide by the wishes of the Planning Commission to obtain approval of the final plat.

If a proposed plat is totally inappropriate, or if the area for which it is proposed is inconsistent with the comprehensive plan, the Planning Commission should be made aware of this by staff and reaffirm it at their meeting. The process can still proceed but the developer should know that final plat approval may be difficult to achieve.

Plan for Infrastructure and Services

Be thorough. Allow enough review time for the preliminary plat to make sure it is consistent with your regulations and plans. Make sure all utility and service providers have a chance to review and comment.

Ask yourself: What is the cost of providing services to new developments? Is the development paying for itself? How? Inexperienced developers or landowners may attempt to sell lots without providing services to those lots. Once all lots are sold, the developer can walk away and the local jurisdiction is left responsible for providing all required subdivision infrastructure (streets, storm water facilities, water, sewer, parks, etc.). Make sure that financing is secured for building the proposed roads.

Install Infrastructure Prior to Final Plat Approval

Ideally, infrastructure construction, inspection, and approval takes place after the preliminary plat is approved but before the final plat is approved and recorded. While there is no requirement that infrastructure be constructed prior to final plat approval, the most effective way to ensure that all water, sewer, and roads are properly constructed is to withhold final plat approval until inspection occurs.

Bond for Installation

As an alternative, subdivision infrastructure can be built within an agreed-upon timeframe after final plat approval, as long as a construction bond is filed prior to final plat approval. A construction bond is an up-front payment by the developer (or owner). The bond guarantees that the required subdivision improvements to the site will be made at the developer's expense within a required timeframe. It also guarantees that infrastructure will be completed based on local ordinance requirements.

When should construction begin?

Ideally, infrastructure construction, inspection, and approval takes place after the preliminary plat is approved but before the final plat is approved and recorded. While there is no requirement that infrastructure be constructed prior to final plat approval, the most effective way to ensure that all water, sewer, and roads are properly constructed is to withhold final plat approval until inspection occurs.

It is important that all storm water facilities, such as culverts, are installed before subdivision lots are sold and structures are built. If they are not installed in advance, they may never be. Once all lots are sold, the developer can walk away. One way to assure the needed improvements are installed is to hold off on issuing building permits unless and until the improvements identified in the Storm Water Management Plan have been properly installed.

Requiring Storm Water Plans & Traffic Studies

For large plats containing several lots and blocks, it is advisable to require the developer to submit additional information with the proposed plat. For some *smaller, single-lot plats,* these supplemental items can be waived.

Storm Water Management Plan

An important element in platting is determining the storm water runoff that will be generated by a development. The developer's engineer can prepare the storm water plan and it can be checked by the local jurisdiction's engineer.

Vacant, undeveloped agricultural land will soak up rainfall and snowmelt but developed land has rooftops, driveways, and roadways that shed water. A heavy rainfall can create problems if significant runoff has not been anticipated. Storm water volumes and directions of flow can be calculated and facilities like culverts or drainage swales can be identified.

Storm Water Management Plans should be a standard requirement for all large proposed developments.

Traffic Study

When reviewing a proposed plat, consider the traffic it will generate. Each home that's built will translate to a couple of vehicles and several trips back and forth each day. Where will the traffic access other major roadways? Will there be any safety issues with the added traffic volumes? For any sizable development, it is not unreasonable to require the developer to submit a traffic study in conjunction with the plat.

A traffic study will establish projections for anticipated traffic and will recommend items like signal lights and turning lanes if they are needed. Because these safety improvements are directly associated with the proposed development, *costs for installation should be the developer's responsibility*.

Subdivision Layouts – What to Watch For

Access

For the safety of future residents, there should be more than one access to a new neighborhood (for larger developments). If for some reason one access would become blocked, an alternative route is needed for fire trucks, police, or emergency services.

Streets

Regarding street layouts, the design of a subdivision should allow for the logical extension of streets to adjacent properties. If the adjoining land develops, street

connections should be available to avoid creation of land-locked parcels, to provide access, and to provide continuity for a future expanded system of streets and roadways.

Your local engineering staff should apply minimum standards for roads and streets for items such as width, surfacing requirements, and steepness of grades. Again, building permits can be held until roads and streets are completed to your own engineer's satisfaction. It's important that roads are built properly because once the plat is recorded, these become public roadways, to be maintained by your own local road or street department.

Private streets should be discouraged. There may be a temptation to allow private streets to ease the public cost and burdens of perpetual maintenance, but private streets are not always in the best interest of the future residents. Neighborhood residents who are responsible for their own streets are unaware of the importance of preventative maintenance. When preventative maintenance is ignored, total street reconstructions are inevitable. These are expensive projects and neighborhood associations seldom have adequate funding resources.

Lot sizes

If your ordinance doesn't already specify lot sizes, or even if it does, here are a few things to consider for rural lots:

- Existing soil types will determine the area needed for a septic system drain field. Soils with a high clay content will require more area. Sandy soils require less area.
- Sometimes, after several years, a drain field may have to be replaced so it's a good idea to size lots accordingly and have enough room for a second, future drain field.
- Larger lots are not always better especially in urban settings. Utilities such as water and sewer lines are expensive to install and expensive to replace. More compact development is more affordable because the cost, usually determined by the linear foot, can be shared by more users.

Land Use and Zoning

Review the proposed plat in the context of the future land use map and the zoning map. Sometimes, a rezoning or land use amendment will be needed for the subdivision to proceed. Rezoning requires proper public notice, a public hearing, and an additional application, all of which delay the subdivision process and cost the developer. Therefore, any potential zoning issue should be discussed during the pre-application meeting. If the proposed land uses that would result from the subdivision are wholly incompatible with existing plans and development, the application would be denied. This needs to be clarified up front.

Flood Hazards

Review the plat to ensure that no portion of the proposed subdivision is located within a FEMA Special Flood Hazard Area (SFHA). This is the area that would be covered by flood waters at base flood level. If a portion of the proposed subdivision is located within an SFHA, the National Flood Insurance Program (NFIP) would apply, with enforcement of floodplain regulations, including mandatory purchase of flood insurance. The National Flood Insurance Program (NFIP) requires that base flood elevations are provided for subdivision proposals that contain at least 50 lots or five acres (whichever is less).

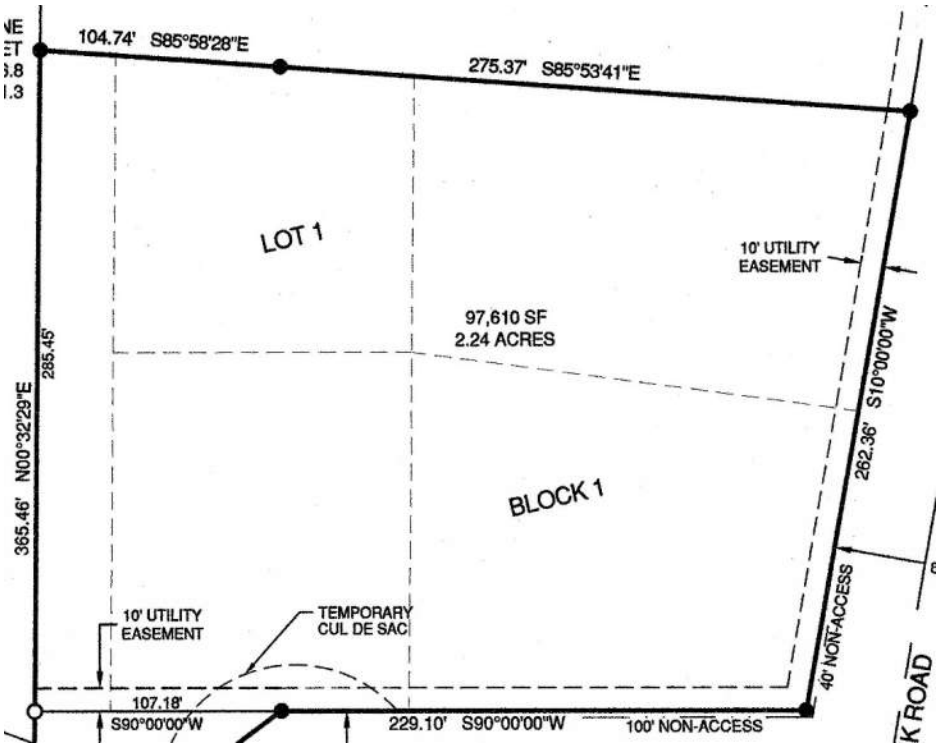
Ghost Platting

Ghost platting is a method of splitting large rural lots located in subdivisions close to cities. As a community grows, it can reach a rural large-lot subdivision. Ghost platting allows for easier conversion of rural lots to urban lots, facilitating urban densities and the extension of urban infrastructure.

If a large-lot rural subdivision which was once on the edge of town is now being swallowed up by surrounding development, it may be reasonable to annex that rural subdivision. Annexation typically means that the municipality is obligated to provide city water and sanitary sewer systems to the annexed lots. The annexation of a rural subdivision can be very costly for the owners of large lots because the water and sewer line installation costs are based on the linear foot. If a lot is several hundred feet wide, the costs for water and sewer may be very burdensome.

Ghost platting allows for cost-sharing when a large-lot rural development is annexed. Ghost platting will show how large lots will be further subdivided into smaller urban-sized lots. When the time comes, the ghost lots can be sold and utility costs can be shared by more users. To plan for conversion from rural to urban subdivisions on the edge of town, ghost lot lines should be observed when the first house is built and proper setback distances should be implemented. It is possible to combine two or more ghost lots if a larger area is desired for a house.

Paper Subdivision – A distinction should be made between a paper subdivision (sometimes called a "ghost subdivision") and the ghost platting technique described above. A paper subdivision is a subdivision that went through the platting process and was recorded, but never constructed. Paper subdivisions are often challenging to develop as platted. Many are several decades old. Outdated lot sizes may not support modern development styles. Paper subdivisions usually involve many more lots than would be appropriate for the ghost platting technique, with potentially many landowners. Contrast this to the ghost platting technique described above. Ideally, this technique is used to facilitate the division of one lot into halves or quarters, with the ghost lots held from sale until roads and utilities are provided.



Example ghost plat.

In the example above, ghost lot lines are dashed. A landowner could build in Lot 1, observing setback requirements from the dashed lines, and sell off the other lots in the future. However, a few considerations must be observed. First, the intent of ghost platting is to facilitate access to future infrastructure. Therefore, ghost platting is most often used to split one lot into two. This would ensure that each side-by-side lot would have access to a future road. In the example above, if Lot 1 is not a corner lot, it would be boxed in. Another consideration is to provide labels with the metes and bounds descriptions, and/or use orthogonal lines to divide the land into equal portions. Otherwise, the property may need to be resurveyed – and potentially replatted – prior to sale. The example shown could require a resurvey and/or replat prior to sale and development, since the ghost lots aren't labeled and can't be easily described.

When converting ghost lots to actual urban lots, problems can occur with mortgage lenders. If the large rural lot is mortgaged, banks may be skeptical about selling off portions of the property. Lenders should be informed early in the process.

The Subdivision Regulations

The Subdivision Regulations section of your code will define the steps of the subdivision process, standards for development, and plat preparation and recording procedures. To illustrate the purposes for regulating the subdivision of land, the City of Bismarck has a good paragraph at the beginning of their Subdivision Regulations Section:

> **Purpose of Subdivision Regulations; Approval of Plats.** As each new subdivision of land in the City becomes a permanent unit in the basic structure of the expanding community, to which the community will be forced to adhere, the design and arrangement of such subdivisions must correlate to the unified scheme of community interests. In order to provide for the proper arrangement of streets in relation to other existing and planned streets, and to the master plan of the City of Bismarck; to provide for adequate and convenient open spaces, for recreation, for light and air; in order to avoid congestion of population; in order to provide for traffic, for utilities, for access of fire-fighting apparatus; in order to promote, preserve and enhance area natural resources; in order to provide for and improve the public health, safety and general welfare of the City of Bismarck, the following rules and regulations for the platting and subdivision of land within the City of Bismarck and adjacent territory have been adopted by the Planning Commission of the City of Bismarck, in accordance with the laws of the State of North Dakota and the ordinances of the City of Bismarck.

Major and Minor Plats

Many communities differentiate between major and minor plats. A major plat must go through the full process – pre-application, preliminary plat, final plat. Major plats are appropriate for conversions of vacant agricultural land to developable lots, or for large redevelopment projects. Minor plats are often appropriate for the re-subdivision of existing platted lots. This process excludes the preliminary plat, providing time and cost savings to the applicant. Local governments should clearly define criteria for minor plats in the subdivision ordinance. For example, a city could stipulate that minor plats will only be considered for subdivisions that involve no more than five lots. In addition, a minor plat is appropriate provided it meets the following criteria:

- It does not require the dedication of public rights-of-way or the construction of new streets;
- It does not create any public improvements other than sidewalks;
- It does not land-lock or otherwise impair convenient ingress and egress to or from the rear or side of the subject tract or any adjacent property;
- It does not violate any local, state or federal law, ordinance, regulation, plan or policy;

- It does not fall within the corridors of any planned or proposed street as shown in the adopted transportation plan.

Plat Certifications and Dedications

It is important that the application form requesting subdivision plat approval includes all property owners' signatures and contact information. The application form can also include the name of the developer and in many cases, but not all, the developer will also own the property.

The actual owner(s) of the property must also sign the final plat. A title insurance policy or an attorney's opinion of title is required for plat approval. The title insurance or attorney's opinion should be current. If they are not recent documents, a land ownership transfer may have occurred since they were drafted.

> **40-50.1-03. Instruments of dedication - Certifying and recording plat.** The plat must contain a written instrument of dedication, which is signed and acknowledged by the owner of the land. When there is divided ownership, there must be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat must be written with black ink, not ballpoint ink. The instrument of dedication must contain a full and accurate description of the land platted. The registered land surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correct and monuments are placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat. The dedication and certificate must be sworn to before an officer authorized to administer an oath. The plat must be presented for approval to the governing body affected by the plat, together with a copy of a title insurance policy or an attorney's opinion of title, running to the benefit of the governing body affected by the plat, stating the name of the owner of record.

Submittal Requirements

The contents of preliminary and final plats are defined in the Subdivision Regulations. These mapping features and elements can be documented on a list to be provided to developers. Lists are valuable not only for developers, but for staff to review a plat.

The NDCC provides lists of required elements for plats. For counties, the basic elements are defined in NDCC 11-33.2-04.

11-33.2-04. Preparation of subdivision resolution - Contents.
The board of county commissioners of any county desiring to avail itself of the powers conferred by sections 11-33.2-01 through 11-33.2-11 and sections 11-33.2-13 through 11-33.2-15 shall direct the county planning commission, as established pursuant to sections 11-33-04 and 11-33-05, to prepare a proposed resolution regulating the subdivision of land. The county planning commission shall prepare the proposed resolution to be submitted to the board of county commissioners and shall file it in the office of the county auditor. The proposed subdivision resolution may include:

1. Provisions for the submittal and processing of plats, and specifications for such plats, including provisions for preliminary and final approval and for processing of final approval by stages or sections of development.

2. Provisions for ensuring that:

a. The location, layout, or arrangement of a proposed subdivision shall conform to the comprehensive plan of the county.

b. Streets in and bordering a subdivision shall be coordinated, and be of such width and grade and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection.

c. Adequate easements or rights of way shall be provided for drainage and utilities.

d. Reservations if any by the developer of any area designed for use as public grounds shall be of suitable size and location for the designated use.

e. Land which is subject to extraordinary hazards, including flooding and subsidence, either shall be made safe for the purpose for which such land is proposed to be used, or shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing hazard.

3. Provisions governing the standards that public improvements shall meet, including streets, walkways, curbs, gutters, streetlights, fire hydrants, and water and sewage facilities. As a condition of final approval of plats, the board of county commissioners may require that the subdivider make and install such public improvements at the subdivider's expense and that the subdivider execute a surety bond or other security to ensure that the subdivider will so make those improvements within such time as the board of county commissioners shall set.

11-33.2-04. (continued)

4. Provisions for release of a surety bond or other security upon completion of public improvements required to be made by the subdivider.

5. Provisions for encouraging and promoting flexibility, economy, and ingenuity in the location, layout, and design of subdivisions, including provisions authorizing the board of county commissioners to attach conditions to plat approvals requiring practices which are in accordance with modern and evolving principles of subdivision planning and development, as determined by the board of county commissioners.

Similarly, for cities, the NDCC provides a listing of basic elements to be shown on subdivision plats (see below):

40-50.1-01. Laying out townsites, additions, and subdivisions - Survey and plat required - Contents of plat.
Any person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land shall cause the land to be surveyed and a plat made of the land. The written plat must comply with the following:

1. The plat must describe particularly and set forth all the streets, alleys, and public grounds, and all outlots or fractional lots within or adjoining the townsite or jurisdiction, together with the names, widths, courses, boundaries, and extent of all such streets, alleys, and public grounds, and giving the dimensions of all lots, streets, alleys, and public grounds.

2. All lots and blocks, however designated, must be numbered in progressive numbers and their precise length, width, and area be stated on the map or plat. The streets, alleys, or roads which divide or border the lots must be shown on the map or plat.

3. The plat must indicate that all outside boundary monuments have been set and indicate those interior monuments that have been set. There must be shown on the plat all survey and mathematical information, including bearings and distances, and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines appearing on the plat. All interior lot lines and exterior boundary lines of the plat must be correctly designated on the plat and show bearings on all straight lines, or angles at all angle points, and central angle, radius, and arc length for all curves. All distances must be shown between all monuments as measured to the hundredth of a foot [0.3048 centimeter]. All lot distances must be shown on the plat to the nearest hundredth of a foot [0.3048 centimeter] and all curved lines within the plat must show central angles, radii, and arc distances. A north arrow and the scale of the plat must be shown on the plat. The scale must be of a dimension that the plat may be easily interpreted. If a curved line constitutes the line of more than one lot in any block of a plat, the central angle for that part of each lot on the curved line must be shown.

40-50.1-01. (continued)

4. Ditto marks may not be used on the plat for any purposes.

5. If a river, stream, creek, or lake constitutes a boundary line within or of the plat, a survey line must be shown with bearings or angles and distances between all angle points and their relation to a waterline, and all distances measured on the survey line between lot lines must be shown, and the survey line shown as a dashed line.

6. The unadjusted outside boundary survey and the plat survey data must close by latitude and departure with an error that does not exceed one part in ten thousand parts.

7. All rivers, streams, creeks, lakes, and all public highways, streets, and alleys of record must be correctly located and plainly shown and designated on the plat.

8. The names and adjacent boundary lines of any adjoining platted lands must be dotted on the plat.

9. The scale must be shown graphically and the basis of bearings must be shown. The plat must be dated as to the completion of the survey and preparation of the plat.

10. The purpose of any easement shown on the plat must be clearly stated. Building setbacks may not be shown on the plat.

11. Any plat which includes lands abutting upon any lake, river, or stream must show a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

The elements of the NDCC listed above can be translated into subdivision regulation requirements, as many jurisdictions have already done. Materials provided to the developer at the initial pre-application meeting can also include these lists. When a plat is submitted, the same lists can be used to determine if the plat is complete.

A Note on Urban Sprawl

To maximize cost-effectiveness of providing people with public utilities and services, it is advisable for a community to grow outward in an orderly manner. A leapfrog, checkerboard pattern of development does not lend itself to maximum efficiency and can increase local government costs of providing services to those residents.

When considering proposed rural developments, obtain input from your local service providers on their ability to serve the location. When city dwellers move out into the country, they will often expect a higher level of services than is available. They need to know that the snow drifts on their road may not be plowed by the time they are ready to go to work in the morning. They need to know that a fire truck or ambulance will not be able to respond as quickly as in town. Sometimes it may not be appropriate to approve a rural residential plat that is too remote.

The property tax revenues generated by large-lot rural developments should be compared to the actual costs of public services they require. An acre of corn doesn't generate much property tax revenue but the level of public services on agricultural land is negligible.

Summary

Once a subdivision plat is approved, the underground utilities are installed and the streets are built, the development pattern is set. As growth occurs, adjoining developments will be tying into and extending the streets and utilities. An adopted master plan which shows the big-picture expectations for community growth will help to integrate these larger, community-wide systems. Supplemental plans for a future street network or a trails network can apply to each new subdivision, as well as requirements for parks and recreational facilities.

Think long-term, not just 5 years in the future, but 20-30 years.

PRELIMINARY PLAT

COUNTRY CREEK FIFTH SUBDIVISION

A PORTION OF THE NORTHEAST 1/4, SECTION 6, TOWNSHIP 139 NORTH, RANGE 79 WEST, BURLEIGH COUNTY, NORTH DAKOTA

ENGINEER:
KADRMAS, LEE & JACKSON, INC
128 SOO LINE DR.
PO BOX 1157
BISMARCK, NORTH DAKOTA
58502-1157
PHONE 355-8400

OWNER:
APPLE CREEK, LLP
750 119TH ST.
MENOKEN, ND
PHONE 258-3925

PLAT INFORMATION

52 LOTS – 5 BLOCKS
LOT ACREAGE – 82.010 ACRES
STREET ACREAGE – 20.771 ACRES
TOTAL ACREAGE – 101.485 ACRES

ZONING REQUEST

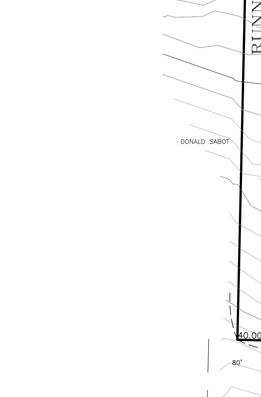
CURRENT ZONING – AG
REQUESTED ZONING – RR

PLAT LEGEND

- DENOTES MONUMENT FOUND
- DENOTES LOT CORNERS
- DENOTES EXISTING GRAVEL ROAD
- DENOTES EASEMENT LINE
- DENOTES 100' NON-ACCESS LINE
- DENOTES GATE VALVE

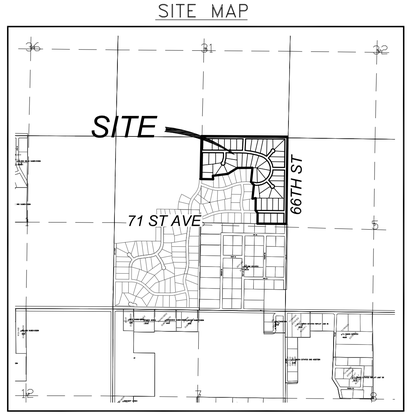
NOTE:

:UTILITY EASEMENTS SHOWN HEREON ARE 15 FEET IN WIDTH AND PARALLEL TO LOT LINES UNLESS OTHERWISE NOTED.



DATE: MAY 2008
CONTOUR INTERVAL 1'
NAGV 29

SITE MAP



Kadrmas Lee & Jackson
Engineers Surveyors Planners

COUNTRY CREEK FIFTH SUBDIVISION

J:\MISC\1608266-COUNTRY_CREEK_5TH\CADD\C3D\1608266-PLAT.DWG

OWNER:
APPLE CREEK, LLP
4512 SHOREVIEW PLACE S.E..
MANDAN, ND

ENGINEER:
KADRMAS, LEE & JACKSON, INC
128 SOO LINE DR.
PO BOX 1157
BISMARCK, NORTH DAKOTA
58502-1157
PHONE 355-8400

CURVE TABLE

PARCEL CURVE DATA				PARCEL CURVE DATA			
SEGMENT	LENGTH	RADIUS	DELTA	SEGMENT	LENGTH	RADIUS	DELTA
C1	100.26	60.00	95.74	C20	327.46	410.00	45.76
C2	60.80	60.00	58.06	C21	82.60	1960.00	2.41
C3	73.55	60.00	70.23	C22	215.71	410.00	30.14
C4	54.82	60.00	52.35	C23	178.50	1960.00	5.22
C5	161.29	460.00	20.09	C24	168.20	1960.00	4.92
C6	100.94	540.00	10.71	C25	162.94	1960.00	4.76
C7	88.40	540.00	9.38	C26	54.68	1960.00	1.60
C8	95.63	60.00	91.32	C27	142.42	490.00	16.65
C9	49.95	60.00	47.70	C28	270.40	490.00	31.62
C10	60.81	60.00	58.07	C29	162.62	490.00	19.02
C11	83.03	60.00	79.28	C30	185.10	490.00	21.64
C12	101.31	60.00	96.74	C31	182.26	490.00	21.31
C13	48.15	60.00	45.98	C32	138.58	490.00	16.20
C14	50.32	60.00	48.05	C33	65.12	2040.00	1.83
C15	89.64	60.00	85.60	C34	146.16	490.00	17.09
C16	89.94	410.00	12.57	C35	160.24	2040.00	4.50
C17	104.93	1240.00	4.85	C36	151.75	2040.00	4.26
C18	291.31	410.00	40.71	C37	160.80	2040.00	4.52
C19	303.83	410.00	42.46	C38	55.41	2040.00	1.56

PLAT LEGEND

- DENOTES MONUMENT FOUND
- DENOTES LOT CORNERS
- DENOTES EASEMENT LINE
- DENOTES 100' NON-ACCESS LINE

PLAT NOTES:

BASIS OF BEARING - S.P.C.
NORTH DAKOTA STATE PLAIN SOUTH
GPS POINT B46-1
ELEV.-1863.15
NGVD 1929

PLAT INFORMATION

52 LOTS - 5 BLOCKS
LOT ACREAGE - 81.447 ACRES
STREET ACREAGE - 20.778 ACRES

TOTAL ACREAGE - 101.485 ACRES

COUNTRY CREEK FIFTH SUBDIVISION

A PORTION OF THE NORTHEAST 1/4, SECTION 6, TOWNSHIP 139 NORTH, RANGE 79 WEST, BURLEIGH COUNTY, NORTH DAKOTA

DESCRIPTION

A PORTION OF THE NORTHEAST 1/4, SECTION 6, TOWNSHIP 139 NORTH, RANGE 79 WEST, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SAID NORTHEAST 1/4, WHICH IS THE POINT OF BEGINNING; THENCE FROM THE SAID POINT OF BEGINNING ALONG THE NORTH LINE OF SAID NORTHEAST 1/4, S 89°35'39" E, 2617.15 FEET TO THE NORTHEAST CORNER OF SAID NORTHEAST 1/4, THENCE ALONG THE EAST LINE OF SAID NORTHEAST 1/4, S 00°41'49" W, 2656.66 FEET TOT HE SOUTHEAST CORNER OF SAID NORTHEAST 1/4; THENCE ALONG THE SOUTH LINE OF SAID NORTHEAST 1/4, N 89°42'03" W, 880.95 FEET TO THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, COUNTRY CREEK 3RD SUBDIVISION; THENCE ALONG THE EAST LINE OF SAID LOT 1, N 00°17'57" E, 323.29 FEET; THENCE N 36°12'08" W, 99.52 FEET TO THE SOUTHEAST CORNER OF BLOCK 5, SAID COUNTRY CREEK 3RD SUBDIVISION; THENCE ALONG THE EAST BOUNDARY OF SAID BLOCK 5 AS FOLLOWS: THENCE N 00°17'57" E, 375.00 FEET; THENCE S 79°58'37" W, 99.30 FEET; THENCE N 05°53'58" E, 419.61 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 5; THENCE N 43°14'53" W, 129.20 FEET TO THE SOUTHEAST CORNER OF BLOCK 4, SAID COUNTRY CREEK 3RD SUBDIVISION; THENCE ALONG THE EAST AND NORTH BOUNDARY OF SAID BLOCK 4 AS FOLLOWS: THENCE N 06°07'40" E, 431.67 FEET; THENCE S 89°46'15" W, 460.93 FEET; THENCE S 57°59'57" W, 345.79 FEET; THENCE S 82°41'22" W, 456.05 FEET; THENCE S 04°05'02" E, 106.82 FEET; THENCE N 88°43'35" W, 381.89 FEET TO THE WEST LINE OF SAID NORTHEAST 1/4; THENCE ALONG SAID WEST LINE, N 01°16'25" E, 1309.90 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 4452911 SQUARE FEET OR 102.225 ACRES MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, KENT A. ORVIK, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE ANNEXED PLAT IS A CORRECT REPRESENTATION OF THE NOTES OF A SURVEY PERFORMED UNDER MY SUPERVISION AND COMPLETED ON THE 14TH DAY OF MARCH, 2006, THAT ALL DISTANCES ARE CORRECT AND MONUMENTS ARE PLACED IN THE GROUND AS SHOWN AND THAT THE OUTSIDE BOUNDARY LINES ARE CORRECTLY DESIGNATED ON THE PLAT.

KENT A. ORVIK
REGISTERED PROFESSIONAL LAND SURVEYOR
N.D. REGISTRATION NO. 3463

STATE OF NORTH DAKOTA)
SS)
COUNTY OF BURLEIGH)

ON THIS _____ DAY OF _____, 200__, BEFORE ME PERSONALLY APPEARED KENT A. ORVIK, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

_____ COUNTY, NORTH DAKOTA
MY COMMISSION EXPIRES _____

Kadrmas Lee & Jackson
Engineers Surveyors Planners

APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT, HAS ACCEPTED THE DEDICATION OF ALL STREETS SHOWN THEREON, HAS APPROVED THE GROUNDS AS SHOWN ON THE ANNEXED PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK,

THE FOREGOING ACTION OF THE CITY COMMISSION OF BISMARCK, NORTH DAKOTA WAS TAKEN BY RESOLUTION APPROVED THE _____ DAY OF _____, 200__.

ATTEST
W. C. WOCKEN - CITY ADMINISTRATOR

APPROVAL OF CITY ENGINEER

I, MELVIN J. BULLINGER, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE "COUNTRY CREEK FIFTH SUBDIVISION" AS SHOWN ON THE ANNEXED PLAT.

MELVIN J. BULLINGER - CITY ENGINEER

APPROVAL OF CITY PLANNING COMMISSION

THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, ON THE _____ DAY OF _____, 200__ IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK AND REGULATIONS ADOPTED BY THE SAID PLANNING COMMISSION.

IN WITNESS WHEREON ARE SET THE HANDS AND SEALS OF THE CHAIRMAN AND SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF BISMARCK.

WAYNE LEE YEAGER - CHAIRMAN

CARL D. HOKENSTAD - SECRETARY

APPROVAL OF BOARD OF COUNTY COMMISSIONERS

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BURLEIGH, NORTH DAKOTA HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE ANNEXED PLAT, HAS ACCEPTED THE DEDICATION OF ALL STREETS SHOWN THEREON, HAS APPROVED THE GROUNDS AS SHOWN ON THE ANNEXED PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE COUNTY OF BURLEIGH, NORTH DAKOTA.

THE FOREGOING ACTION OF THE COUNTY COMMISSIONERS OF BURLEIGH, NORTH DAKOTA WAS TAKEN BY RESOLUTION APPROVED THE _____DAY OF _____, 200__.

JERRY WOODCOX - CHAIRPERSON

ATTEST
KEVIN GLATT - COUNTY AUDITOR

OWNER'S CERTIFICATE AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT APPLE CREEK, LLP., BEING THE OWNER AND PROPRIETOR OF THE PROPERTY SHOWN ON THE ANNEXED PLAT HAVE CAUSED THAT PORTION DESCRIBED HEREON TO BE SURVEYED AND PLATTED AS "COUNTRY CREEK FIFTH SUBDIVISION", AND DO SO DEDICATE STREETS AS SHOWN HEREON INCLUDING ALL SEWER, CULVERTS, WATER AND GAS DISTRIBUTION LINES AND OTHER PUBLIC UTILITY LINES, WHETHER SHOWN HEREON OR NOT, TO THE PUBLIC USE FOREVER.

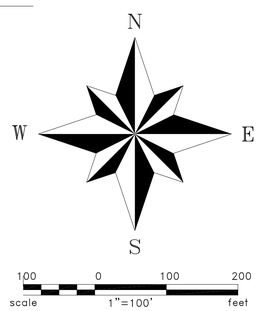
THEY ALSO DEDICATE EASEMENTS TO RUN WITH THE LAND, FOR GAS, ELECTRIC, TELEPHONE AND OTHER PUBLIC UTILITIES OR SERVICES ON, ACROSS OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON.

ART MARINER, MANAGING PARTNER,
APPLE CREEK, LLP
4512 SHOREVIEW PLACE S.E..
MANDAN, ND

STATE OF NORTH DAKOTA)
SS)
COUNTY OF _____)

ON THIS _____ DAY OF _____, 200__, BEFORE ME PERSONALLY APPEARED ART MARINER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

_____ COUNTY, NORTH DAKOTA
MY COMMISSION EXPIRES _____

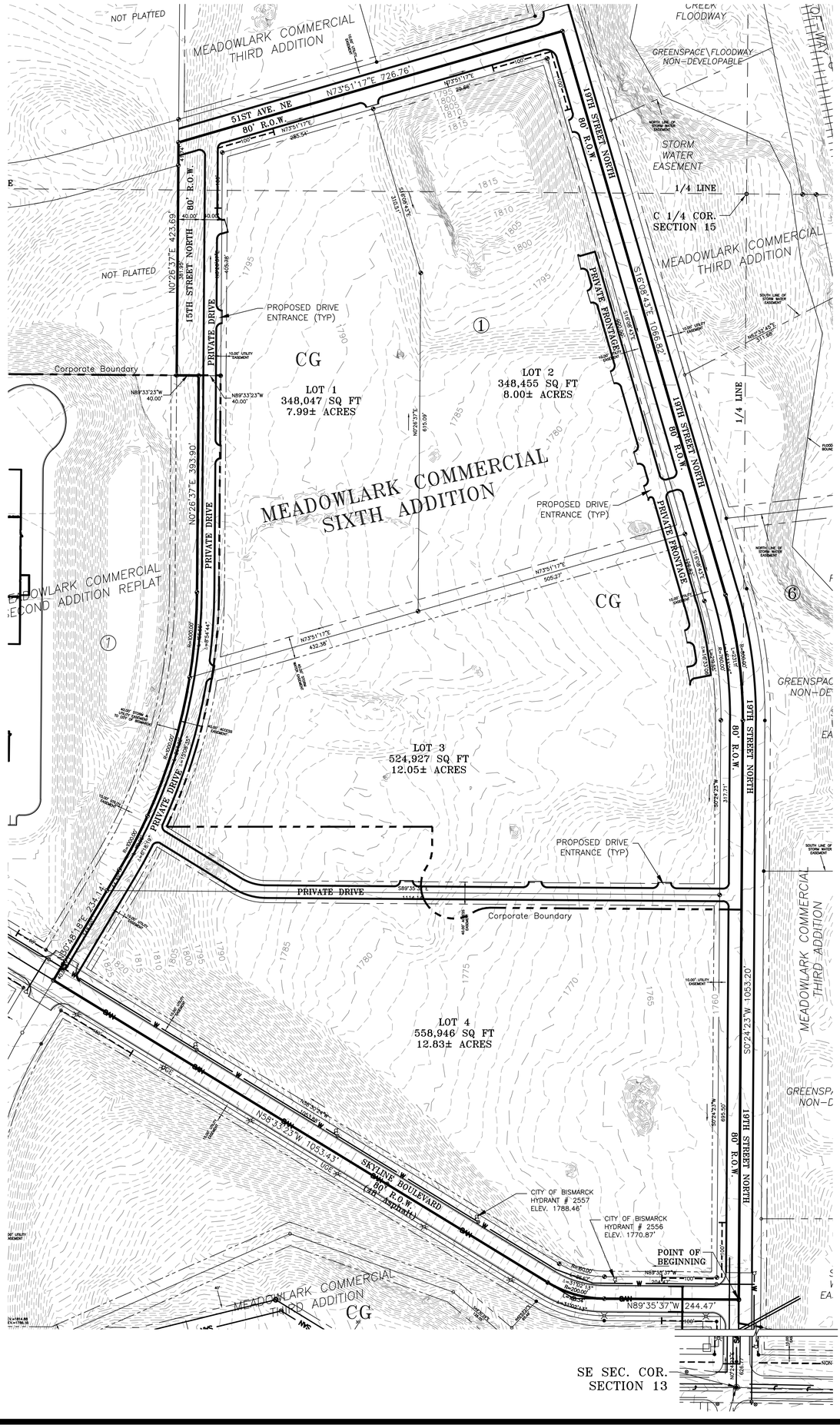


100 0 100 200
scale 1"=100' feet

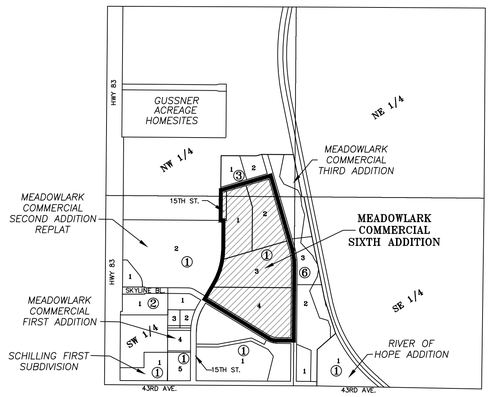
DATE: JULY 2008

PRELIMINARY PLAT OF MEADOWLARK COMMERCIAL SIXTH ADDITION

A REPLAT OF LOTS 1 THROUGH 6, BLOCK 2; LOTS 1 THROUGH 6, BLOCK 4; LOTS 1 THROUGH 4, BLOCK 5, ALL IN MEADOWLARK COMMERCIAL THIRD ADDITION, LYING IN THE WEST HALF (W 1/2) OF SECTION 15, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE 5TH P.M., BURLEIGH COUNTY, NORTH DAKOTA
TO BE HEREAFTER KNOWN AS:
LOTS 1 THROUGH 4, BLOCK 1 OF MEADOWLARK COMMERCIAL SIXTH ADDITION TO THE CITY OF BISMARCK, LYING IN THE WEST HALF (W 1/2) OF SECTION 15, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE 5TH P.M., BURLEIGH COUNTY, NORTH DAKOTA RTH, RANGE 80 WEST OF THE 5TH P.M., BURLEIGH COUNTY, NORTH DAKOTA.



LOCATION MAP
N.T.S.



SECTION 15
T 139 N, R 80 W

GRAPHIC SCALE

60 0 30 60 120 240

(IN FEET)
1 inch = 60 ft.

LEGEND

- SET, 5/8"x18" REBAR W/ L.S. CAP STAMPED "ZELMER #3756"
- TO BE SET, 5/8"x18" REBAR W/ L.S. CAP STAMPED "ZELMER #3756"
- FOUND 5/8"x18" REBAR W/ L.S. CAP STAMPED "ZELMER #3756"
- FOUND IRON PIPE
- COMPUTED CORNER LOCATION
- COMPUTED ROADWAY & EASEMENT POINTS
- NON ACCESS LINE

LEGEND
NORTH

Perimeter Metes & Bounds Description

A preliminary plat of Lots 1–4, Block 1; of Meadowlark Commercial Sixth Addition to the City of Bismarck, lying in Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, and being more particularly described as follows:

Beginning at the South East corner of the SW ¼ of said Section 15; thence N00°24'23"E along the center line of 15th Street, a distance of 626.77 feet to the Point of Beginning;

thence N89°35'37"W along the center line of Skyline Boulevard, a distance of 244.47 feet; thence northwesterly along the arc of a curve to the right and said center line, having a central angle of 31°02'13" and a radius of 200.00 feet, and an arc length of 108.34 feet; thence N58°33'23"W along said center line, a distance of 1053.43 feet to the center line intersection of said Skyline Boulevard and 15th Street; thence N30°48'18"E, a distance of 234.14; thence northeasterly along the arc of a curve to the left, having a central angle of 30°21'15" and a radius of 1000.00 feet, and an arc length of 529.89 feet; thence N00°26'37"E, a distance of 393.90 feet to the northeast corner of Meadowlark Commercial Second Addition Replat; thence N89°33'23"W along the north line of Lot 1, Block 1, of said Meadowlark Commercial Second Addition Replat, a distance of 40.00 feet; thence N00°26'37"E, along the west right of way line of 15th Street North, a distance of 423.69 feet to the centerline 51st Avenue NE; thence N73°51'17"E along said 51st Avenue centerline, a distance of 726.76 feet to the centerline intersection of 19th Street North; thence S16°08'43"E along said 19th Street centerline, a distance of 1066.82 feet; thence southeasterly along the arc of a curve to the right and said centerline, having a central angle of 16°33'06" and a radius of 800.00 feet, and an arc length of 231.11 feet; S00°24'23"W along said centerline, a distance of 1053.20 feet to the Point of Beginning and containing 45.64 acres, more or less.

BURLEIGH COUNTY RECORDER

VERTICAL DATUM
THE CITY OF BISMARCK VERTICAL CONTROL NETWORK, NGVD29

BASIS OF BEARINGS & HORIZONTAL DATUM
BEARINGS SHOWN ARE GRID BEARINGS BASED ON THE NORTH DAKOTA STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH ZONE, REFERENCED FROM THE CITY OF BISMARCK GPS CONTROL MONUMENTS "B 4–21" AND "B 36–10".

OWNER
MDS Properties, LLC
P.O. Box 2219
Bismarck, ND 58502–2219

SURVEYOR
Bruce P. Zelmer PLS
Bartlett & West
3456 East Century Ave
Bismarck, ND 58503

TOTAL ACREAGE WITHIN
3.34± Acres NW ¼ Sec 15
42.30± Acres SW ¼ Sec 15
45.64± Acres Total

ACREAGE OF LOTS
40.87± Acres

ACREAGE OF STREETS
4.77± Acres

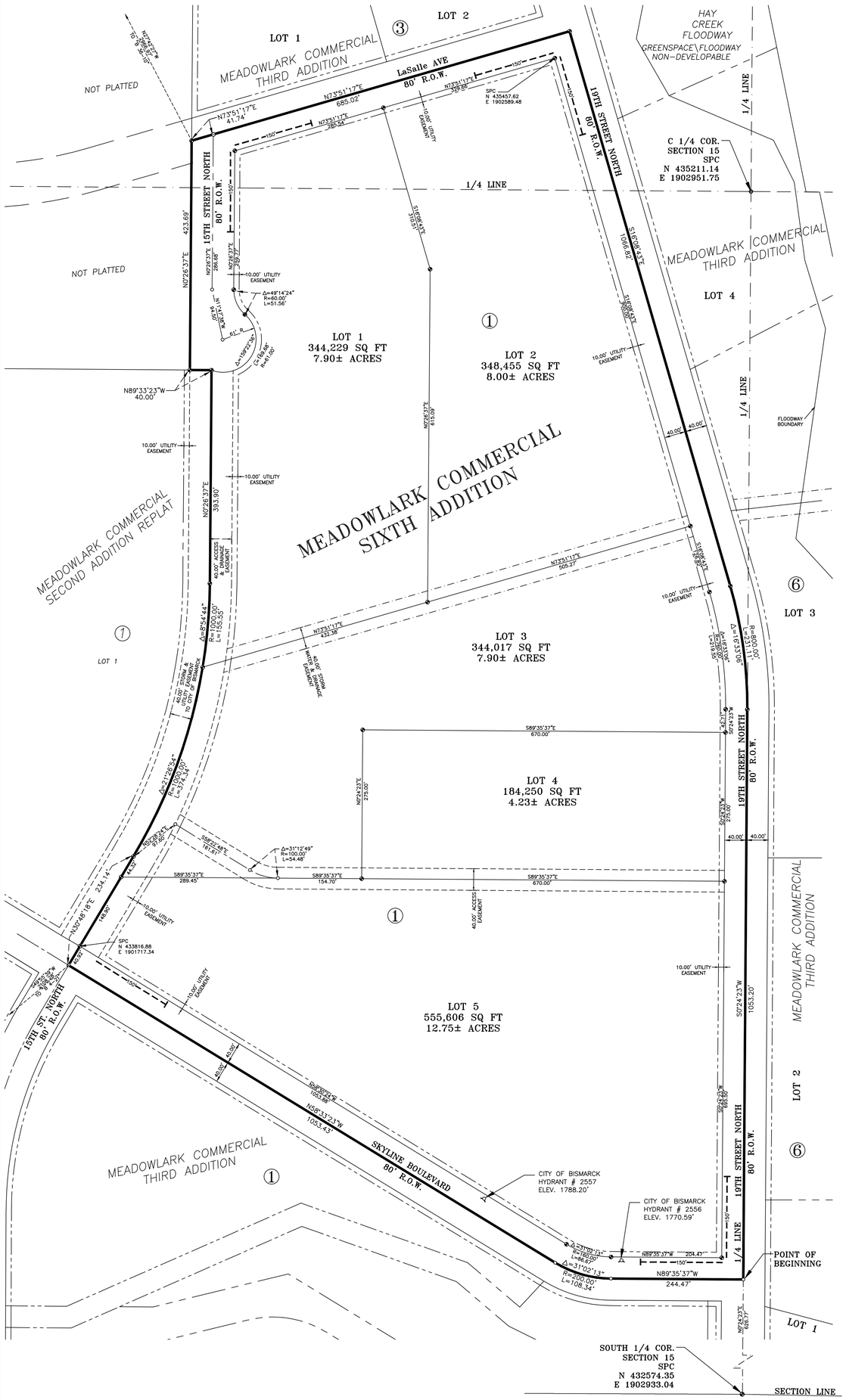
DATE
December 23, 2011

Prepared By:
BARTLETT & WEST
3456 E. Century Ave.
Bismarck, North Dakota 58503
701–258–1110
FAX 701–258–1111
www.bartwest.com

MEADOWLARK COMMERCIAL SIXTH ADDITION

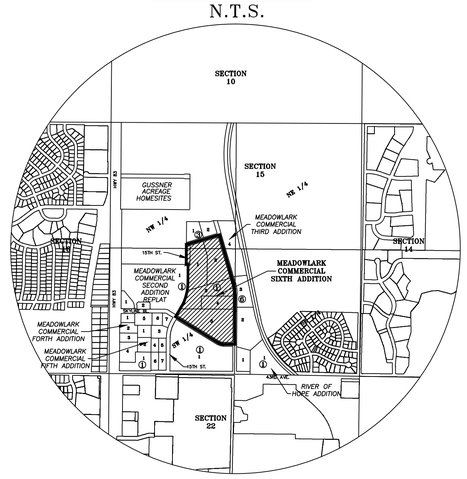
A REPLAT OF LOTS 1 THROUGH 6, BLOCK 2; LOTS 1 THROUGH 6, BLOCK 4; LOTS 1 THROUGH 4, BLOCK 5, ALL IN MEADOWLARK COMMERCIAL THIRD ADDITION TO THE CITY OF BISMARCK, LYING IN THE WEST HALF (W 1/2) OF SECTION 15, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE 5TH P.M., BURLEIGH COUNTY, NORTH DAKOTA, TO BE HEREAFTER KNOWN AS:

LOTS 1 THROUGH 5, BLOCK 1 OF MEADOWLARK COMMERCIAL SIXTH ADDITION TO THE CITY OF BISMARCK, LYING IN THE WEST HALF (W 1/2) OF SECTION 15, TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE 5TH P.M., BURLEIGH COUNTY, NORTH DAKOTA.



LOCATION MAP

N.T.S.



SECTION 15
T 139 N, R 80 W

GRAPHIC SCALE

100 0 50 100 200 400

(IN FEET)
1 inch = 100 ft.

NORTH

LEGEND

- ● 5/8"x18" REBAR W/ L.S. CAP STAMPED "ZELMER #3756"
- ○ FOUND IRON PIPE
- ○ COMPUTED ROADWAY & EASEMENT POINTS
- NON ACCESS LINE

Perimeter Metes & Bounds Description

A Replat of Lots 1 through 6, Block 2; Lots 1 through 6, Block 4; Lots 1 through 4, Block 5, all in Meadowlark Commercial Third Addition to the City of Bismarck, lying in the West Half (W 1/2) of Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, to be hereafter known as: Lots 1 through 5, Block 1 of Meadowlark Commercial Sixth Addition to the City of Bismarck, lying in the West Half (W 1/2) of Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota and being more particularly described as follows:

Commencing at the South Quarter Corner of said Section 15; thence N00°24'23"E along the north/south quarter line of said Section 15, a distance of 626.77 feet to the Point of Beginning; thence N89°35'37"W along the center line of Skyline Boulevard, a distance of 244.47 feet; thence northwesterly along the arc of a curve to the right and said center line, having a central angle of 31°02'13" and a radius of 200.00 feet, and an arc length of 108.34 feet; thence N58°33'23"W along said center line, a distance of 1053.43 feet to the center line intersection of said Skyline Boulevard and 15th Street North; thence N30°48'18"E, a distance of 234.14; thence northeasterly along the arc of a curve to the left, having a central angle of 21°26'54" and a radius of 1000.00 feet, and an arc length of 374.34 feet; thence northeasterly along the arc of a curve to the left, having a central angle of 08°54'44" and a radius of 1000.00 feet, and an arc length of 155.55 feet; thence N00°26'37"E, a distance of 393.90 feet to the south righ-of-way line of said 15th Street North; thence N89°33'23"W along said south right-of-way line, a distance of 40.00 feet to the northeast corner of Lot 1, Block 1 of Meadowlark Commercial Second Addition Replat; thence N00°26'37"E along the west right-of-way line of said 15th Street North, a distance of 423.69 feet to the centerline of LaSalle Avenue; thence N73°51'17"E along said centerline, a distance of 41.74 feet; thence N73°51'17"E along said centerline, a distance of 685.02 feet to the centerline intersection of 19th Street North and LaSalle Avenue; thence S16°08'43"E along the centerline of said 19th Street North, a distance of 1066.82 feet; thence southeasterly along the arc of a curve to the right and said centerline, having a central angle of 16°33'06" and a radius of 800.00 feet, and an arc length of 231.11 feet; S00°24'23"W along said centerline, a distance of 1053.20 feet to the Point of Beginning and containing 45.64 acres, more or less.

OWNER'S DEDICATION

I, the undersigned, hereby certify that I am the owner of the land which is included in this plat, this plat being entitled: A Replat of Lots 1 through 6, Block 2; Lots 1 through 6, Block 4; Lots 1 through 4, Block 5, all in Meadowlark Commercial Third Addition to the City of Bismarck, lying in the West Half (W 1/2) of Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, to be hereafter known as: Lots 1 through 5, Block 1 of Meadowlark Commercial Sixth Addition to the City of Bismarck, lying in the West Half (W 1/2) of Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, that the plat has been made at my request and under my direction, for the purpose of defining and describing the property as shown by this plat.

I do dedicate the streets as shown hereon including all sewer, culverts, water distribution lines and any other public utility lines, whether shown hereon or not, to the public forever. I also hereby dedicate the easements to run with the land for gas, electric, telephone or other public utilities or services on or under those certain strips of land designated hereon as "Utility Easements". I also hereby dedicate the easements to run with the land for access on those certain strips of land designated heron as "Access Easements".

In witness whereof I have hereunto set my hand this, the _____ day of _____,

MDS Properties, LLC &
Invesco Holdings, Inc.

By _____,
Dan Schmaltz

Title Authorized Agent / Member,

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this, the _____ day of _____, before me, the undersigned officer, personally appeared Dan Schmaltz, Authorized Agent / Member of MDS Properties LLC and Invesco Holdings, Inc. a corporation and that he, as such being authorized to do so, executed the foregoing Owner's Dedication by signing the name of the corporation by himself as Authorized Agent / Member.

By _____,
Dan Schmaltz

Title Authorized Agent / Member,

APPROVAL OF CITY PLANNING COMMISSION

The subdivision of land as shown on this plat has been approved by the Planning Commission of the City of Bismarck, on the _____ day of _____, _____ in accordance with the laws of the State of North Dakota, ordinances of the City of Bismarck and regulations adopted by said Planning Commission. In witness whereof are set the hands and seals of the Chairman and the Secretary of the Planning Commission of the City of Bismarck.

_____,
Wayne Lee Yeager
Chairman

_____,
Carl D. Hokenstad
Secretary

APPROVAL OF BOARD OF CITY COMMISSIONERS

The Board of City Commissioners of the City of Bismarck, North Dakota, has approved the subdivision of land as shown on this plat, has accepted the dedication of all streets shown thereon, has approved the grounds as shown on this plat as an amendment to the Master Plan to the City of Bismarck, North Dakota, and does hereby vacate any previous platting within the boundary of this plat.

The foregoing action of the Board of City Commissioners of Bismarck, North Dakota, was taken by resolution approved on the _____ day of _____,

_____,
W.C. Wocken
City Administrator

APPROVAL OF CITY ENGINEER

I, Melvin J. Bullinger, City Engineer of the City of Bismarck, North Dakota, hereby approve this plat of Meadowlark Commercial Sixth Addition, as shown on this plat.

Dated this _____ day of _____,

_____,
Melvin J. Bullinger, P.E.
City Engineer

SURVEYOR'S CERTIFICATE

I, Bruce P. Zelmer, a Professional Land Surveyor in and for the State of North Dakota, do hereby certify that at the request of MDS Properties LLP and Invesco Holdings, Inc., as owners and under their direction, did on or prior to December 23rd, 2011, survey the land described as follows: A Replat of Lots 1 through 6, Block 2; Lots 1 through 6, Block 4; Lots 1 through 4, Block 5, all in Meadowlark Commercial Third Addition to the City of Bismarck, lying in the West Half (W 1/2) of Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota, to be hereafter known as: Lots 1 through 5, Block 1 of Meadowlark Commercial Sixth Addition to the City of Bismarck, lying in the West Half (W 1/2) of Section 15, Township 139 North, Range 80 West of the 5th P.M., Burleigh County, North Dakota.

I also hereby certify that this plat is a correct representation of the survey made under my direct supervision, and that the monuments shown thereon are accurate, the required monuments have been set and that the dimensional and geodetic details are correct, and that this plat is to the best of my knowledge and belief, in all respects, a true description of said property.

Dated this _____ day of _____.

_____.
Bruce P. Zelmer, P.L.S. #3756

STATE OF NORTH DAKOTA)
) SS
COUNTY OF BURLEIGH)

On this, the _____ day of _____, before me, the undersigned, a Notary Public, personally appeared Bruce P. Zelmer, a Professional Land Surveyor in and for the State of North Dakota, known to me to be the person whose name is subscribed to the foregoing Surveyor's Certificate, and I hereby acknowledge that he executed the foregoing instrument.

My commission expires _____.

_____,
Notary Public

VERTICAL DATUM
THE CITY OF BISMARCK VERTICAL CONTROL NETWORK, NGVD29

BASIS OF BEARINGS & HORIZONTAL DATUM
BEARINGS SHOWN ARE GRID BEARINGS BASED ON THE NORTH DAKOTA STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH ZONE, REFERENCED FROM THE CITY OF BISMARCK GPS CONTROL MONUMENTS "B 4-21" AND "B 36-10".

BURLEIGH COUNTY RECORDER

OWNER
MDS Properties, LLC
P.O. Box 2219
Bismarck, ND 58502-2219

Invesco Holdings, Inc.
P.O. Box 2219
Bismarck, ND 58502-2219

TOTAL ACREAGE WITHIN
3.34± Acres NW ¼ Sec 15
42.30± Acres SW ¼ Sec 15
45.64± Acres Total

ACREAGE OF LOTS
40.79± Acres

ACREAGE OF STREETS
4.85± Acres

SURVEYOR
Bruce P. Zelmer PLS
Bartlett & West
3456 East Century Ave
Bismarck, ND 58503

DATE
March 13, 2012

Prepared By:
BARTLETT & WEST
3456 E. Century Ave.
Bismarck, North Dakota 58503
701-258-1110
FAX 701-258-1111
www.bartwest.com

Print Form

CITY/ETA SUBDIVISION PLAT SUBMITTAL CHECKLIST

The following is a summary of the information required on all subdivision plats submitted for review and approval, based on the requirements of Section 14-09-07 of the City Code of Ordinances (Specifications for Plats). The applicant checklist column for the appropriate subdivision plat type (preliminary or final/minor) must be completed by the applicant and this form must be submitted in conjunction with the unified development application. If required items are not included on a plat submitted for approval, the application will be deemed incomplete.

I. PRELIMINARY SUBDIVISION PLATS

General Information	Applicant Checklist	Staff Checklist
a. Proposed name of the subdivision plat (if in City use "addition", if in ETA use "subdivision").		
b. Location of subdivision plat by section, township and range (to the quarter section).		
c. Names and addresses of property owner(s) and registered land surveyor who prepared the plat.		
d. Scale of 1" = 100' or less, shown graphically (A different scale may be used only if it has previously been approved by the Director of Planning & Development).		
e. Date.		
f. North point indication (arrow or compass rose).		
g. Boundary line of proposed subdivision plat indicated by a solid heavy line.		
h. Total acreage within the subdivision plat.		
i. A location map inset showing the boundary of the proposed subdivision plat and covering an area within a one mile radius of the subdivision plat.		
Existing		
j. Existing & proposed access points along public right-of-way within or adjacent to the subdivision plat. For subdivision plats within the ETA, all access points within ¼ mile of the subdivision plat shall be shown.		
k. Name, location, and width of all existing or previously platted streets, including the type and width of surfacing, within or adjacent to the subdivision plat.		
l. Name, dimensions and location of any railroad right-of-way within or adjacent to the subdivision plat.		
m. Name, dimensions and location of any utility easements within or adjacent to the subdivision plat.		
n. Name, dimensions and location of any parks, public land or multi-use trails or crosswalks within or adjacent to the subdivision plat.		
o. Name, dimensions and location of any permanent buildings or structures within or adjacent to the subdivision plat.		

Existing *continued*	Applicant Checklist	Staff Checklist
p. Location of any corporate boundary if within or adjacent to the subdivision plat.		
q. Location and identification of any sections lines within or adjacent to the subdivision plat.		
r. Existing water mains, storm sewers, sanitary sewers, culverts, bridges, poles, pipelines and other utility structures within or adjacent to the tract, indicating pipe sizes, grades, and exact locations.		
s. Existing zoning of proposed subdivision plat and adjacent tracts of subdivided and un-subdivided land.		
t. Boundary lines of tracts of subdivided and un-subdivided land within or adjacent to the proposed subdivision plat (including any lots being replatted). Owners names are not needed for adjacent tracts within the corporate limits but must be shown for any adjacent tracts within the ETA.		
u. Topographic contours with a minimum contour interval of 2 feet, with indication of datum used (NGVD29 or NAVD88 with NAVD88 required for areas with floodplain information in that datum).		
v. 100-year floodplain and floodway elevations if any portion of the subdivision plat is within the floodplain, with indication of datum used (NAVD88 required for areas with current information in that datum).		
Proposed		
w. Layout, numbers and dimensions of lots and blocks.		
x. Layout of proposed streets, alleys, crosswalks and easements, showing all widths and proposed street names.		
y. Location and dimensions of proposed utility easements, including easements for storm water management facilities and proposed locations of culverts and retention/detention areas, if available.		
z. Location and dimensions of non-access lines.		
aa. Identification of parcels of land intended to be dedicated or reserved for public uses, or set aside for use of property owners within the subdivision plat.		
bb. Fencing note, if required, in accordance with Section 14-09-06 for property adjacent to I-94 or any open drainage facility.		
cc. Airport noise contours within or adjacent to the subdivision plat as established by the latest available data.		
dd. Location of streams, water courses and marshy or swampy areas within or adjacent to the subdivision plat, including federally designated wetlands (must be labeled).		

II. FINAL & MINOR SUBDIVISION PLATS

a. Name of the subdivision plat (if in City use “addition”, if in ETA use “subdivision”).		
b. Location of subdivision plat by section, township and range (to the quarter section).		
c. Names and addresses of property owner(s) and registered land surveyor.		
d. Scale of 1” = 100' or less, shown graphically.		
e. Date.		
f. North point indication (arrow or compass rose).		
g. Basis of bearings, as derived from State Plane Coordinates.		
h. Indication of both vertical datum and horizontal datum used for the plat.		
i. Boundary line of subdivision plat based on an accurate traverse, with angular and linear dimensions.		
j. Legal description of property being platted, including any section line right-of-way not previously deeded for subdivision plats within the ETA.		
k. Accurate locations of all monuments. One monument shall be placed at each corner and at each change of direction in theboundary line of the subdivision plat. In addition, one monument shall be noted/ placed at each block corner; at eachpoint of deflection in the interior lot lines; and at the point of curvature and point of tangency of each curve in a street line on both sides of the street. Whether monuments are to be noted or placed prior to recording the plat is based on the location of the subdivision plat.		
l. True angles and distances to the nearest official monuments. For subdivision plats adjacent to or within the current corporate limits, a tie to at least one official monument is required. For subdivision plats within the ETA, ties to two official monuments are required. For purposes of this requirement, an official monument is an official government monument, such as a section corner or quarter section corner.		
m. Ties to a minimum of two accepted State Plane Coordinate monuments based on NAD 83 horizontal datum (adjusted 86), units of measurement international feet, ND south zone 3302.		
n. Elevations referenced to a durable benchmark described on the plat within its location to the nearest hundredth of a foot, with indication of datum used (NAVD88 required for areas with current floodplain information in that datum).		
o. Exact location, width and name of all rights-of-way within and adjoining the subdivision plat, and the exact location of all alleys and multi-use trails within the subdivision plat.		
p. Accurate outlines and legal descriptions of any areas (not including streets, alleys or public utility easements) to be dedicated or reserved for public use, with the purposes indicated; and of any areas to be reserved by deed covenant for common use of all property owners within the subdivision plat.		
q. All easements for rights-of-way provided for public services and public utilities.		
r. All lot numbers and block numbers and lot lines, with accurate dimensions in feet and hundredths.		
s. Square footage or acreage of land within the subdivision plat, each individual lot, each sublot created by ghost platting, and the total area in streets. If the subdivision plat crosses a quarter-section line, the acreage within each quarter section must also be noted.		
t. Radii, deltas and lengths of all curves based on arc definitions.		
u. Location and dimensions of non-access lines and access points within a continuous non-access line.		

Final Plats *continued*

v. 100-year floodplain and floodway elevations and topographic contours with a minimum contour interval of 2 feet for any portion of the subdivision plat within a designated floodplain, with indication of datum used (NAVD88 required for areas with current floodplain information in that datum).

w. For any waterways or bodies of water within or adjacent to the subdivision plat, the present shoreline locations (relative to the meander line).

x. Water elevations must be shown and dated (meander line).

y. For subdivision plats adjacent to theMissouri River, the 33,000 cfs flow elevation must be shown, which is the ordinary high water mark defined in the zoning ordinance for the purpose of measuring setbacks.

z. Certification by the registered surveyor that the subdivision plat represents a survey made by him/her, or under the surveyor's direct supervision, and that the monuments shown thereon are accurate, all required monuments have been set, and that all dimensional and geodetic details are correct.

aa. Notarized certification by all owner(s) of the land of adoption of the subdivision plat and dedication of sewers, water distribution lines, streets, public areas and other improvements. If there are multiple owners, the specific lot(s) owned by each must be specified.

bb. Proper form for approval of the Planning & Zoning Commission.

cc. Proper form for acceptance of the subdivision plat and amendment of the Master Streetplan by the Board of City Commissioners. For subdivision plats within the ETA, proper form for acceptance of the right-of-way by the Burleigh County Board of Commissioners is also required.

dd. Proper form for approval by the City Engineer.

ee. Fencing note, if required for fencing along Interstate 94 or any open drainage facility.

ff. All restrictive airport noise, clear zone and approach zone elevations within or adjacent to the subdivision plat.

gg. All easements for stormwater management facilities shall be shown and dedicated.

hh. Minimum sheet size of 30” x 36” required. If more than one sheet is required, an index sheet showing the entire subdivision plat on one sheet must submitted, all sheets must be numbered, of the same size, and include matchlines. A border of ½ inch shall be proved on the top, bottom, and right sides of the subdivision plat and a border of 2 inches shall be provided on the left side.

Print Form

COUNTY PLAT SUBMITTAL CHECKLISTS

The following information is required on all plats submitted for review and approval by Burleigh County. The applicant checklist column for the appropriate plat type (preliminary or final) must be completed by the applicant and this form must be submitted in conjunction with the unified development application. If required items are not included on a plat submitted for approval, the application will be deemed incomplete.

The following checklist must be completed and submitted with the application form.

COUNTY SUBMISSION CHECKLIST

General Information	Applicant Checklist	Staff Checklist
1. Proposed name of subdivision (use "subdivision" rather than "addition")		
2. Location of subdivision by section, township and range (to nearest quarter section)		
3. Name and address of registered land surveyor		
4. Name and address of property owner		
5. Scale of 1" = 100' or less, shown graphically (A different scale may be used only if it has previously been approved by the Director of Planning & Development)		
6. Date		
7. North point indication (arrow or compass rose)		
8. Boundary line of proposed subdivision indicated by a solid heavy line		
9. Total acreage within the subdivision and each individual lot		
10. A location map inset showing the boundary of the proposed subdivision and covering an area within a one mile radius of the subdivision		
EXISTING		
11. Existing access points along public right-of-way within or adjacent to the subdivision. All such adjacent access points within ¼ mile of the subdivision shall be shown or noted		
12. Name, location, and width of all existing or previously platted streets, including the type and width of surfacing, within or adjacent to the subdivision		
13. Name, dimensions and location of any railroad right-of-way within or adjacent to the subdivision		
14. Name, dimensions and location of any utility easements within or adjacent to the subdivision		
15. Name, dimensions and location of any parks or public land within or adjacent to the subdivision		
16. Name, dimensions and location of any permanent buildings or structures within or adjacent to the subdivision		

01/07

EXISTING continued	Applicant Checklist	Staff Checklist
17. Location of any corporate boundaries within or adjacent to the subdivision		
18. Location of section lines within or adjacent to the subdivision		
19. Existing water mains, storm sewers, sanitary sewers, culverts, bridges, poles, pipelines and other utility structures within or adjacent to the tract, indicating pipe sizes, grades, and exact locations		
20. Existing zoning of proposed subdivision and all adjacent tracts		
21. Boundary lines of adjacent tracts of subdivided and un-subdivided land, showing owners names		
22. Location of streams, water courses and marshy or swampy areas within or adjacent to the subdivision, including federally designated wetlands (must be labeled)		
23. Topographic contours with a minimum contour interval of 5 feet, with indication of datum used (NGVD29 or NAVD88, with NAVD88 preferred for all areas and required for areas with current floodplain information in that datum)		
24. 100-year floodplain and floodway elevations if any portion of the subdivision is within the floodplain, with indication of datum used (NAVD88 required for areas with current floodplain information in that datum)		
25. Boundaries of any existing underlying lot(s) being replatted, if any		
PROPOSED		
26. Layout, numbers and dimensions of lots		
27. Layout of proposed streets, alleys, crosswalks and easements, showing all widths and proposed street names		
28. Location and dimensions of non-access lines		
29. Identification of parcels of land intended to be dedicated or reserved for public uses, or set aside for use of property owners within the subdivision		
FINAL PLATS		
1. Minimum sheet size of 30” x 36”. If more than one sheet is required, an index sheet showing the entire subdivision on one sheet must submitted, all sheets must be numbered, of the same size, and include matchlines. A border of ½ inch shall be provided on the top, bottom, and right sides of the plat and a border of 2 inches shall be provided on the left side		
2. Name of the subdivision (use “subdivision” rather than “addition”)		
3. Location of subdivision by section, township and range (to nearest quarter section)		
4. Name and address of registered land surveyor		
5. Name and address of property owner		
6. Scale of 1” = 100' or less, shown graphically		
7. Basis of bearings		
8. Date		
9. North point indication (arrow or compass rose)		

FINAL PLATS continued

10. Boundary line of subdivision based on an accurate traverse, with angular and linear dimensions		
11. Legal description of property being platted, including any section line right-of-way not previously deeded for roadway purpose		
12. Accurate locations of all monuments, which shall be one (1) inch diameter iron pipes eighteen (18) inches in length. One monument shall be placed at each corner and at each change of direction in the boundary line of the subdivision; one monument shall be placed at each block corner; and one monument shall be placed at the point of curvature and point of tangency of each curve in a street line on both sides of the street		
13. True angles and distances to the nearest established street lines or official monuments, not less than 2 need to be accurately described on the plat. For purposes of this requirement, an official monument is an official government monument, such as a section corner or quarter section corner		
14. Ties to within 12 inches of a minimum of two accepted State Plane Coordinate monuments based on NAD 83 ND Zone 3302		
15. Exact location, width and name of all streets within and adjoining the subdivision and exact location of all alleys and crosswalks within the subdivision		
16. Accurate outlines and legal descriptions of any areas (not including streets, alleys or public utility easements) to be dedicated or reserved for public use, with the purposes indicated; and of any area to be reserved for common use of all property owners within the subdivision		
17. All easements for rights-of-way provided for public services and utilities		
18. All lot numbers and lot lines, with accurate dimensions in feet and hundredths		
19. Square footage or acreage of land within the subdivision, each individual lot and the total area in streets. If the subdivision crosses a quarter-section line, the acreage within each quarter section must also be noted		
20. City, township, county or section lines accurately tied to the boundary lines of the subdivision by distance and angles;		
21. Radii, internal angles, points of curvature, tangent bearings and lengths of all arc		
22. Location and dimensions of non-access lines		
23. 100-year floodplain and floodway elevations and topographic contours with a minimum contour interval of five (5) feet for any portion of the subdivision within a designated floodplain, with indication of datum used (NAVD88 required for areas with current floodplain information in that datum)		
24. Present shoreline locations and water elevations shown and dated for any waterways or bodies of water within the subdivision (meander line)		
25. For subdivisions adjacent to theMissouri River, the 33,000 cfs flow elevation must be shown		
26. Certification by a registered surveyor that the plat represents a survey made by him/her, that monuments shown thereon exist as located and that all dimensional and geodetic details are correct		
27. Notarized certification by all owners of the land of adoption of the plat and dedication of sewers, water distribution lines, streets, public areas and other improvements		
28. Proper form for approval of the Planning Commission		
29. Proper form for acceptance of the plat and amendment of the master plan by the Board of County Commissioners		
30. Proper form for approval by the CountyEngineer		

Unit 6
Process and Proper Procedures

Planning and Zoning Guide

Unit 6 – Proper Procedures

Why are procedures important?

Procedures and processes established by a community ensure that all zoning and subdivision applications, annexations, city-initiated zoning changes, and zoning ordinance amendments are being handled in the same manner, with the same level of scrutiny and the same opportunities for stakeholder involvement. Procedural statutes for local governments are established by the NDCC (See Unit 9 and Unit 10). Local governments must follow statutory requirements, unless they choose to adopt more specific or rigorous standards, as allowed by Home Rule.

Following established procedures reduces a local government's vulnerability to legal challenges from either an applicant or from concerned or affected citizens who are unhappy with the outcome of a decision. If a decision is challenged, the judge will tend to focus on the procedural approach:

- Were the proper notifications were made?
- Were the zoning, subdivision, or NDCC rules interpreted and addressed in a manner consistent with the wording of the regulations?
- Were the public hearings handled correctly, giving the public an opportunity to address the appointed or elected officials?
- Was the decision based on the facts presented during the hearing?
- Were the reasons for the local government body's decision stated at the meeting, and are they documented in the motion and in the minutes?
- Were the reasons consistent with the findings of fact (i.e. review criteria) used on other decisions made by the local government body?
- Was the decision based on actions that were questionable from an ethical standpoint? (Refer to Unit 8 regarding Ethics.)

Local government decisions such as zoning or subdivision approval must not be ***arbitrary*** *or* ***capricious****. A decision is arbitrary if it is not supported by logic or available facts. A decision is capricious if it is adopted without thought or reason. Such decisions are an abuse of power and can be overturned in court. There should be a rational basis behind each decision – i.e., a "finding of fact" that is recorded at meetings. Even a finding which is logical in premise may be* ***unreasonable*** *if it is overly severe in application. For example, an exaction that is allowed by ordinance may be challenged if the amount of the exaction is not roughly proportional to the impacts caused by the development.*

The following sections detail six steps to guide local governments through the development review process.

Step 1 – Application Forms

A clear application form can save the local government staff and the Planning and Zoning Commissioners a significant amount of time, especially if the application form provides some basic information to the applicant. Examples of required items may include the application, site plan, title opinion, preliminary plat, and amenities plan, depending on the type of application. Before the application is submitted, the local government should provide a list of application materials to the applicant. This is also the time to explain potential property restrictions (i.e., zoning), and provide any additional guidelines that pertain to the subject application (i.e., adopted design standards or environmental standards).

It is not advisable to place the application on a hearing schedule until all the materials required for a complete application are turned into the local government, and those items have been reviewed to ensure that each item is adequate. The burden is on the applicant, not on local government staff, to make sure an application is complete and meets the local government's standards and requirements.

Information to Include on Application Materials

Fee Requirement

Indicate the amount of the application fee, and a statement that the fee is due with the submittal of the application form and materials. If the fee hasn't been paid, the application is not complete. The basis for the fee is to cover the city's costs for publishing the required notifications in the newspaper, the cost of mailing notifications to surrounding property owners, printing costs, and perhaps a fraction of the staff time required to process the application.

Hearings

Provide a list of regularly scheduled hearing dates and the complete application submittal deadline for each hearing. This allows the applicant to quickly see the earliest they can reasonably expect their application to move forward to a public hearing.

Approval Process

An explanation or flow chart of the approval process can help save time and serve as a reminder to the applicant as to the required steps of approval and where they are in the approval process. For example, a zoning change requires a recommendation from the Planning Commission and final approval by the elected

board (County Commission, City Commission/Council, or Township Board of Supervisors), where as a Conditional Use Permit usually receives final approval from the Planning Commission (depending on the jurisdiction).

In cities, a Board of Adjustment has final approval or denial authority for variance applications (appealable to City Council/Commission), whereas counties require approval/denial of a variance by Planning Commission and Board of County Commissioners.

Applicant Information

In addition to providing information to the applicants, the application form should also require information from the applicant about themselves, the subject property, and their proposal, including the following:

- Type of application (plat, rezoning, conditional use permit, etc.)
- Name of plat, if applicable
- Legal description of the property included in the application (lot and block information or a metes and bounds description)
- Street address of property
- Existing and proposed zoning, if applicable
- Property acreage
- Description of the proposal
- Name and contact information for the applicant or developer
- Name and contact information for the property owner(s), if different from the applicant/developer
- Name and contact information for the contact person or agent, if applicable
- Signatures from the applicant and property owner(s)

Examples of application forms are provided at the end of this unit. Some cities have separate application forms for each type of application, while others have a "unified" application form on which they have combined the information for all types of applications.

Step 2 – Checklists

A list of information required by the applicant needs to be part of the application materials so the applicant knows what constitutes a complete application. Once the application is submitted, the staff needs to review the application to ensure that all of the required materials have indeed been submitted.

The required materials are different for each type of application. The examples provided at the end of this unit contain lists of required submittal items.

The items **most frequently left out** of an application include:

- Title opinion (for subdivision applications)
- Legal description (not provided, or frequently incorrect)
- Utility servicing plan (subdivision applications)
- Park dedication (subdivision applications)

Maintain a written record of correspondence with the applicant about the status of the application (i.e. list of information still needed). Once the checklist shows that the application is complete, a public hearing can be scheduled. The application should be complete approximately six weeks prior to the first of any scheduled hearing dates to ensure adequate time for review of the application and public hearing notification.

Proposals of significant scope (e.g. large subdivision or conditional use permits with the potential for significant community impacts) greatly benefit from a pre-application meeting or even a formal "conceptual review" process that helps to air out major comprehensive plan or zoning issues, or other potential items of contention.

Step 3 – Review of Application

All local government departments and outside agencies that will provide services to the proposed project must review the application. Distribute the application materials to the following agencies, and invite them to the staff review meeting:

- Public Works/Engineering Department or Street and Utilities Supervisor
- Rural Water District (where applicable)
- Police Department
- Fire Department
- Utility Providers (electricity, gas, cable tv, etc.)
- Ambulance Service
- NDDOT (if requesting access to a state highway or if the proposal is likely to affect a state highway intersection)
- County Highway Department (if requesting access to a county highway or if the proposal is likely to affect a county highway intersection)
- Other applicable agencies

Departments, agencies, or officials who need to comment on the application should provide written comments or attend the staff review meeting. Once the application has been reviewed, provide a list of written comments to the applicant regarding changes or corrections that are needed to the application materials. Comments should include all concerns the local government and reviewers have about the development proposal.

Review revised materials submitted by the applicant and circulate them to departments and agencies who assisted in the review. Continue coordinating with the applicant and other departments.

Step 4 – Public Notification

One of the most critical steps of an application process is the publication of a Notice of Public Hearing. These are sometimes referred to as "legals" or "legal ads". The NDCC states the following with respect to zoning by municipalities:

NDCC § 40-47-04.1

"No regulation, restriction, or boundary may become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. **Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city**. The notice must contain the following items:

a. The time and place of the hearing.

b. A description of any property involved in any zoning changes, by street address if streets have been platted or designated in the area affected.

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 city auditor."

Each locality has an official newspaper in which its public notices and minutes of meetings are published. Most newspapers require submittal of legal notices (public hearing notifications) at least one week prior to the publication date. Check with your newspaper.

If the deadline is inadvertently missed, a costlier box ad can usually be accommodated under a shorter deadline.

Some good examples of Public Hearing Notices are provided on the following pages.

Public Hearing Notice for a Zoning Change Public Hearing:

NOTICE OF HEARING

Notice is hereby given that the Crosby Planning and Zoning Commission will conduct a Public Hearing in the *Location*, Crosby, North Dakota on *Tuesday, o, 2010 at 4:00* o'clock p.m., to consider recommending to the Crosby City Council approval or denial of a Petition requesting a zone change from A, Agricultural to C-2, Highway Business on Lots *o*, Block *o*, of *Addition* to the City of Crosby, Divide County, North Dakota *or Section x, Township x North, Range x West*, Divide County, North Dakota, Fifth Principal Meridian.

The above-described tract of land is located at *Street Address*.

Additional information may be obtained by viewing the project file located at the City of Crosby, *Address*, Crosby, North Dakota, Monday through Friday, 8:00 a.m. to 4:30 p.m.

Any person interested may appear at the Hearing and be heard.

Chairperson's Name
Chair
(o, 2010)

INSTRUCTIONS TO THE CROSBY JOURNAL

Please publish as a legal on *Monday, o, 2010.*
Please send an affidavit of publication.
Bill to: City Auditor's Office
Attn: *Name*
Address
Crosby, ND 58730
Please call *Name* at *Phone Number* with any questions.

Public Hearing Notice for a Subdivision Public Hearing:

NOTICE OF HEARING

Notice is hereby given that the Crosby Planning and Zoning Commission will conduct a Public Hearing the *Location*, Crosby, North Dakota on *Tuesday, o, 2010 at 4:00* o'clock p.m., to consider recommending to the Crosby City Council approval or denial of a Petition requesting a *plat of Grow Crosby Addition an unplatted portion of the South half of the Northeast Quarter and the North half of the North half of the Southeast Quarter of Section 32, Township 163 North, Range 97 West, of the 5th Principal Meridian, Divide County, North Dakota. Or requesting a plat of Grow Crosby Addition being a replat of all of Crosby Acres Addtion to the City of Crosby, Divide County, North Dakota.*

The above-described tract of land is located at *Street Address*. The proposed plat contains 9 Lots, *1* Block, and 17.207 acres of land more or less.

Additional information may be obtained by viewing the project file located at the City of Crosby, *Address*, Crosby, North Dakota, Monday through Friday, 8:00 a.m. to 4:30 p.m.

Any person interested may appear at the Hearing and be heard.

Chairperson's Name
Chair
(o, 2010)

INSTRUCTIONS TO THE CROSBY JOURNAL

Please publish as a legal on *Monday, o, 2010.*
Please send an affidavit of publication.
Bill to: City Auditor's Office
Attn: *Name*
Address
Crosby, ND 58730
Please call *Name* at *Phone Number* with any questions.

Public Notice for an Annexation Public Hearing:

NOTICE OF
PETITION FOR ANNEXATION

Please take notice that a petition for annexation into the city of Divide has been submitted to the city of Divide and that said petition will be presented to the City Council of the city of Divide at its regular meeting on Date, commencing at Time p.m. for consideration and approval. The public is invited to attend and comment. The land described in the petition that is sought to be annexed is located in Section 32, Township 163 North, Range 97 West, Divide County, North Dakota, more fully described as:

The South half of the Northeast Quarter and the North half of the North half of the Southeast Quarter of Section 32, Township 163 North, Range 97 West of the Fifth Principal Meridian, Divide County, North Dakota, Commencing at the Southweast corner of Auditors Lot 68 B said point being the Point of Beginning thence S89°59'44"W, a distance of 1246.22' thence S46°00'53"E a distance of 1732.02' thence N00°00'00"W, a distance of 1202.93' to the Point of Beginning.

Containing 17.207 acres, more or less, and is subject to all easements and rights-of-way of record.

INSTRUCTIONS TO THE CROSBY JOURNAL

Please publish as a legal on Monday, May 4, 2009.
I will need an affidavit of publication.
Bill to: City Auditor's Office
Attn: Name
Address
Crosby, ND 58730
Please call Name at Phone Number with any questions.

Some local governments have their own public hearing notifications that vary from the NDCC. In those cases the notification requirements are more rigorous. For example, in addition to two publications of the public hearing notification, some local governments require:

- Publication of the first notification to be no less than 15 days prior to the public hearing, with the second publication the following week. This ensures that the notice is available far enough in advance of the hearing.
- Mailed notifications to surrounding property owners for which any part of the property falls within a specified distance of the proposed application (typically 150 to 300 feet, minus the width of street right of way).

Mailed notifications are highly recommended, as most people do not follow public hearing notices in the newspaper. The mailed notices can be very similar to the public hearing notifications. All of the same information should be provided, along with contact information for a local government staff person who can answer questions about the proposal.

A map of the project area, such as the one shown below, is also recommended with a mailed notification letter. This is simpler than trying to describe the location in writing.

Project Location Map
1201 32nd Avenue N, Fargo, ND

If aerial photography isn't available, an enhanced description can be provided. For example, in addition to the address and legal description of the property, the letter could say:

"The subject property lies in the northeast corner of University Drive N and 32nd Avenue N and is approximately 40.5 acres in size."

Key Takeaways

While public notification seems tedious and sometimes results in more controversy at the public hearings, it is one of the most important aspects of planning. Whoever is responsible for processing an application is also responsible for addressing the informational requests of the public and for compiling all written comments that are received. Informing the public, and informing local government officials about public comment are really at the core of what planning is all about.

Furthermore, the public process and public notification is required, not optional. If a project moves ahead in some fashion, without the completion of the proper procedures, including public notification, that action is not legal. It can be stopped by the courts, and local government officials risk the credibility of their positions by not following the public notification process. If local governments do not have the staff resources needed to fulfill these requirements, this is a serious matter, which needs to be corrected.

Step 5 – Preparing for the Public Hearing

Planning staff can begin preparing for the public hearing during the notification period, a few weeks prior to the hearing.

One to Two Weeks Prior to the Hearing

Prepare a staff report summarizing the project (see example at the end of this Unit). Describe the following:

- Applicant/owner/agent
- Location of Property (address and legal description)
- Size of property included in application
- Existing Land Use
- Proposed Land Use
- Existing Zoning Category
- Proposed Zoning Category
- Explanation of why the application is or is not consistent with the Comprehensive Plan
- The characteristics of the project and what the applicant is proposing to do with the property
- Findings of fact – the standard review criteria against which the local government is reviewing each application; discuss if the project satisfies those criteria.
- Staff recommendation of approval, denial, or approval contingent upon the applicant addressing an unresolved issue. The staff's recommendation should be based on the extent to which the project satisfies the requirements of the ordinance and is consistent with adopted plans and policies.

If a proposed development would require a change to the zoning map or the land use map, this should be discussed with the applicant prior to the hearing. This represents an additional cost to the applicant and the local government. An application can be approved contingent upon the amendment, if needed.

Five to Seven Days Prior to the Hearing

- Distribute copies of all submittal information and staff reports to the proper local government staff and appointed or elected officials.
- Distribute any public comments received about the proposed action.
- Be prepared to answer questions of appointed and elected officials.

- Take pictures or video of the site to show at the public hearing. They remind everyone of the site characteristics, including members of the public who are at the hearing.
- Provide maps showing the locations of the applications. If possible, place these items in a PowerPoint presentation so everyone at the meeting can see them. Include other materials submitted by the applicant that help the public understand the application (i.e., plat, design concept).
- Prepare ordinances for approval of zoning changes and resolutions of approval for subdivisions.
- Prepare draft certificates for conditional use permits (special use permits) for completion after the final conditions of approval are met.
- Commissioners should visit the sites for the various items on the agenda.

One to Two Days Prior to the Hearing

- Remind appointed or elected officials of the public hearings and determine how many will attend. If you do not have a quorum, the hearings should NOT take place. They will need to be rescheduled for another meeting.

Hearing Day

- Distribute additional written comments, or written summaries of verbal comments, to the proper local government staff and appointed or elected officials.
- Provide a verbal staff report, describing the information provided in the staff report. State if the criteria identified in the zoning ordinance and adopted plans and policies are met, and state the staff recommendation.

Make sure that the appointed or elected officials state the reason for their actions. For example, if they approve an application, it should be because they believe the criteria (findings of fact) have been met; this statement should be reflected in the motion to approve and the minutes of the meeting. If they deny the application, their motion should state the reason for the denial (that a specific criterion is NOT met, and why it is not met). The motion to deny should include a statement about the criteria that are not met, and the minutes of the meeting should reflect those reasons for denial.

Step 6 - After the Hearing

- Prepare and review the draft minutes (see example at the end of this Unit). These will be included in the commissioners' materials for their next meeting.
- Finalize certificates of approval for CUPs or SUPs. Have them signed by the Chair of the Planning Commission.
- After final approval of zoning amendments, file the zoning amendment ordinances with the City Auditor after they have been signed by the Chairman of the Board or Mayor.
- Amend the zoning map so it remains current.
- After final approval of a subdivision, check with the county to ensure that all taxes have been paid on the property. If there are no outstanding taxes, file the final plat with the County Recorder along with any supporting documents.
- For tabled or continued items, work with the applicant to address the need for additional information or project modifications.
- Make sure that other local government officials have the information they need to ensure that the proposal is completed in a manner that is consistent with the application and the specifications of the approval by the local government officials. This might include:

- File a copy of the final plat and any associated documents such as easements, developer's agreements, and covenants/codes/restrictions that were approved with the plat.

Updating the Comprehensive Plan

When should you update the plan?

The timeline for comprehensive plans typically varies from 10 to 30 years. Developing communities and regions often find themselves updating their plans every 10 years or so – sometimes more frequently. In slow-growing communities, the plan may be useful for a longer duration.

The following are signs that a community may need to update its plan:

1. The community's population is approaching or has exceeded the forecast from the previous plan.
2. A city has recently annexed a large territory, and it needs to develop a land use plan and a utilities/infrastructure plan for the annexed territory.
3. A county and its townships have been operating with disparate plans and zoning ordinances, and they want to develop a unified vision or streamline procedures.
4. There are new priorities for development. Over the years, there is turnover among elected officials and public staff. Attitudes toward development change. Perhaps the community used to prioritize agricultural

Maintaining Parcel Data

Each new subdivision results in new parcels, which should be added to your government's maps and data. Plats are drawn in CAD-based software and need to be converted for GIS format. Coordinate with the engineer who prepared the plat to ensure it is provided in a timely fashion to your GIS staff. If a consultant manages your GIS data, make sure they receive updated parcels data on a regular basis. That way, future maps will properly account for the newest subdivisions.

Typically, parcels data is maintained by the county. Counties with lots of development (i.e., Cass, Ward) will update their tax parcels shapefiles once or twice a month. Smaller counties might update them once or twice a year.

Remember, each new parcel will be assessed for taxes. Your staff can streamline data management if they wait for new properties to be assessed before updating parcel features in GIS. However, if you use this approach, your parcel lines will never be current. Alternatively, you can update parcel lines as soon as they're recorded, and wait to incorporate the assessor's data.

conservation, but now it has taken a pro-development stance to capitalize on emerging economic opportunities.

5. There is a glaring supply issue – like a housing shortage, or a wastewater system that has reached capacity.
6. The plan does not provide clear direction for developers, landowners, staff, or citizens.

Procedures for Updating the plan

There is no set procedure for developing a comprehensive plan. Remember, the plan is not a legal document. Some general guidance is given below.

Scope the effort

Initial conversations between public staff, the Planning Commission, and elected officials should address the scope of the plan. At minimum, the plan must address land use, to provide the legal rationale for the zoning. A land use plan is sufficient for rural townships. For counties and cities, a transportation element is also recommended. The extent of this element depends on the size of the community and the community's needs. A growing city is focused on extending and developing its roadway system, while the county tends to focus on highway maintenance and infrastructure improvements. Either way, it's a good idea to leverage transportation investments so they serve your community's objectives for land use and economic development. Coordinate with the Highway Engineer to determine your priorities.

The plan may address other, optional elements, such as housing or economic development. These elements are rooted in the land use plan. If you think you it's necessary to address these areas to provide additional context for the land use plan, go for it. They are generally not as involved as the land use element. Refer to Unit 2 for additional guidance on scoping the comprehensive plan.

All communities which enforce zoning must have a comprehensive plan. If a community enforces zoning but does not have a comprehensive plan, the legality of the zoning ordinance can be challenged. Producing a plan does not have to be a significant undertaking. Consider a rural township that wants to remain an agricultural community and limit development. The plan might be a five-page document, which provides some facts about the community, states community goals, and includes a future land use map – even if there's just one land use category (agriculture). With a little public input, this plan could be accomplished in a couple months. The entire document could be attached as an introduction to the zoning ordinance.

Transportation Plan

Because land use and transportation are intimately related, it is common for communities to address these topics together. Some communities maintain a standalone transportation plan, like Williston. Others incorporate a transportation element into the comprehensive plan. Regardless of your community's size or growth potential, if you maintain a long-range transportation plan, it is recommended that you update it when you update the land use plan. After all, the size and arrangement of various land uses you depict on the map shape and are shaped by the future roadway system and available right-of-way.

The City of Williston, with Williams County, updated its Comprehensive Plan and Transportation simultaneously, adopting both documents in 2017. The future land use plan was used to derive socioeconomic forecasts (future jobs and households) to build a travel demand model. Using the travel forecasts, the City prioritized future roadway projects.

Get organized

As you scope the plan, you'll have figure out everyone's roles and responsibilities for the project. You might want to develop an organization chart that clarifies the roles of staff. Initial meetings should identify a group of stakeholders who will guide the project and perform review. A stakeholder group of 8-12 people is ideal. The following groups and individuals could be represented:

- Engineering Department
- Emergency Services
- School District
- Local housing agency
- Soil and Water Conservation District
- Planning Commission
- Local government Board or Council
- Local developers and business leaders
- Key landowners

Develop a project timeline to organize specific tasks and project milestones. Here are some example milestones:

1. Kickoff meeting with stakeholder group
2. Public engagement activity #1 (e.g., survey, focus group)
3. Plan development
4. Stakeholder review
5. Public engagement activity #2 (e.g., workshop to refine the land use plan)
6. Completion of draft plan
7. Public/stakeholder comment period

8. Document finalization and adoption

Develop a Public Engagement Plan

In a nutshell, the comprehensive planning process is a method for developing public consensus to guide the direction of the community. A plan that is completed without public input may not provide a rational basis for zoning or other policies that pursue adoption. If a plan is completed with insufficient public participation, and the public takes issue with a certain aspect of implementation, that is a nasty problem for everyone involved.

Public engagement should be one of the largest planning tasks. Try to obtain general feedback at the beginning of the planning process, then reach out again for specific feedback as the plan is being refined. It is good practice, but not required, to open the draft plan for public comment. Depending on the size of your community and the scope of your project, it may be sufficient to have the stakeholder group (i.e., public representatives) perform the review.

Do you need a consultant?

When a local government decides to update the comprehensive plan, they have one of two options: They can update the plan in-house, or they can hire a consultant. Local governments with sufficient resources are encouraged to do the work themselves, because they know their community best. The benefit of a consultant is that they have experienced staff who have produced many comprehensive plans. Also, they are positioned to assist with technical aspects of the project, like developing an online engagement strategy or producing maps and graphics. Another alternative is to identify those tasks which your jurisdiction may lack experience or technical capability in, such as digital mapping (GIS) or running public workshops. You may choose to only bring in outside help for those specific tasks that you may have trouble completing in-house.

If you opt for a consultant, perhaps you already have one in mind. Otherwise, you'll want to produce a request for proposal (RFP). This encourages competition, so that you can find the highest quality consultant at an appropriate cost. If quality is paramount to you, have the RFP focus more on qualifications of the consultant rather than cost. After reviewing proposals for qualifications, cost can be negotiated. Your RFP should address the following:

- **Project scope.** Clearly define the elements of your project. Present them in a bulleted or numbered list to help the applicants understand how to respond to your RFP.
- **Public engagement.** your expectations for the consultant. You may want to finance a series of focus groups, a survey, a social media element, or a booth at the fair. Or you may want to leave room for the consultant to be creative.

- **Project budget.** You can include a budget or leave it open. If you include a budget, this helps clarify expectations for the applicants, but it can limit the number of applicants and the proposals they submit. You might negotiate the budget through the interview process.
- **Project schedule.** Describe your expectations for timely completion of the project. Most plans are completed in 1-2 years. You may have milestones for completing certain tasks, public engagement, stakeholder/public review, and adoption.
- **Submission requirements.** Describe when submittals are due. State that late submittals will not be accepted. Describe procedures for submitting the cost estimate (quality-based selections should include a sealed cost estimate that is only opened after a consultant is selected based on qualifications). Indicate how proposals should be submitted, and who should receive them.
- **Evaluation criteria.** Describe how proposals will be evaluated.
- **Interviews.** If you would like to meet the potential consultant to know what they are like in person, you can opt to include an interview. Give a date for the interviews, or at least set a deadline for responding to proposals.

Before you finalize the contract with the consultant, make sure the local government board (City Council, Township Supervisors, or County Commission) and, if available, have your jurisdiction's attorney review and approve it. The board may choose to adopt a formal resolution in support of the project.

Updating the Zoning Ordinance

Like the comprehensive plan, the zoning ordinance requires regular maintenance. Sometimes, new state and federal laws expand or reduce local government authority to protect public health, safety, and welfare. New court rulings clarify the limits of local government powers. Novel uses, such as medical marijuana "compassion centers", are introduced. Occasionally, the zoning ordinance may need a wholesale update.

The following are signs that the zoning ordinance should be updated or amended:

1. The local government finds itself continually processing small amendments to the zoning ordinance.
2. The local government frequently issues variances or special use permits to approve similar projects.
3. The existing ordinance is unwieldy and difficult to navigate; officials and staff are unable to consistently interpret or even understand the ordinance.
4. The comprehensive plan necessitates substantial ordinance changes.
5. There is a novel land use or economic change with the potential for significant impact – for example, the proliferation of oil activities in the

Bakken formation, or utility-scale renewable energy systems (wind and solar).

NDCC Section 40-47-04 pertains to the public hearing and public notification process that is required for zoning amendments. NDCC Section 40-47-05 describes the requirements for passing an amendment or repeal to the zoning ordinance. See Unit 4 – Zoning.

Procedures and Ethics

Procedures are closely connected to ethics. Procedural transparency is essential. If an elected or appointed official has met with an applicant outside the public hearing process, it is extremely important that the official reveals the conversation or meeting during the public hearing. Make it clear the meeting was informational, and that no decision will be made until the public hearing concludes. Ideally, ex parte contacts of the nature described are avoided.

If there is a conflict of interest, this needs to be stated, and procedures need to be adjusted. If a member of the planning commission is personally affected by the outcome of the hearing (i.e., if they stand to gain financially from the decision), they should recuse themselves from the proceedings. Conflicts of interest are further addressed in the ethics unit.

Any perceived conflict is important. The perception of a conflict of interest means that the public and fellow officials assume that a person cannot act objectively, because they are in some way too close to the issue (relationship to applicant, business connection to project, etc.). It is always best to state conflicts prior to the hearing, and ask fellow board members how they feel about it.

Procedural Flow Charts

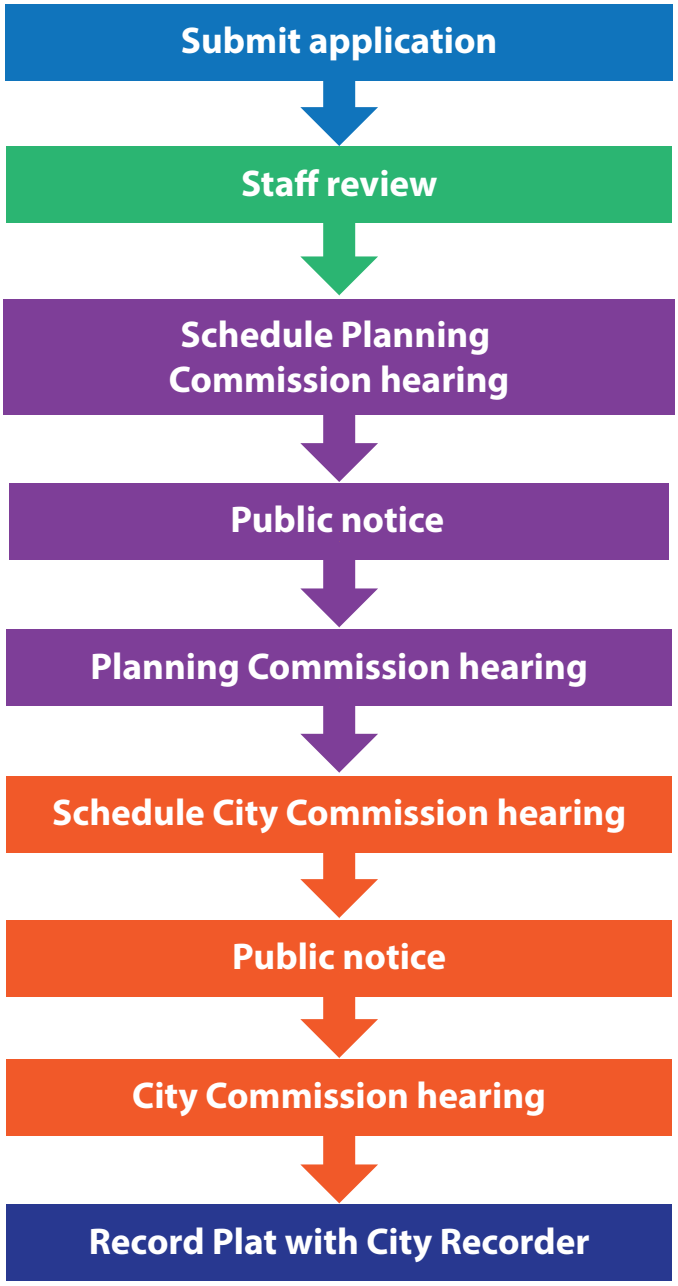
The table and chart on the following pages summarizes the procedures described in this chapter.

The table below shows the responsibilities of staff, the Board of Adjustment, the Planning Commission, and the City/County/Township elected officials for various government actions.

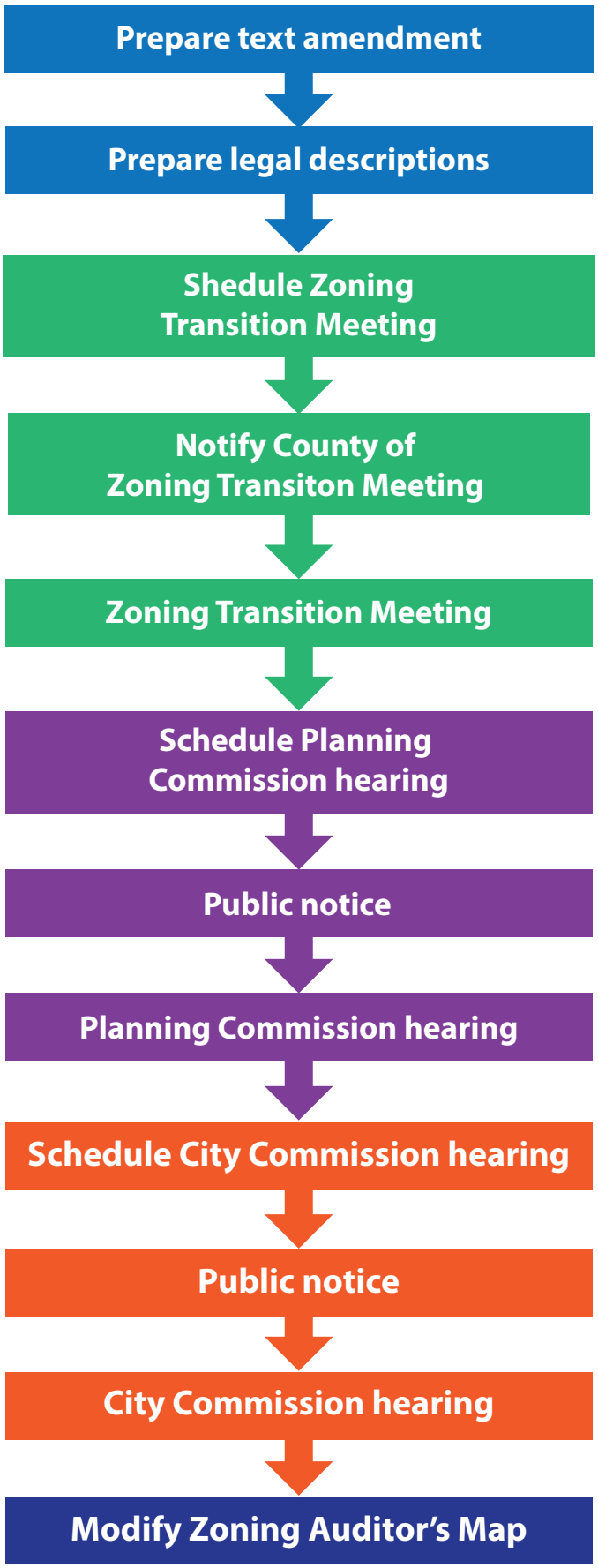
Procedure	Review (R), Decision-Making (DM) and Appeal (A) Bodies			
	Staff	Board of Adjustment	Planning Commission	Council or Board of Commissioners
Zoning Ordinance Text Amendments	R		R	DM
Zoning Changes	R		R	DM
Subdivision	R		R	DM
Conditional Use Permits	R		DM	DM
Land Use Plan Amendment	R		R	DM
Initial ETA Zoning	R		R	DM
Annexation	R		R	DM
Variances		DM		A
Appeals of Administrative Decisions		DM		

The charts on pages 18-20 illustrate the main steps involved in processing various local government procedures. For many actions, the procedural steps are very similar.

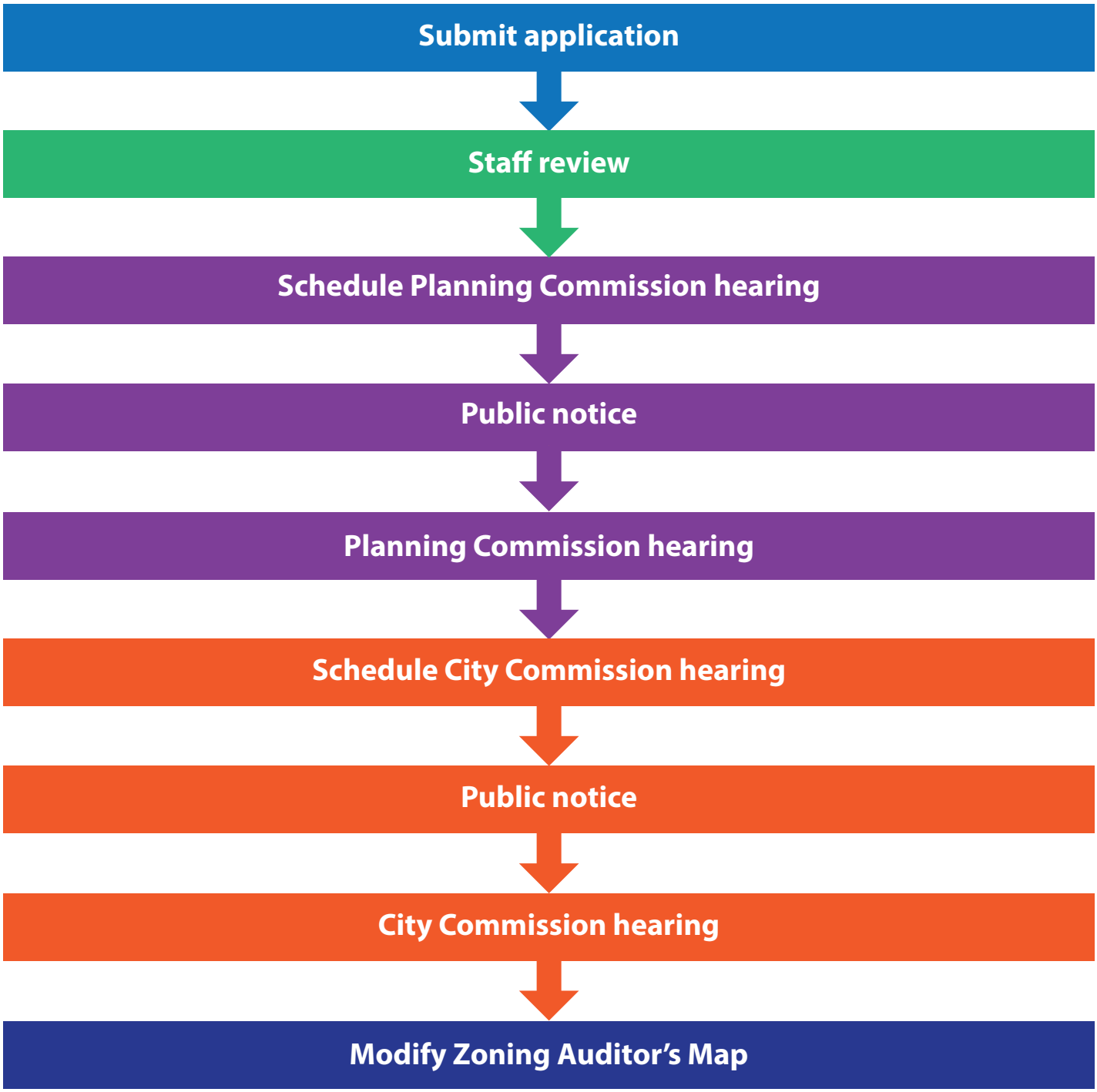
Subdivision of Land



Initial City Zoning of ETA

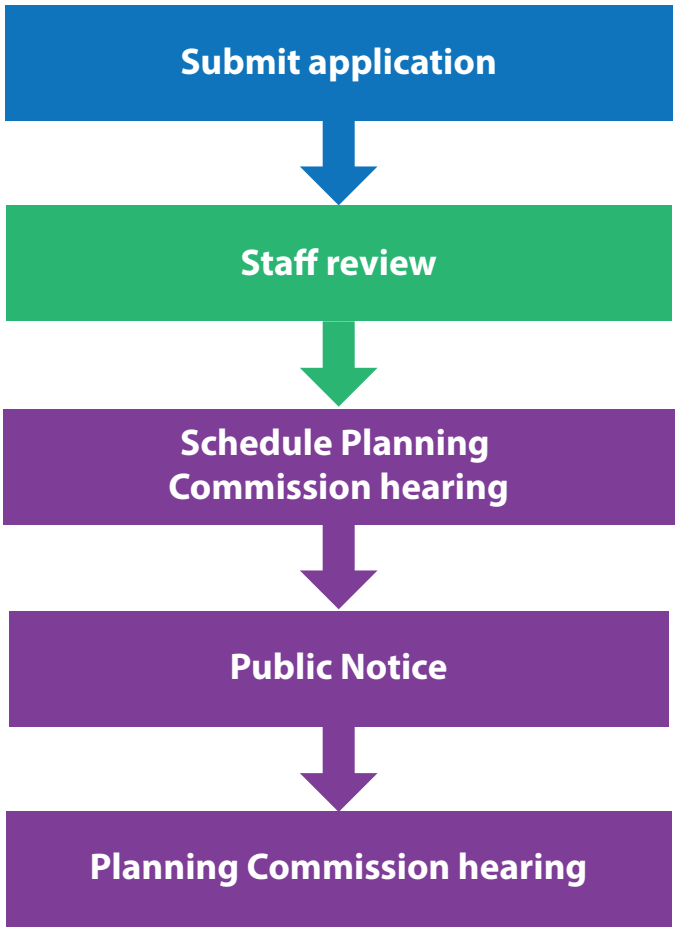


Zoning Change

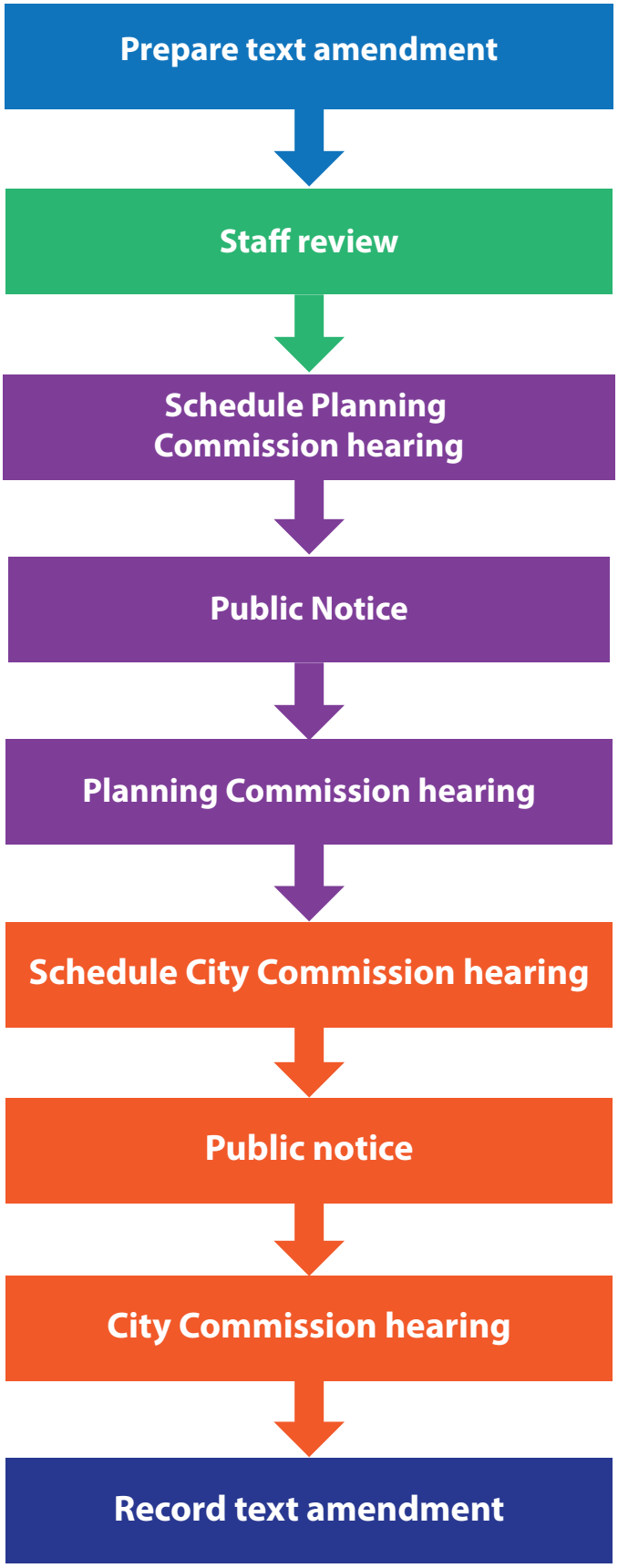


*These steps are the same for processing an amendment to the Land Use Plan, except for the final step, in which the amendment is recorded.

Conditional Use Permit/ Special Use Permit



Zoning Ordinance Text Amendment



Unit 7
Roles

Planning and Zoning Guide

Unit 7 – Roles and Responsibilities

What are the roles involved in the planning, zoning, and subdivision process? Typical parties include:

- Staff
- Planning Commission
- Elected Officials
- Public Citizens
- Board of Adjustment

Staff

Public staff have a critical role in the planning process. They often act as intermediaries between public citizens, elected officials, and official appointees. In North Dakota, communities have a wide range of staff people who have primary responsibility for processing planning, zoning, and subdivision applications. In some cases, the auditor is responsible. In other cases, a tax equalization director is responsible. Sometimes a Public Works Director has primary responsibility. On either end of the spectrum, there are jurisdictions with no staff (such as townships), where the primary responsibility lies with appointed or elected officials, and there are local governments with professional planning and zoning staff, who are trained in community, regional, and urban planning.

Planning and zoning staff responsibilities generally consist of:

1. Keeping the Zoning Ordinance and Comprehensive Plan up-to-date. This may involve working with the Planning Commission and the elected body to determine when it's time to update sections of the zoning ordinance or an element of the Comprehensive Plan, such as the land use plan. If the local government does not already have a plan, it may mean helping the Planning Commission and elected officials understand that a plan is needed as a legal basis for zoning (per NDCC).

2. Preparation of application forms and checklists of required submittal materials for Comprehensive Plan amendments (including the land use plan), zoning map amendments, conditional or special use permits, subdivisions (major and minor), variances, Planned Unit Developments, etc.

3. Preparation of a schedule of regularly scheduled hearings and submittal deadlines for complete applications for each hearing date.

4. Review of applications to ensure completeness.

5. Communication with applicants to inform them of the status of their application (i.e. incomplete, complete, meets requirements, does not meet requirements, concerns of other departments and outside agencies, etc.)

6. Preparation of public hearing notifications for publication in the newspaper. This also includes mailed notices if required by the local government.

7. Compile public comments about each application and distribute to officials prior to the hearing.

8. Prepare materials for the Planning Commission and elected officials, including project application information, staff reports summarizing the extent to which each application meets the requirements of the zoning ordinance, subdivision regulations, and adopted plans and policies. Concerns of other departments and outside agencies should also be addressed. The staff report should include a recommendation for approval, denial, or conditional approval (see Unit 6, Proper Procedures). An example staff report is included at the end of this unit.

9. Follow up after the public hearings to ensure meeting minutes are accurate and complete, zoning map amendments are completed, ordinances and resolutions are signed and filed with the city auditor (and published in the newspaper if required).

10. Zoning Administration – Review applications for building permits to ensure that all zoning ordinance requirements are met.

11. Train Planning Commissioners and elected officials so they understand the rules about open meetings and conflicts of interest. Provide orientation about the local government's zoning ordinance, adopted plans, and policies. Encourage appointed and elected officials to attend training related to their role.

12. Schedule discussions with appointed and elected officials about big-picture planning issues and long-range planning. This may include annual reviews of the comprehensive plan, desirable updates to the zoning ordinance, public improvements, or strategic plans that would provide additional direction to the local government.

Planning Commission

Planning Commissioners are appointed by the elected officials. For most application items, they have an advisory role. In its capacity as an advisor to the elected officials, the Planning Commission motions should state:

> *"I make a motion to recommend approval/denial of the rezoning of (state the description of the property) to the City Commission (Council, County Board, Township Board)."*

Unless the Planning Commission has final approval authority on a certain type of application, such as a CUP or SUP, the motions should state that it is making a recommendation, so it is completely clear to the public and the applicant that the motion is only advisory.

In some cases, such as conditional or special use permits, or minor subdivisions, the Planning Commission may have final approval authority, depending on the jurisdiction, and their motion should then be to approve or deny.

Responsibilities of the Planning Commission include:

1. Familiarity with the Comprehensive Plan and any other adopted plans and policies of the local government as they pertain to issues of growth and development.

2. Review of information provided by the staff prior to public hearings. Talk with staff about questions you would like answered at the public hearing. This ensures that they have an opportunity to find this information in advance of the meeting.

3. Inform yourselves and each other about the rules of open meetings, and avoid meetings and email correspondence that violates these rules.

4. Site visits prior to public hearings.

5. Attendance at the public hearings.

a. Declaration of any perceived or real conflict of interest. This is a matter that should be discussed generally by the Planning Commission to clarify expectations.

6. Make a motion to approve or deny each application (recommend approval or deny to the authoritative body).

Planning Commissioners have a very important role as concerned and engaged citizens. Since they are not elected, their recommendations and decisions are viewed by the public as being based on technical merit and the extent to which the application meets the plans and regulations of the community. Often, the public testimony presented at public meetings is emotional and based on personal opinion. It is the job of the Planning Commission to listen to this testimony and differentiate between the facts of the application, additional factual information presented at the hearing, and the biases and opinions of those providing input, and make an informed decision based on factual information.

Planning Commissioners must make decisions to approve or deny applications **only** *at public hearings. Never make a decision about an application or advance a position for or against a project outside of a public hearing. Legally, to satisfy procedural due process, decisions must be based on* **findings of fact** *presented at the hearing.*

Elected Officials

Elected officials consist of the City Council or Commission, the County Board of Commissioners, or Township Board of Supervisors.

All responsibilities of a Planning Commissioner (see above) apply to an elected official.

Elected officials have final approval authority over most applications pertaining to development. This usually includes the adoption of plans, zoning ordinances, zoning changes, and major subdivisions.

Items normally approved by the Planning Commission or the Board of Adjustment can be appealed to the elected officials. Those appeals must also be handled as public hearings.

All responsibilities of a Planning Commissioner apply to an elected official. In addition, elected officials are responsible for informing themselves about the recommendation of the staff and Planning Commission. Ideally, the Planning Commission minutes are made available to the elected officials prior to their public hearing.

Occasionally, the Planning Commission's recommendation will differ from that of the staff. This may happen if the Planning Commission interprets or evaluates the facts of the case slightly different than staff, or if the information presented at the public hearing leads to a new recommendation. It is important that the elected officials understand the basis for the staff and Planning Commission recommendations.

The Public

The public is also responsible for educating themselves about the zoning ordinance and the adopted plans and policies of the local government. One of the most important aspects of living in a democracy is the willingness of the people to abide by the rules that have been established by elected officials. Therefore, it is the public's responsibility to abide by the rules.

If citizens wish to be informed about public hearing items, it is important for them to review the published notices of public hearings and review the minutes of the meetings. Attendance at public meetings will help them to see if the Planning Commission and elected body is acting with consistency and basing their decisions on factual information.

Citizens should have access to the staff members, and can expect to receive the same information as that provided to the Planning Commissioners and elected officials relative to development applications.

Board of Adjustment

A Board of Adjustment is an appointed board that is charged with making decisions about variances. In some cases, they are also asked to address appeals of

administrative decisions. All of the same responsibilities of a Planning Commissioner, as described above, apply to members of the Board of Adjustment.

A Note about Very Small Communities

Many small communities and townships in North Dakota do not have staff. Nevertheless, it is still important that decisions about applications are based on factual information and that the required public hearing notifications have been published. Whether the information about a project is gathered by staff or by appointed Planning Commissioners or elected officials, the same roles and responsibilities apply relative to the importance of basing decisions on factual information and on the zoning ordinance and adopted plans and policies of the jurisdiction.

City of Killdeer
Staff Report – Conditional Use Permit

Application:	Request for approval of a conditional use permit.
Hearing Date:	March 8, 2017
Location:	Southwest of ND 22 & Railroad Street SE Killdeer, ND
Owner(s)/Applicant:	Land Owners: Dean & Robert Brew / Applicant: Verizon Wireless (Rick Adams)
Reason for Request:	The applicant desires to construct a 100' monopole cell tower within a commercial district.
Recommendation:	*Approval of the conditional use permit.*
Zoning: Commercial	
Land Use:	Commercial
Setbacks:	Engineered Fall Zone (50 feet from the tower)
Lot Area:	N/A

Allowed Uses:

- Retail service uses including grocery, pharmacies, hardware, clothing, bakeries, eating and drinking places, automobile service station, print shop, and repair shops.
- Personal service uses including offices and clinics, barber and beauty shops, hotels and motels, financial institutions, bowling alleys and amusement centers, theaters, dry cleaners, laundries and tailor shops.
- Educational, governmental, philanthropic, or charitable institution.
- Sales and servicing of motor vehicles and farm implements.
- Agriculture.
- Amusement places including bowling alleys, athletic clubs, pool halls and similar indoor facilities.
- Automobile dealerships.
- Truckstop.

Conditional Uses:

- Single-Family dwelling units
- Contractor's yard and operations
- Processing and packaging of materials
- Warehouses and wholesale dealerships
- Commercial grain bins or related activity
- Animal hospitals and veterinary clinics
- Commercial above-ground fuel storage setback a minimum 300 feet from the boundary of residential districts and public buildings.
- Hotels and motels.
- Multi-family dwelling units

Staff Analysis and Findings

The application for a conditional use permit shall be granted unless the Planning and Zoning Commission finds the following conditions present (KLDC Title III, section 3.7, part 4):

1. *The conditional use shall not be detrimental to or endanger the public health, safety or general welfare.*

   The tower/monopole and its access are proposed to be located on an multiple lots within the Fitzlaugh Addition. The current parcel includes six lots and is 0.97 acre in size. The parcel is bordered on the north and west with vacated right of way. The engineered fall zone of the tower is equal to or less than a 50 foot radius around the tower. Including the adjacent vacated right of way, there is sufficient room surrounding the tower for the fall zone. However, an overhead powerline is located 40 feet to the north of the tower, within the fall zone. In the rare event that the tower would fail, the tower could impact the powerline, resulting in an impact to local utility service.

   Views from Highway 22 and the community in general can be considered as a factor in regulating development (under the promotion of the *general welfare*). However, the city's decision makers need to be careful in making sure that any decision made based on concerns with views are not made arbitrarily. Reasons for denying or even limiting a cell tower (as an example) due to viewshed impacts must be supported with sound reasoning.

   It is SRF's position that the tower will likely have minimal impacts on the city's views due to the following reasons:
   - The proposed tower is located in an area that includes abandoned cars, trailers, and resembles an outdoor vehicle storage area. The tower will not detract from the existing views of this area.
   - The tower is not located in or near the culturally or historically-significant part of Killdeer, including the downtown and surrounding neighborhoods.
   - The gateway image into Killdeer from Highway 22 coming from the south will not change to a large extent. Many metal shop buildings are already located along this corridor, and the tower is proposed to be setback from the highway frontage.

   Refer to the applicant's submittal of **photo simulations** (see attachment) that show views of what the tower would look like from Highway 22 to the south of the site, from City Hall, and from directly west of the site across Highway 22. To help provide some prospective from other nearby communities, similar sized monopoles have also been developed along major highway corridors in Dickinson and New Town. See the images below.

Above: Monopole in Dickinson south of I-94

Above: Monopole in New Town south of Highway 23

2. *The conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.*

   The proposed tower is located in the middle of a commercial district and the surrounding area is designated as commercial in the land use plan, as a result, the tower should not diminish or impair the value or enjoyment of the other properties. The tower is setback away from highway frontage that is advantageous for commercial retail and highway-related businesses.

3. *The conditional use shall not impede the normal and orderly development of the surrounding property.*

   The proposed structure and location are both compatible with the zoning district and consistent with the future land use plan; therefore it will likely not impede the normal and orderly development of the surrounding area. In addition, enhanced cell and data services in this area can encourage further growth and development in the surrounding area.

4. *Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided.*

   The plans provided do include a 20' access and utility easement from Anderson Street to the site of the tower; therefore, adequate improvements have been considered and provided.

5. *Adequate measures will be taken to provide ingress and egress to the property without adverse effects on the neighboring properties and traffic congestion in the public street.*

   The proposed access is located in a reasonable location for the site and will likely have no adverse effects on the neighboring properties or generate any traffic congestion. Any traffic generated by the proposal will be minimal.

6. *The conditional use shall conform to all applicable regulations of the district within which it is located.*

   The proposed use does conform to all additional regulations of the commercial district.

Growth Management Plan Consistency

The subject land area is designated in the land use plan as **commercial**. The approval of a conditional use permit will not conflict with the intent is this designation.

Staff Recommendation

Staff recommends approval of the request for a conditional use permit to allow a monopole cell towner subject to the conditions in this report.

Suggested Motion: "To approve the conditional use permit to allow a monopole cell tower within a commercial district. Adopt the conditions of approval and the findings of fact as stated in the staff report."

Zoning Map

Single Family Residential
Multiple Family Residential
Commercial
Industrial
Agricultural
Recreation
Planned Unit Development Overlay
Flood Plain

Existing Zoning Districts

Land Use Plan

Future Land Use

Commercial
Industrial
Industrial/Housing
Medium-Density Residential
Low-Density Residential
Public/Institutional
Agricultural
Park/Open Space
Low-Density Residential (extended)
Medium-Density Residential (extended)
Commercial (extended)
Industrial (extended)
Park/Open Space (extended)

Attachments:

- Applicant's site justification letter
- Site development plans
- Photo simulations
- Engineered fall zone letter
- Verizon letter

CITY OF JAMESTOWN
102 3rd Ave SE - Jamestown, ND 58401
Phone: 701-252-5900

MINUTES
Planning Commission – MAY 14, 2018 – 8:00 a.m.

Present: Hillerud, Frye, Bayer, Bensch, Trautman, Rath, Ritter, Paulson
Others: Hellekson, Liebig, Reuther, Veil, Harty
Absent: Rhinehart,

1. Chairman Hillerud called the meeting to order. Commission member Trautman made a motion to approve the minutes from the April 9, 2018, Planning Commission meeting. Seconded by Commission member Rath. Unanimous aye vote. Motion carried.

2. Public Hearing: Horizon Estates First Addition Final Plat
   The final plat of Horizon Estates First Addition, Block 1, Lots 1-4, and Block 2, Lots 1-11, a portion of Auditor's Lot 30-2 within the NE ¼ of Section 30, T140, R63W, Bloom Township, Jamestown, Stutsman County, North Dakota.
   The property is located north of 5th St NE, east of 23rd Ave NE and west of 27th Ave NE, Jamestown, ND.

   Scott Harmstead, SRF Consulting Group, Inc. gave the staff report. He explained the plat and said that the area is intended to be a low density, single-family residential subdivision. Mr. Harmstead stated that all conditions have been met except the title opinion. Approval of the final plat was recommended with the exception that the title opinion be received by staff prior to recording the plat.

   Chairman Hillerud asked about ensuring a gravel surface for the temporary turnaround easement. Mr. Harmstead said this review is done at a staff level, just as other subdivision improvements are reviewed at the staff level, such as right of way improvements. Commission Member Rath noted that the plat should not be approved until all conditions are met.

   Chairman Hillerud opened the public hearing.

   Jim Schumacher, 8394 32nd St SE and owner of the plat area, discussed concerns related to the naming of the roads, and asked if all utility easements will be next to the curb. Mr. Schumacher asked if the new bike path will go to 27th Ave NE and where sidewalks would be located with the utility easement locations provided on the plat. Chairman Hillerud explained that the easements are shown on the plat, and the bike path is scheduled to be completed in the near future. Mr. Harmstead added that right of way in the plat provides ample room for sidewalks between the back of curb and right of way edge.

   Jim Reuther, City Fire Chief, explained that response time for the emergency departments can be an issue if areas are unknown to the fire staff as many are volunteers. The quadrant area and street/avenue name are preferred for easier and more efficient locating.

   Chairman Hillerud closed the public hearing.

   Commission Member Trautman made a motion to accept the findings of staff and recommend approval of the final plat of Horizon Estates First Addition to the City Council with the caveat that the title opinion is provided prior to the

final plat being placed on the City Council agenda. Seconded by Commission member Ritter. Roll Call. Unanimous aye vote. Motion carried.

3. Public Hearing: Land Use & Transportation Amendment
   A tract of land located within the NW ¼ and the NE ¼ of Section 27, T140, R64W, Midway Township, Stutsman County, North Dakota. The property is located along the south side of 34th St SE approximately 0.2 miles east of its intersection with the US 52/281 Bypass. The property is designated as Agricultural/Rural Open Space in the adopted Future Land Use Plan, and a request has been made by the property owner(s) for an amendment to General Industrial.

   Scott Harmstead, SRF Consulting Group, Inc. gave the staff report. Mr. Harmstead explained the property is in the one-mile extra territorial area and the site is roughly 1,000 feet east of the Hwy 281 Bypass. The 2015 Land Use & Transportation Plan currently provides for three different land use designations ranging from light industrial to heavy industrial land use. Mr. Harmstead explained that based on review of the Land Use and Transportation Plan and recent interpretation of industrial uses by the City Council and Planning Commission, the best fit for the proposed ready mix facility would be the General Industrial land use designation. Mr. Harmstead also noted that a protest letter was received from an adjacent property owner with regard to the upcoming zone change request.

   Chairman Hillerud opened the public hearing.

   Kelsey Krapp, attorney on behalf of the applicant, introduced his client, Travis Traut, the project owner. Mr. Traut explained that new ready mix operations have greatly improved and dust will be minimized. They will use a dust collection system which dumps dust back into the silo. Mr. Traut stated that the operators will be using aggregate materials that include granite, sand, etc. Commission member Bayer asked where the driveway will be and Mr. Traut showed the Commission where the driveway would be on the map provided by SRF Consulting Group, Inc.—the anticipated access location is along the northwest boundary of the proposed site. The Commission also asked if there are any other permits required; Mr. Krapp stated the ND Department of Health was contacted and that there are no air quality permits required.

   Jim Wentland, 8169 34th St SE, property owner of land adjacent to the proposed ready mix operation to the east, questioned the dust generated by the facility. Mr. Wentland expressed his concerns and asked if such a facility could be located closer to the US 281 Bypass. He also stated that his property is zoned residential. Mr. Wentland also asked about the truck washout area.

   Mr. Traut explained the dust system that would be used at the proposed facility. Mr. Traut explained that the exact location of the truck washout area had not yet been determined. Mr. Traut noted his desire to be a good neighbor with respect to the adjacent properties.

   Chairman Hillerud closed the public hearing.

   Commission Member Bensch made a motion to accept the findings of staff and recommend approval of the land use plan amendment from Agricultural/Rural Open Space to General Industrial for a 10-acre site located on the south side of County Road 40, approximately 1,000 feet east of its intersection with the US 281 Bypass. Seconded by Commission Member Frye. Roll Call. Unanimous aye vote. Motion carried.

4. Public Hearing: Zone Change

A tract of land located within the NW ¼ and the NE ¼ of Section 27, T140, R64W, Midway Township, Stutsman County, North Dakota from A-1, Agricultural District to M-2, General Industrial & Manufacturing District. The property is located along 34th St SE approximately 0.2 miles east of the Bypass.

Scott Harmstead, SRF Consulting Group, Inc. gave the staff report. He said that the current zoning is A-1, Agricultural. Mr. Harmstead stated he had previously described the protest letter received. Seasonal traffic impacts were explained and the only concerns from the Stutsman County Highway Superintendent dealt with establishing a safe access to County Road 40. The City Engineer did not require a traffic impact study. A stormwater permit application is required for the proposed development and a draft application was provided with the staff report. Chairman Hillerud asked if there is a better defined zone for this use and if the use is allowed in the M-1 District.

Mr. Harmstead replied that Zoning Ordinance was amended in 2014 to allow the proposed use in the M-1 District. Jamison Veil, Planning & Zoning Administrator, stated that the applicant had requested to apply for the M-2 District to allow for potential expansion in the future for rock crushing and washing, which is allowed in the M-2 District with a special use permit.

Chairman Hillerud opened the public hearing.

Jim Schumacher, 8394 32nd St SE, appeared to support the project and its developers for their investment in this type of business as competition is needed in this industry for the Jamestown area.

Chairman Hillerud closed the public hearing.

Commission Member Bayer made a motion to accept the findings of staff and recommend approval to the City Council of the zone change from A-1 District to the M-2 District for 10 acres located within the northwest quarter and the northeast quarter of Section 27, Township 140 North, Range 64 West. Seconded by Commission Member Rath. Roll Call. Unanimous aye vote. Motion carried.

5. Public Hearing: Preliminary Plat

The preliminary plat of Country Grain Cooperative Subdivision, Lot 1, Block 1 being within the Extraterritorial Jurisdiction of the City of Jamestown, a tract of land located within the NW ¼ and the NE ¼ of Section 27, T140, R64W, Midway Township, Stutsman County, North Dakota. The property is located along the south side County Road 40, approximately 1,000 feet east of its intersection with the US 281 Bypass.

Scott Harmstead, SRF Consulting Group, Inc. gave the staff report. Scott explained the preliminary plat and explained the access from County Road 40, and that existing county right of way is adequate. There was no utility easement input from any rural or city utility companies. Comments from the County Highway Department were received and were noted as part of the zoning change request. Mr. Harmstead recommended that the plat conditions as provided in the staff report be amended as follows:

- Access to the proposed lot shall be determined in coordination with the County Highway Department.
- Provide a 10’ wide utility easement along CR 40 within the subject lot, as required by city ordinance.
- A title opinion is required prior to submittal of the final plat.

Jamison Veil, Planning & Zoning Administrator, added that he had been in contact with the City Attorney about the title opinion, and it is being worked on now, so it should be ready before the final plat is considered by the City.

Chairman Hillerud opened the public hearing. No one appeared. Chairman Hillerud closed the public hearing.

Commission Member Paulson made a motion to accept the findings of staff and approve the preliminary plat with the conditions as amended by staff. Seconded by Commission Member Ritter. Roll Call. Unanimous aye vote. Motion carried.

6. Chairman Hillerud stated the City Council has been receptive to the zoning ordinance action item list presented from the Planning Commission. Mr. Harmstead added that the action item relating to the downtown parking amendment may be more of an involved ordinance amendment in scope than previously thought.

7. Commission member Ritter called for adjournment, seconded by Commission member Rath. Meeting adjourned.

Unit 8
Ethics

Planning and Zoning Guide

Unit 8 – Ethics

Living Your Life in a Fish Bowl

Determinations on land use often involve many competing interests. An understanding of ethics can help guide you in your decision making process.

> *"Whenever you do a thing, act as if the whole world were watching."*
>
> Thomas Jefferson

The North Dakota Century Code does not have a chapter specifically addressing rules of ethical conduct. Courts of law often make the final decision on whether some action or behavior of a government official or staff person has actually involved a conflict of interest or some other ethical question.

Planning and zoning exists to serve the public interest. In the following NDCC excerpt from the chapter on how a board of county commissioners should make determinations on subdivision plats, it is clear that the public interest is the guiding factor. To paraphrase it, read the bold underlined sections below:

From NDCC Title 11, Effect of Approval of Plats, Chapter 33.2-12.

. . . In determining whether a plat shall be finally approved or disapproved, the board of county commissioners shall inquire into the public use and interest proposed to be served by the subdivision. It shall determine if appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, but its determination is not limited to the foregoing. The board shall consider all other relevant facts and **determine whether the public interest will be served** by the subdivision. . . .

What is the Public Interest?

Public interest is broadly defined as the rights, health, or finances of the public at large. Any decision that advances these interests may be said to serve the public interest. From a local government's point of view, "the public" is usually defined as its body politic – the citizens with a stake in local elections, who pay local taxes, etc. Thus, each governing body is primarily concerned with the impacts of local policy on local citizens. (Sometimes the "public interest" transcends political boundaries – for example, when regional outcomes affect local policy decisions.) Often, government actions will benefit certain groups more than others, creating "winners" and "losers". In each case, the government should consider collective benefits against collective costs. Although the outcomes of specific actions may be debatable, in general a local government will be acting in the public interest when it adheres to consistent ethical standards in process and procedure.

Potential Conflicts

Sometimes "community interest" or the interests of the "public at-large" may compete with personal interests. Especially in smaller communities, there may be direct connections between those who will be making decisions on land use matters and those who will profit financially from the approval of a development. Conflicts of interests do occur and it is important to recognize when there is a "personal interest" involved in a land use matter.

The spectrum of potential conflicts of interest include everything from even the mere "appearance" of a conflict of interest to, on the other end of the scale, direct financial gain. Most situations fall somewhere in between, such as the indirect financial gain of someone who is an acquaintance of a commissioner. If there is any question on whether a conflict of interest may exist, the issue should be publicly disclosed.

Sometimes a commissioner will, during a meeting, and before an agenda item is discussed, declare his connections to a proposed project or to the people involved in it. In clear cases of a commissioner's direct financial gains related to a particular proposal, that commissioner can voluntarily recuse his or herself, abstain from the decision-making process, and leave the meeting. It is advisable for that commissioner to physically leave the meeting room until determinations have been made by the remaining commissioners. If the commissioner with a conflict of interest happens to be the chairman, the vice-chair should be prepared to conduct the meeting.

Sometimes one commissioner may question whether another commissioner has a conflict of interest. The question could be on whether a commissioner is capable of making an unbiased and impartial decision on a matter. There have been occasions where a commission will discuss the potential conflict of interest and then vote on whether a particular commissioner should participate in the process.

What are Ex Parte Communications?

It is inevitable that an applicant will contact commissioners outside the meeting to promote a proposal. This is known as an ex parte contact, which is defined below.

Ex parte contact: Some form of communication between one party to a proceeding (such as the applicant) and a public official with some responsibility for making the decision, occurring outside the formal decision-making process.

In some jurisdictions, ex parte contacts are prohibited by their bylaws or codes of ethics. In North Dakota it is not illegal for a commissioner to visit with an applicant outside of a meeting. It is recommended that the discussion be for purposes of gaining technical information on the project and the contact should be reported to the other commissioners at the public meeting.

Working Sessions

A good way to avoid awkward ex parte situations is for the commission to hold "working sessions" where all of the commissioners can together visit the actual site of the proposed development. The time and location of each working session must be published in advance in the official paper of the jurisdiction to notify the media and the public. It is important that the public notice indicates that no deliberations will occur and no decisions will be made and the working session is for informational purposes only. This type of public notice is needed to abide by the open meetings rules (see below).

What is a "meeting"? – NDCC, Chapter 44 Open Meeting Rules

As used in the open meetings law, the term "meeting" means any gathering of a quorum of the members of a governing body of a public entity regarding public business. The form of the gathering is irrelevant.

"Meeting" includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of the members of the governing body are participating by phone, either at the same time or in a series of individual conversations. If a governing body delegates any authority to two or more people, the newly formed committee is also subject to the open records and meetings laws.

The only time a gathering of a quorum of members is not a meeting is if it is a purely social gathering— as soon as public business is discussed, it becomes a "meeting."

Emails

Regarding email correspondence where public business is discussed, be cognizant about who is receiving those emails or text messages. A quorum of the members of a governing body can occur electronically and be a violation of open meetings rules.

Bylaws & Oaths

If your commission is so inclined, they can adopt bylaws to establish their own rules and expectations of conduct related to upholding the public trust and public interest. An oath of office is another tool that's related to public service positions.

Staff

Local government staff persons are also expected to perform their duties in an ethical manner and should recognize and report any appearances of conflict of interest with their own involvement. Sometimes another staff person will have to take over for one who is too close to a development proposal.

Public Officials

The North Dakota Century Code (NDCC) details thorough expectations for public officials in the State of North Dakota. See the excerpts on the following page.

NDCC guidance for public officials:

Title 40, Chapter 9-6. Style of board - Oath and salary of commissioners.
The commissioners and the president of the board constitute the board of city commissioners and shall take an oath faithfully to perform the duties of their respective offices. The monthly salary of each city commissioner must be fixed by ordinance. The president of a commission may receive a salary of up to fifty percent more than the level set for each commissioner upon resolution by the board of city commissioners.

Title 40, Chapter 9-17. Restrictions on members of board.
No member of the board of city commissioners shall:

1. Be eligible to any other office the salary of which is payable out of the city treasury;

2. Hold any other office under the city government; and

3. Hold a position of remuneration in the employment of the city.

Title 40, Chapter 13-3. Oaths of municipal officers.
Every person elected or appointed to any municipal office, before the person enters upon the discharge of the duties thereof, shall take and subscribe the oath of office prescribed for civil officers, and, except in the case of the auditor, shall file the same with the city auditor within ten days after notice of the election or appointment has been given. The oath of the city auditor shall be filed in the office of the auditor of the county in which the municipality is located. Refusal to take the oath of office, as required by this section, shall also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to section 44-02-01.

Title 40, Chapter 13-5. Officers not to be interested in contracts or work of municipality - Exception. Except as otherwise provided by law, no municipal officer, in a municipality having a population of ten thousand or more according to the last federal decennial census, shall be directly or indirectly interested in:

1. Any contract, work, or business of the municipality;

2. The sale of any article the expense, price, or consideration of which is paid from the municipal treasury or by any assessment levied by any act or ordinance; or

3. The purchase of any real estate or other property belonging to the municipality or which shall be sold for taxes or assessments or by virtue of any process issued in any suit brought by the municipality.

Provided, however, that the foregoing shall not be applicable if unanimously approved by the other members of the governing body of the political subdivision by a finding unanimously adopted by such other members and entered in the official minutes of the governing body, to be necessary for the reason that the services or property obtained are not otherwise available at equal cost.

Title 40, Chapter 13-5.1. Municipal officers - Contracts - Disclosure required - Penalty.
A municipal officer may not refuse or fail to disclose to the governing board of which that person is a member any personal interest, direct or indirect, in any contract requiring the expenditure of municipal funds. Any person who violates this section is guilty of an infraction and is, in addition, subject to removal from office.

40-13-13. Nepotism by city officials restricted.
The head of an executive or administrative department of a city may not appoint that individual's spouse, son, daughter, brother, or sister to any position under the control or direction of that individual, unless the appointment has previously been approved by the governing body of the city.

American Planning Association Guidance

The American Planning Association adopted Ethical Principles in Planning in 1992. The content of these principles is similar as Section A of the APA's the Code of Ethics, which is the guide to ethical conduct that is required for all AICP members. Extending these principles to all planning practitioners, regardless of professional certification, helps maintain the integrity of the planning profession. The following is an excerpt from Ethical Principles in Planning.

Ethical Principles in Planning

As Adopted in May of 1992 by the American Planning Association

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;

(Ethical Principles, continued)

3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;

4. Assist in the clarification of community goals, objectives and policies in plan-making;

5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;

6. Strive to protect the integrity of the natural environment and the heritage of the built environment;

7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;

2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.

3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;

4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;

5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;

6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;

7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.

8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;

9. Not use confidential information acquired in the course of their duties to further a personal interest;

(Ethical Principles, continued)

10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions.
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome.
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service.
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

Ethics Scenarios

Scenario 1: Someone you know asks you to provide guidance on a change of zoning case – specifically, to use your influence to help produce a favorable decision. How can you help without violating ethical planning principles?

Answer: There is no issue with providing guidance to the applicant regarding the procedural requirements or the submittal requirements for a zoning change. However, explain that you can't pre-judge the case, nor promise action that is favorable for your friend. If you feel that this conversation compromises your objectivity, delegate your decision-making authority to another person, if possible. At a minimum, state this conflict of interest before the Planning Commission.

Be "ethically conscious" of what you are doing as a public official or as a staff person. It's not worth the legal risk.

Scenario 2: You are responsible for zoning enforcement. You notice that several of your neighbors have erected fences that extend their backyard into a shared alley, effectively privatizing public land. How do you address this situation? Does a conflict arise between the many 'hats' you wear (property owner, neighbor, public servant)?

Answer: When thinking about how you might proceed, it helps to clarify the ethical obligations of each role you have, and the personal interests of each. Reflecting on these roles helps to separate competing interests. It is always best to remain open and honest with your peers and superior(s). Before speaking with the neighbors, you might explain the violations to the city manager, and disclose that you own property in the same development. Ask whether you should be the one to handle the case, or have it reassigned. If you are the one to pursue enforcement, ensure that this is the city manager's decision, and document it in writing. Further document how enforcement actions would not provide a benefit to you. In your meeting with property owners, disclose that you own property in the same development, and describe the steps you've already taken to ensure that the situation is handled appropriately.

Scenario 3: A local landowner/developer wants to pick your brain for planning/zoning advice. He invites you to lunch and he offers to pay. Should you accept?

Answer: It depends – is the meeting in regards to a pending application? If so, there is a clear ethical issue with taking the meeting. If not, the meeting is probably fine, but remember that you should always take care to avoid real *and perceived* conflicts of interest. This means that you should not permit the perception of favored action. So, even if the lunch is cheap, you should probably split the check. If you do meet outside the office, don't discuss matters that are better suited for an office conversation.

Scenario 4: Two planners work together in the public sector. After several years, one leaves for the private sector. How does this change their personal and professional relationship?

Answer: If they work for a typical municipality in North Dakota – where everyone knows one another, there is a small planning staff, and the usual assortment of consultants – they should work to distance their business relationship. If the private consulting firm responds to RFPs from the city, the public planner should recuse himself from the selection process – at least for a year or two. If there are limited city staff and the public planner cannot delegate responsibility, the city should reinforce the use of transparent, measurable evaluation criteria for selecting consultants, to avoid the perception of favoritism. The same would hold if both individuals originally worked in the private sector, and one transferred to the city.

Scenario 5: Is it a conflict of interest for a board member to vote on an application involving a shopping center to be located in close proximity to where his/her parents live?

Answer: In an actual case, a board member voted on the siting of a shopping center to be located near his elderly parents' home. Neighbors opposed to the project alleged the board member had a conflict of interest because if the shopping center were to be built there, the board member would not have to do the grocery shopping for his parents. The court found no prohibited conflict of interest and noted that there was no evidence that the board member even did grocery shopping for his parents. (Lincoln heights Ass'n v. Township of Cranford Planning Board, 714 A.2d 995 (N.J. Super. Ct. Law Div. 1998)).

More generally, note that the specifics of each case will determine whether there is in fact a conflict of interest. Just because a decision involves you, if you can demonstrate that you stand nothing to gain, there is no conflict of interest. However, if the shopping center was proposed for *your* neighborhood, you should not vote on the case, since either outcome – approval or denial of the shopping center – could be seen to benefit you personally (i.e., perception of NIMBYism).

> *"Always do right. This will gratify some people and astonish the rest."*
>
> Mark Twain

NDCC - Township/ County

Planning and Zoning Guide

Unit 9 – NDCC (County/Township)

Planning and Zoning-Related Chapters Pertaining to Counties and Townships and Other References

Chapter 11-33	County Zoning
Chapter 11-33.2	Subdivision Regulations
Chapter 11-35	Regional Planning and Zoning Commissions
Chapter 54-21.3	State Building Code (Not limited to Counties and Townships)
Chapter 58-03	Powers of Township and Electors of the Township

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

! " ## $ "% & ' (For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section 23.1-04-04.

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For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution all or any parts of the county, subject to sections 11-33-02.1 and 11-33-20, into districts of such number, shape, and area as may be determined necessary, and likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations must be uniform in each district, but the regulations in one district may differ from those in other districts.

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1. For purposes of this section:
   a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
   b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:

(1) The production of timber or forest products; or
(2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.

c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.

d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.

2. For purposes of this section, animal units are determined as follows:
   a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
   b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
   c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
   d. One cow-calf pair equals 1.0 animal unit;
   e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
   f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
   g. One horse equals 2.0 animal units;
   h. One sheep or lamb equals 0.1 animal unit;
   i. One turkey equals 0.0182 animal unit;
   j. One chicken, other than a laying hen, equals 0.008 animal unit;
   k. One laying hen equals 0.012 animal unit;
   l. One duck equals 0.033 animal unit; and
   m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8. a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
   b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated

feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.

c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.

d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

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1. For purposes of this section:
   a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
   b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
      (1) The production of timber or forest products; or
      (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
   c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
   d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.
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   c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
   d. One cow-calf pair equals 1.0 animal unit;
   e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
   f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
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   j. One chicken, other than a laying hen, equals 0.008 animal unit;
   k. One laying hen equals 0.012 animal unit;
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   m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8. a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
   b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
   c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23.1-06-15.
   d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

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These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of nonurban areas.
2. To provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.
4. To lessen governmental expenditures.
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

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The board of county commissioners of any county desiring to avail itself of the powers conferred by this chapter shall establish, by resolution, a county planning commission to

recommend the boundaries of the various county zoning districts and appropriate regulations and restrictions to be established therein. In counties with three-member boards of county commissioners, the planning commission consists of seven members, of whom at least one must be appointed from the governing body of the city that is the county seat, and of whom at most one may be appointed from the board of county commissioners. In counties with five-member boards of county commissioners the planning commission consists of nine members, of whom at least two must be appointed from the governing body of the city that is the county seat, and of whom at most two may be appointed from the board of county commissioners. The term of an ex officio member is coterminous with the member's term in the underlying office. The remaining members shall be appointed from the county at large. In counties that elect county commissioners from districts, at least one at large member of the planning commission must be appointed from each district. When appointments to said commission are first made, three members at large shall be appointed for a two-year term and two members at large for a four-year term, after which all subsequent appointments for members at large shall be for a four-year term. Appointments to fill vacancies shall be for the unexpired portion of the term. All appointments to the county planning commission shall be made by the board of county commissioners.

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The commission shall meet within thirty days after its appointment and elect a chairman and other necessary officers from its membership. The commission may adopt rules and bylaws not inconsistent with the provisions of this chapter. A majority of the members of the commission constitutes a quorum. The appointing authority shall establish the rate of compensation for commissioners and actual expenses incurred by commissioners may be reimbursed at the official reimbursement rates of the appointing authority. The county auditor shall serve as secretary to the commission and shall keep all of the records and accounts of the commission.

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The county planning commission in conjunction with the township boards of the affected areas shall investigate and determine the necessity of establishing districts and prescribing regulations therefor, as herein provided; and, for that purpose, shall consult with residents of affected areas, and with federal, state, and other agencies concerned. State, county, township, and city officials, departments, or agencies are hereby required to make available, upon request of the county planning commission, such pertinent information as they may possess, to render technical assistance, and to cooperate in assembling and compiling pertinent information.

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After investigation, as herein provided, the county planning commission shall prepare a proposed resolution to be submitted to the board of county commissioners establishing districts and prescribing regulations therefor, as herein provided, which shall be filed in the office of the county auditor.

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After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution, and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

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Following the public hearing, the board of county commissioners may adopt the proposed resolutions or any amendments thereto, with such changes as it may deem advisable. Upon

adoption of any resolution or any amendment thereto, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any such resolution or any amendment thereto, the county auditor shall cause notice of the same to be published for two successive weeks in the official newspaper of the county and in such other newspapers published in the county as the board of county commissioners may deem necessary. Said notice shall describe the nature, scope, and purpose of the adopted resolution, and shall state the times at which it will be available to the public for inspection and copying at the office of the recorder. Proof of such publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11-33-10, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed pursuant to section 11-33-10, the resolution shall not take effect until the board of county commissioners has affirmed such resolution or amendment in accordance with the procedures of section 11-33-10. Any such resolution may, from time to time, be amended or repealed by the board of county commissioners upon like proceedings as in case of the adoption of a resolution.

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

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The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case when a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes hereof.

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Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, may appeal to the district court in the manner provided in section 28-34-01.

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The lawful use or occupation of land or premises existing at the time of the adoption of a resolution hereunder may be continued, although such use or occupation does not conform to the provisions thereof, but if such nonconforming use or occupancy 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. If the state acquires title to any land or premises, all further use or occupancy thereof shall be a conforming use or occupancy.

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The board of county commissioners, may, by resolutions, as herein provided, prescribe such reasonable regulations, not contrary to law, as it deems desirable or necessary to regulate and control nonconforming uses and occupancies.

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Repealed by S.L. 1969, ch. 138, § 2.

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The board of county commissioners shall provide for the enforcement of this chapter and of resolutions and regulations made thereunder and may impose enforcement duties on any officer, department, agency, or employee of the county.

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If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

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

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1. The board of county commissioners may authorize and provide for the issuance of permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to this chapter.
2. If a board of county commissioners provides for the issuance of permits, the board shall require the applicant to state whether the structure is reasonably anticipated to have a significant impact on the transportation system. A structure is deemed to have significant impact on the transportation system if, over a period of one year, it will have an average daily usage of at least twenty-five motor vehicles whose gross weight exceeds sixty thousand pounds [27215.54 kilograms]. The board shall require that, if the structure will have a significant impact on the transportation system, the director of the department of transportation be notified and be given an opportunity to comment on the application. However, approval of the director of the department of transportation of the proposed structure is not required.
3. The board may establish and collect reasonable fees for permits issued under this section. The fees so collected must be credited to the general fund of the county.
4. The board of county commissioners may appropriate, out of the general funds of the county, such moneys as may be necessary for the purposes of this chapter.

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If the area to be regulated and restricted is situated in two or more counties, a joint planning commission may be established. Membership of such a joint planning commission shall consist of five members from each county planning commission to be appointed by the chairman of the respective county planning commissions. Each joint commission shall make a preliminary report and hold public hearings thereon as is provided in the case of county planning commissions before submitting its final report and recommendations to the respective county planning commissions of each county concerned.

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Repealed by S.L. 2015, ch. 422, § 2.

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A violation of any provision of this chapter or the regulations and restrictions made thereunder shall constitute the maintenance of a public nuisance and shall be a class B misdemeanor.

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1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to concentrated animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
   a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
   b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

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1. Any zoning regulation that pertains to a concentrated animal feeding operation and is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.
2. For purposes of this section:
   a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
   b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

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This chapter does not include any power relating to the role of the board of county commissioners in the establishment, repair, or maintenance of highways or roads.

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For the purposes of this chapter, unless the context otherwise requires, "subdivision" means the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

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For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict within the county the subdivision of land. This chapter shall not serve to invalidate any ordinance, resolution, regulation, decision, plat approval, or other action taken or adopted, by a board of county commissioners or county planning commission, prior to or subsequent to July 1, 1981, which regulates or otherwise affects the subdivision of land, except that, subsequent to July 1, 1981, the provisions of section 11-33.2-12 shall apply to any county requiring plat approval as a prerequisite to the subdivision of land.

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County regulation of subdivisions pursuant to the provisions of this chapter shall in no way affect subdivisions within the corporate limits, or within the area of application of extraterritorial zoning jurisdiction adopted pursuant to section 40-47-01.1, of any city. Additionally, no resolution, regulation, or restriction adopted pursuant to the provisions of this chapter shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.

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The board of county commissioners of any county desiring to avail itself of the powers conferred by sections 11-33.2-01 through 11-33.2-11 and sections 11-33.2-13 through 11-33.2-15 shall direct the county planning commission, as established pursuant to sections 11-33-04 and 11-33-05, to prepare a proposed resolution regulating the subdivision of land. The county planning commission shall prepare the proposed resolution to be submitted to the board of county commissioners and shall file it in the office of the county auditor. The proposed subdivision resolution may include:

1. Provisions for the submittal and processing of plats, and specifications for such plats, including provisions for preliminary and final approval and for processing of final approval by stages or sections of development.
2. Provisions for ensuring that:
   a. The location, layout, or arrangement of a proposed subdivision shall conform to the comprehensive plan of the county.
   b. Streets in and bordering a subdivision shall be coordinated, and be of such width and grade and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection.
   c. Adequate easements or rights of way shall be provided for drainage and utilities.
   d. Reservations if any by the developer of any area designed for use as public grounds shall be of suitable size and location for the designated use.
   e. Land which is subject to extraordinary hazards, including flooding and subsidence, either shall be made safe for the purpose for which such land is proposed to be used, or shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing hazard.
3. Provisions governing the standards that public improvements shall meet, including streets, walkways, curbs, gutters, streetlights, fire hydrants, and water and sewage

facilities. As a condition of final approval of plats, the board of county commissioners may require that the subdivider make and install such public improvements at the subdivider's expense and that the subdivider execute a surety bond or other security to ensure that the subdivider will so make those improvements within such time as the board of county commissioners shall set.

4. Provisions for release of a surety bond or other security upon completion of public improvements required to be made by the subdivider.
5. Provisions for encouraging and promoting flexibility, economy, and ingenuity in the location, layout, and design of subdivisions, including provisions authorizing the board of county commissioners to attach conditions to plat approvals requiring practices which are in accordance with modern and evolving principles of subdivision planning and development, as determined by the board of county commissioners.

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After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

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Following the public hearing, the board of county commissioners may adopt the proposed resolution, with such changes as it may deem advisable. Upon adoption of the resolution, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any resolution, the county auditor shall have notice of that fact published for two successive weeks in the official newspaper of the county and in other newspapers published in the county as the board of county commissioners may deem appropriate. The notice shall describe the nature, scope, and purpose of the adopted resolution and shall state the times at which it will be available for public inspection and copying at the office of the recorder. Proof of publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment shall not take effect until the board of county commissioners has affirmed the resolution or amendment in accordance with the procedures set out in section 11-33.2-07. The resolution may be amended or repealed by the board of county commissioners by following the same procedures as in the case of adoption of a resolution.

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Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto, may, within thirty days after the first publication of the notice of adoption of the resolution or amendment, petition for a separate hearing before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground or grounds of objection. The petition shall be filed with the county auditor. A hearing on the petition shall be held by the board no sooner than seven days, nor later than thirty days after the filing of the petition with the county auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing, the board of county commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take. The board of county commissioners, at its next regular meeting, shall either rescind or affirm the resolution or amendment. The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the board of county commissioners or of any citizen.

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The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder in any specific case when a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the general purposes of this chapter.

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Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, or any resolution or amendments adopted hereunder, may appeal to the district court in the manner provided in section 28-34-01.

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The board of county commissioners shall provide for the enforcement of this chapter and of any resolution and amendments adopted hereunder, and may impose enforcement duties on any officer, department, agency, or employee of the county.

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The board of county commissioners may approve plats as a prerequisite to the subdivision of land subject to the provisions of this chapter and may establish and collect reasonable fees therefor. The fees collected must be credited to the general fund of the county. The board of county commissioners may appropriate, out of the general funds of the county, moneys necessary for the purposes of this chapter. The board of county commissioners shall state the grounds upon which any request for approval of plats is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board.

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If a county requires approval of plats as a prerequisite to the subdivision of land, whether such requirement be adopted in compliance with this chapter, or be adopted, whether prior to or subsequent to July 1, 1981, pursuant to other authority, from and after July 1, 1981:

1. No subdivision of any lot, tract, or parcel of land shall be made, no street, sanitary sewer, water main, or other improvements in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with a plat as finally approved by the board of county commissioners.
2. No plat shall be finally approved or disapproved by the board of county commissioners except upon receipt of recommendations by both the county planning commission and the board of township supervisors of the township in which the proposed subdivision is located. The board of county commissioners shall, by certified mail, notify the chairman of the board of township supervisors that an application for plat approval has been initiated, either before the county planning commission or before the board of county commissioners, and that the board of township supervisors is requested to make a recommendation on the application. If the board of county commissioners does not receive, by certified mail, a recommendation by the board of township supervisors within sixty days after notification, it may take final action on the application for plat approval. The recommendations by either the county planning commission or the board of township supervisors shall not be binding on the county commissioners.
3. In determining whether a plat shall be finally approved or disapproved, the board of county commissioners shall inquire into the public use and interest proposed to be served by the subdivision. It shall determine if appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, but its determination is not limited to the foregoing. The board shall consider all other relevant facts and determine whether the public interest

will be served by the subdivision. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and that the public use and interest will be served by the platting of such subdivision, and that the proposed plat complies with a county resolution, if any, regulating or restricting the subdivision of land, to the extent that such resolution does not conflict with the provisions of this section, such plat shall be finally approved with such conditions as the board of county commissioners may deem necessary. If it finds that the proposed plat does not make appropriate provisions, or that the public use and interest will not be served, or that the proposed plat does not so comply with the aforementioned resolution, then the board of county commissioners shall disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat.

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Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

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In the event that any public improvements which may be required to be installed by the subdivider have not been installed as provided in the subdivision resolution or in accordance with the plat as finally approved, the board of county commissioners is hereby granted the power to enforce any surety bond, or other security, required of said subdivider by appropriate legal and equitable remedies. If the proceeds of the bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the security, the board of county commissioners may, at its option, install part of such improvements in all or part of the subdivision and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the subdivider, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other purpose.

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Upon final approval of a plat as required under this chapter, the subdivider shall record the plat in the office of the recorder of the county wherein the plat is located. Whenever plat approval is required by a county, the recorder shall not accept any plat for recording unless such plat officially notes the final approval of the board of county commissioners.

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Any person, partnership, corporation, or limited liability company who or which, being the owner or agent of the owner of any lot, tract, or parcel of land, shall lay out, construct, open, or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or who or which sells, transfers, or agrees or enters into an agreement to sell or transfer any land in a subdivision or engages in the subdivision of land or erects any buildings thereon,

unless and until a plat has been finally approved in full compliance with the provisions of this chapter and of the resolution adopted hereunder and has been recorded as provided herein, shall be guilty of a class B misdemeanor. Each lot, tract, or parcel created or transferred, and each building erected in a subdivision in violation of the provisions of this chapter or of the resolutions adopted hereunder shall constitute a separate offense.

If any lot, tract, or parcel of land is subdivided in violation of this chapter or any resolution or amendments thereto adopted pursuant to this chapter, the proper county authorities or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful subdivision.
2. To restrain, correct, or abate such violations.
3. To prevent the occupancy or use of the land which has been unlawfully subdivided.
4. To vacate and nullify any recorded plat of such unlawful subdivision.

CHAPTER 11-35
REGIONAL PLANNING AND ZONING COMMISSIONS

11-35-01. Regional commissions - Appointment - Powers.

The governing boards of counties, cities, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members, namely, one from the board of county commissioners, two from the rural region affected, and two from the city, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region must be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, cities, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures must be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court in accordance with the procedure provided in section 28-34-01.

11-35-02. Zoning of territory adjacent to cities.

Until the organization of either a regional planning and zoning commission as provided in section 11-35-01 or township or county zoning commission pursuant to sections 58-03-11 through 58-03-15 and chapter 11-33, respectively, any city which shall determine to use zoning regulations shall have exclusive jurisdiction and power to zone over all land over which it has authority to control subdivisions and platting of land as provided in section 40-48-18.

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The purposes of this chapter are to:

1. Provide the citizens of this state with nationally recognized standards and requirements for construction and construction materials.
2. Eliminate restrictive, obsolete, conflicting, and unnecessary construction regulations that tend to increase construction costs unnecessarily or restrict the use of new materials, products, or methods of construction or provide preferential treatment to types or classes of materials or products or methods of construction.
3. Ensure adequate construction of buildings throughout the state and to adequately protect the health, safety, and welfare of the people of this state.

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As used in this chapter, unless the context requires otherwise:

1. "Agricultural purposes" includes purposes related to agriculture, farming, ranching, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry.
2. "Building" means a combination of any materials fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".
3. "City" means any city organized under the laws of this state.
4. "Code enforcement agency" means an agency of the state or local government with authority to inspect buildings and enforce the law, ordinances, and regulations which establish standards and requirements applicable to the construction, installation, alteration, repair, or relocation of buildings.
5. "Construction" means the construction, erection, reconstruction, alteration, conversion, or repair of buildings.
6. "Jurisdictional area" means the area within which a city or township has zoning jurisdiction.
7. "State building code" means the state building code provided for in this chapter.
8. "Temporary work camp housing" includes a modular residential structure used to house workers on a temporary basis for a maximum period of five years.

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1. The department of commerce, in cooperation with the state building code advisory committee, shall adopt rules to implement, amend, and periodically update the state building code, which must consist of the international building, residential, mechanical, and fuel gas codes.
2. The state building code advisory committee consists of:
   a. Two representatives appointed by the North Dakota building officials association, one of whom must be from a jurisdiction of fewer than ten thousand people.
   b. One representative appointed by the North Dakota chapter of the American institute of architects.
   c. One representative appointed by the North Dakota society of professional engineers.
   d. One representative appointed by the North Dakota association of builders.
   e. One representative appointed by the North Dakota association of mechanical contractors.
   f. One representative appointed by the associated general contractors.
   g. A fire marshal appointed by the state fire marshal.
   h. One individual appointed by the state electrical board.
3. The state building code advisory committee shall meet with the department of commerce or a designee of the commissioner of commerce at least once each

calendar year to address proposed amendments to the state building code. The department of commerce may not adopt an amendment to the state building code unless the amendment is approved by a majority vote of:

a. One representative appointed by the North Dakota chapter of the American institute of architects;
b. One representative appointed by the North Dakota society of professional engineers;
c. One representative appointed by the North Dakota association of builders;
d. One representative appointed by the North Dakota association of mechanical contractors;
e. One representative appointed by the associated general contractors; and
f. Representatives of eligible jurisdictions as established by administrative rule.

4. The state building code or a building code adopted by a city, township, or county may not include a requirement that fire sprinklers be installed in a single family dwelling or a residential building that contains no more than two dwelling units. The state building code, plumbing code, electrical code, or an equivalent code adopted by a political subdivision must provide that a building designed for and used as a school portable classroom may be constructed and inspected as a temporary structure as defined by the state building code or may be permitted as a permanent school portable classroom. The foundation system of such a structure must comply with the recommendations of the manufacturer's engineering report for a pre-engineered unit or a structural engineer's report. Frost-free footings may not be required for a temporary structure that meets the requirements of the state building code unless required by an engineering report. Temporary electrical and plumbing installations may be allowed for any structure by the governmental entities governing those areas of construction or the applicable codes.
5. For the purposes of manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].
6. The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.
7. A modular residential structure or a prebuilt home placed in the state must be constructed in compliance with the state building code. A modular residential structure or a prebuilt home placed in a jurisdiction that has amended the state building code must be constructed in compliance with the state building code and the amendments adopted by that jurisdiction.

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1. Except as specifically provided in this chapter, the following statewide codes are exempt from this chapter:
   a. The Standards for Electrical Wiring and Equipment, as contained in North Dakota Administrative Code article 24-02.
   b. The State Plumbing Code, as contained in North Dakota Administrative Code article 62-03.
   c. The State Fire Code, as contained in the rules of the state fire marshal as provided in section 18-01-04.
2. The following buildings are exempt from this chapter:
   a. Buildings which are neither heated nor cooled.
   b. Buildings used whose peak design rate of energy usage is less than one watt per square foot [929.0304 square centimeters] or three and four-tenths British thermal units an hour per square foot [929.0304 square centimeters] of floor area.
   c. Restored or reconstructed buildings deliberately preserved beyond their normal term of use because of historical associations, architectural interests, or public

policy, or buildings otherwise qualified as a pioneer building, historical site, state monument, or other similar designation pursuant to state or local law.

3. Any building used for agricultural purposes, unless a place of human habitation or for use by the public, is exempt from this chapter.

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1. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the 2010 Americans with Disabilities Act standards for accessible design as contained in title 28, Code of Federal Regulations, parts 35 and 36 [28 CFR 35 and 36].
2. A state agency or the governing body of a political subdivision shall require from any individual preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that individual, in conformance with the Americans with Disabilities Act standards for accessible design as provided under subsection 1. A statement of conformance must be submitted to the department of commerce division of community services for recording.
3. After July 31, 2013, a newly designed and constructed building in excess of seven thousand five hundred square feet [696.77 square meters] which is classified within the state building code as assembly, business, educational, institutional, or mercantile occupancy and required by the state building code to be accessible must include at the primary exterior public entrance an automatic door or power-assisted manual door that complies with the requirements of the Americans with Disabilities Act of 1990, revised 2010. If a multiple unit building does not have a primary exterior public entrance, an individual unit within that building is not required to include an automatic door or power-assisted manual door unless that individual unit is in excess of seven thousand five hundred square feet [696.77 square meters].

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A building permit issued under section 11-33-18, subsection 6 of section 40-05-02, or other similar grant of authority must contain the following statement:

Federal law may require this construction project to conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

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State or local government code enforcement agencies may allow exemptions or accept alternate methods for construction and placement of temporary work camp housing that has been previously used as housing or temporary work camp housing in a different location, provided that the waiver does not substantially compromise the health or safety of workers. This authority is granted to code enforcement agencies enforcing the state building code, the State Electrical Code, and the State Plumbing Code when acting within their existing jurisdiction. This section does not apply to newly constructed temporary work camp housing.

1. State or local government code enforcement agencies, acting within their existing jurisdiction, may conduct a nondestructive walkthrough inspection of previously used temporary work camp housing to ensure compliance with applicable codes, including the state building code, State Electrical Code, and State Plumbing Code. If the housing is found to be compliant with these codes, or to not substantially compromise the health or safety of workers pursuant to a waiver under this section, the code enforcement agency may issue a limited certificate of inspection, which is effective for a period of five years. Residents may not be permitted to move into or live in temporary work camp housing unless the housing has a current limited certificate of inspection or has been found to meet all applicable codes and requirements by any code enforcement agency having jurisdiction.

2. The applicable codes, including the state building code, the State Electrical Code, and the State Plumbing Code, are applicable as a standard for liability in legal actions against owners or operators of temporary work camp housing if exemptions are granted.
3. An owner of temporary work camp housing has the duty to remove that housing and all related above-grade and below-grade infrastructure within one hundred twenty days after the temporary work camp housing is vacated. Any city or county may abate any public nuisance caused by vacated temporary work camp housing within its jurisdiction. An owner of temporary work camp housing shall provide the city or county where the temporary work camp housing is installed with a surety bond, letter of credit, or other security instrument in the form and in an amount specified by the city or county. These funds must be used to cover actual expenses that may be incurred by the city or county in removal of the temporary work camp housing, including any above-grade or below-grade infrastructure. The owner is liable for any expenses that are reasonably incurred by the city or county which exceed the amount of the security.

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A city or township may administer and enforce the state building code only within its jurisdictional area. A county may administer and enforce the state building code within those areas of the county in which the state building code is not administered by a city or township. Cities and townships may relinquish their authority to administer and enforce the state building code to the county in which they are located in the manner provided by section 11-33-20. The governing body of a city, township, or county electing to administer and enforce the state building code may designate an enforcement agency. Cities, townships, and counties may provide by agreement for joint administration and enforcement and may contract for private enforcement of the state building code.

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Repealed by S.L. 1983, ch. 511, § 8.

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The manufacturer of a modular residential or commercial structure that is built in a factory shall contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the division of community services. The department of commerce shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. When a manufacturer of modular residential or commercial structures contracts with a certified third-party inspector to monitor compliance with all applicable building, electrical, fire, and plumbing codes and standards for a modular residential or commercial structure, no further inspection by state or local building, electrical, fire, or plumbing inspectors may be required for that structure during the manufacturing process in the factory. This section does not apply to a factory manufacturing fewer than two residential or commercial structures per year.

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The department of commerce shall adopt rules establishing a manufactured home installation program for all manufactured homes built in accordance with the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.]. The rules must establish minimum installation standards. The rules may include standards, fees, and requirements for certification and training of installers, inspections of installations, dispute resolution, penalties for noncompliance, and costs of processing complaints. The standards do

not apply to manufactured homes installed before the original effective date of the rules. Manufactured homes may be installed in accordance with either standards adopted in the rules or the manufacturer's instructions. The rules must include provisions for the enforcement of these standards. Any person who violates this section or any rule adopted under this section is guilty of a class A misdemeanor.

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Each township is a body corporate and has capacity:

1. To sue and be sued.
2. To purchase and hold lands within its limits and for the use of its inhabitants subject to the powers of the legislative assembly.
3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.
4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants.

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No township may possess or exercise any corporate powers except those enumerated in this chapter, those specially given by law, and those necessary to the exercise of the powers enumerated or granted.

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All acts or proceedings performed by a township in its corporate capacity must be done in the name of the township.

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Repealed by S.L. 1979, ch. 172, § 29.

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Repealed by S.L. 1979, ch. 172, § 29.

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The following must be deemed township charges:

1. The compensation of township officers.
2. Contingent expenses necessarily incurred for the use and benefit of the township.
3. The moneys authorized to be raised by the vote of the township meeting for any township purpose.
4. Each sum directed by law to be raised for any township purpose.

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The electors of each township have the power at the annual township meeting:

1. To establish one or more pounds within the township, to determine the location of the pounds, to determine the number of poundmasters and to choose the poundmasters, and to discontinue pounds which have been established.
2. To select the township officers required to be chosen.
3. To direct the institution or defense of actions in all controversies in which the township is interested.
4. To direct the raising of such sums as they may deem necessary to prosecute or defend actions in which the township is interested.
5. To make all rules and regulations for the impounding of animals.
6. To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers granted to the township.
7. To impose penalties for each offense on persons offending against any rule or regulation established by the township.
8. To apply penalties when collected in such manner as they deem most conducive to the interests of the township.
9. To ratify or reject recommendations offered by the board of township supervisors for the expenditure of funds for the purpose of purchasing building sites and for the

purchase, location, erection, or removal of any building or erection for township purposes. No recommendation shall be adopted except by a two-thirds vote of the electors present and voting at any annual township meeting.

10. To authorize and empower the board of township supervisors to purchase liquids, compounds, or other ingredients for the destruction of noxious weeds, and sprinklers to be used in spraying said liquids or compounds. No township shall purchase more than two such sprinklers in any one year.
11. To authorize aid to a district fair association within the limits provided in title 4.
12. To authorize the levy of township taxes for the repair and construction of roads and bridges and for other township charges and expenses within the limits prescribed in title 57.
13. To direct the expenditure of funds raised for the repair and construction of roads within the limits provided in title 24.
14. To authorize the dissolution of the township in the manner provided in this title.
15. To authorize the entering into a contract for fire protection as provided for in section 18-06-10.
16. To authorize the expenditure of funds for the eradication of gophers, prairie dogs, crows, or magpies.
17. To authorize the expenditure of township funds for weather modification activities.
18. To authorize the expenditure of funds to pay membership fees in county, state, and national associations of township governments. This subsection may not be construed to authorize a mill levy.
19. To support an airport or to support or create an airport authority and to levy a tax for airport purposes within the limitations of section 2-06-15.
20. To direct the transfer of township funds to a rural fire protection district or rural fire department for fire protection within the township.
21. To direct the transfer of township funds to a rural ambulance service district for emergency medical service within the township.
22. To establish special assessment districts in accordance with chapter 58-18.

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Repealed by S.L. 1971, ch. 410, § 4.

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Repealed by S.L. 1977, ch. 562, § 7.

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Bylaws made by a township do not take effect until they are published. The township clerk shall have the bylaws published in a legal newspaper published in the township. If there is no such newspaper, the bylaws must be published in the county's official newspaper. The clerk shall make an entry in the township records of the time when and place where the bylaws were published. The township bylaws duly made and published are binding upon all persons coming within the limits of the township as well as upon the inhabitants thereof and remain in force until altered or repealed at some subsequent township meeting.

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For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and

restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

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For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section 23.1-04-04.

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1. For purposes of this section:
   a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
   b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
      (1) The production of timber or forest products; or
      (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
   c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
   d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the state department of health.
2. For purposes of this section, animal units are determined as follows:
   a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
   b. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
   c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
   d. One cow-calf pair equals 1.0 animal unit;
   e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
   f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
   g. One horse equals 2.0 animal units;
   h. One sheep or lamb equals 0.1 animal unit;

i. One turkey equals 0.0182 animal unit;
j. One chicken, other than a laying hen, equals 0.008 animal unit;
k. One laying hen equals 0.012 animal unit;
l. One duck equals 0.033 animal unit; and
m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
4. A regulation may not preclude the development of a concentrated feeding operation in the township.
5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8. a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
   b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
   c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
   d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

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1. For purposes of this section:
   a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
   b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
      (1) The production of timber or forest products; or
      (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
   c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
   d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste

collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.

2. For purposes of this section, animal units are determined as follows:
   a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
   b. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
   c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
   d. One cow-calf pair equals 1.0 animal unit;
   e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
   f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
   g. One horse equals 2.0 animal units;
   h. One sheep or lamb equals 0.1 animal unit;
   i. One turkey equals 0.0182 animal unit;
   j. One chicken, other than a laying hen, equals 0.008 animal unit;
   k. One laying hen equals 0.012 animal unit;
   l. One duck equals 0.033 animal unit; and
   m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
4. A regulation may not preclude the development of a concentrated feeding operation in the township.
5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8. a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
   b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
   c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23.1-06-15.
   d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

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The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

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The board of township supervisors of a township desiring to avail itself of the powers conferred by sections 58-03-11 through 58-03-15 shall establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein. Membership of the commission must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which the zoning is contemplated. Where the area to be regulated and restricted is situated in two or more townships, a joint zoning commission may be established. Membership of a joint zoning commission must consist of two township supervisors from each township and two members from the municipality in relation to which the zoning is contemplated. A zoning commission shall make a preliminary report and hold public hearings before submitting its final report and recommendations to the board or boards of township supervisors. The board or boards of township supervisors may establish, and from time to time change, the boundaries of township zoning districts and establish, amend, supplement, and enforce regulations and restrictions in the districts. No regulation, restriction, or boundaries become effective until after a public hearing at which parties in interest and citizens have an opportunity to be heard. At least fifteen days' notice of the time and place of the hearing must be published in the official newspaper of the county and also in the official newspaper of the municipality in relation to which the zoning action is taken, if in the municipality an official newspaper other than the official newspaper of the county is published. The description of any land within any zoning district established by a zoning commission together with any regulations and restrictions established must be filed with the governing bodies of the township and municipalities concerned, and if amendments are made to the boundaries of the zoning district or the regulations or restrictions, the amendments must be filed in the same manner. A zoning commission established under this section and a board of township supervisors shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission or board.

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1. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used, in violation of any regulation or restriction made under the authority conferred by sections 58-03-11 through 58-03-15, the proper local authorities of the township or of the municipality in relation to which such zoning regulation or restriction is established, or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding:
   a. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
   b. To restrain, correct, or abate such violations;

c. To prevent the occupancy of the building, structure, or land; or
d. To prevent any illegal act, conduct, business, or use in or about such premises.

2. If after reasonable notice and opportunity for hearing by the board of township supervisors, a property owner fails to bring a building or structure or the use of land owned by that person into compliance with a regulation or restriction made under sections 58-03-11 through 58-03-15, in addition to any other remedies, the board of township supervisors may impose a civil penalty of up to two thousand dollars annually against the property owner and the property. The board of township supervisors may also assess the property owner for all costs of the township in bringing the property into compliance or in instituting and prosecuting any appropriate action or proceeding under this section. Any civil penalty or assessment of costs, or both, against a property owner constitute a lien on the property and must be charged against the property and become a part of the taxes against the property for the ensuing year and must be collected in the same manner as other real estate taxes are collected and placed to the credit of the township.

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Appeals from any rule, restriction, or decision of the board of township supervisors may be made to the district court of the county in which such township lies. Appeals must be taken in accordance with the procedure provided in section 28-34-01. Upon a showing that any rule, restriction, or decision of the board of township supervisors is unreasonable under the circumstances or contrary to the intent of sections 58-03-11 through 58-03-15, any such rule, restriction, or decision may be set aside or reversed.

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Sections 58-03-11 through 58-03-15 do not include any power relating to the role of the board of township supervisors in the establishment, repair, or maintenance of highways or roads.

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Every township may convey, sell, or dispose of real property of the township upon recommendation by the board of township supervisors and upon approval by the township electors at the annual meeting or at a special meeting called for such purpose. When the board estimates the real property to be of a value of less than one thousand dollars, it may be sold at private sale, but in all other cases such property may be sold only at public sale. A notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held must be published in the official county newspaper once each week for two consecutive weeks with the last publication being at least ten days prior to the date set for the sale. The township electors shall determine and the notice must specify whether the bids are to be received at auction or as sealed bids. The property advertised must be sold to the highest bidder if that bid is deemed sufficient by a majority of the township supervisors.

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1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
   a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal

wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.

b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

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1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.
2. For purposes of this section:
   a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
   b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

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Notwithstanding any other law, a township may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed.

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1. A township that regulates the construction, erection, reconstruction, repair, or alteration of buildings and structures and issues building permits shall respond to a building permit application within sixty days of receiving the application either by approving the application and delivering the building permit or by providing the applicant written notice of the grounds for rejection of the application.
2. If the building or structure for which a permit is requested meets all applicable zoning regulations and the board of township supervisors or other appropriate official fails to respond as required under subsection 1, the application is deemed to be approved and the applicant may proceed with the construction, erection, reconstruction, repair, or alteration of the building or structure and the township shall return any permit fee submitted with the application.
3. A township's building permit application form must include a statement that if the building or structure for which the permit is requested meets all applicable zoning regulations and the board of township supervisors or other appropriate official fails to respond within sixty days of receiving the application, the application is deemed approved. Upon receipt of a building permit application, a township shall note on the application the date of receipt and shall provide a copy of the submitted application to the applicant with the date of receipt noted.

NDCC - City

Planning and Zoning Guide

Unit 10 – NDCC (City)

Planning and Zoning-Related Chapters Pertaining to Cities

Chapter 40-05	Powers of Municipalities
Chapter 40-11	Ordinances
Chapter 40-47	City Zoning
Chapter 40-48	Municipal Master Plans and Planning Commissions
Chapter 40-50.1	Platting of Townsites
Chapter 40-51.2	Annexation and Exclusion of Territory

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The governing body of a municipality shall have the power:

1. Ordinances. To enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such municipality or as the general welfare of the municipality may require, and to repeal, alter, or amend the same. The governing body of a municipality may adopt by ordinance the conditions, provisions, and terms of a building code, a fire prevention code, a plumbing code, an electrical code, a sanitary code, vehicle traffic code, or any other standard code which contains rules and regulations printed as a code in book or pamphlet form by reference to such code or portions thereof alone without setting forth in said ordinance the conditions, provisions, limitations, and terms of such code. When all or part of any such code has been incorporated by reference into any ordinance, it has the same force and effect as though it had been spread at large in such ordinance without further or additional posting or publication. A copy of such standard code or portion thereof shall be filed for use and examination by the public in the office of the city auditor of such municipality prior to adoption. The adoption of any such standard code by reference shall be construed to incorporate such amendments thereto as may be made therein from time to time, and such copy of such standard code so filed shall at all times be kept current in the office of the city auditor of such municipality. The adoption of any such code or codes heretofore by any municipality is hereby validated. Fines, penalties, and forfeitures for the violation thereof may be provided within the limits specified in this chapter notwithstanding that such offense may be punishable also as a public offense under the laws of this state.
2. Finances and property. To control the finances, to make payment of its debts and expenses, to contract debts and borrow money, to establish charges for any city or other services, and to control the property of the corporation.
3. Appropriation. To appropriate money for corporate purposes only, and to provide for the payment of debts and expenses of the corporation.
4. Tax levy. To levy and collect taxes on real and personal property for general and special purposes.
5. Borrowing money. To borrow money on the credit of the corporation for corporation purposes and to issue bonds therefor as limited and provided by title 21.
6. Refunding obligations. To issue bonds in place of or to supply means to meet maturing bonds, or for the consolidation or funding of bonds or any floating indebtedness of the municipality in the manner provided in title 21.
7. Certificates of indebtedness. To borrow money in anticipation of revenues to be derived from taxes already levied as provided and limited in title 21.
8. Streets, sidewalks, and public grounds. To lay out, establish, open, alter, repair, clean, widen, vacate, grade, pave, park, or otherwise improve and regulate the use of streets, alleys, avenues, sidewalks, crossings, and public grounds, and to acquire, construct, maintain, and operate parking lots and facilities for motor vehicles; to regulate or prevent any practice having a tendency to annoy persons frequenting the same; and to prevent and regulate obstructions and encroachments upon the same.
9. Powers relating to parks - Planting grass and trees - Powers respecting parks. To regulate the planting of trees and grass on boulevards, berms, parks, parkways, and public grounds, and to exercise the same powers as are granted to a board of park commissioners respecting the parks of the municipality, if any, until the municipality has been organized into a park district.
10. Lighting of public places. To provide for the lighting of streets, alleys, avenues, parks, and public grounds.
11. Lights to inhabitants of city. To provide for the furnishing of lights to the inhabitants of the city.

12. Gas and water mains - Sewers - Electric light and gas plants. To regulate the laying of gas or water mains and pipes, and the building, laying, or repairing of sewers, tunnels, and drains, and the erecting of gas and electric light plants. Any company or association of persons organized for the purpose of manufacturing illuminating gas or electricity to supply municipalities and the inhabitants thereof shall have authority, subject to existing rights, with the consent of the governing body of the municipality, to erect gas or electric light works and lay down pipes and string wires or poles in streets or alleys subject to such regulations as the municipality may prescribe by ordinance.
13. Structures under sidewalks - Snow and obstructions. To regulate the use of all structures under sidewalks and to require the owner or occupant of any premises to keep the sidewalks in front of or along such premises free from snow or other obstruction.
14. Streets - Cleanliness of and injury to. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage, or any offensive matter in, and to prevent injury to, any street, avenue, alley, or public ground.
15. Curbs and gutters. To provide for and regulate curbs and gutters.
16. Advertising and obstructions in public places. To regulate and prevent the use of streets, sidewalks, and public grounds for signs, signposts, awnings, telegraph and telephone poles, posting handbills and advertisements, the exhibition or carrying of banners, placards, advertisements, or handbills, and the flying of flags, banners, or signs across the streets or from houses.
17. Traffic and sales in public places. To regulate traffic and sales upon the streets, sidewalks, and public places.
18. Speed of vehicles and locomotives. To regulate the speed of vehicles and locomotives within the corporate limits of the corporation, except that the speed limit for vehicles on those streets designated as part of any state highway shall be determined by mutual agreement with the director of the department of transportation.
19. Numbering lots. To regulate the numbering of houses and lots.
20. Naming streets. To name and change the name of any street, avenue, alley, or other public place.
21. Railroad companies - Ditches and rights of way. To require railroad companies to make, keep open, and repair ditches, drains, sewers, and culverts along and under their tracks so that filthy and stagnant pools of water cannot stand on their grounds or right of way and so that the natural or artificial drainage of adjacent property shall not be impeded. To require railroad companies to fence their respective railroads or any portion of the same and construct cattle guards and public roads and keep the same in repair within the limits of the corporation.
22. Extending ways and pipes over railroad property. To extend by condemnation, subject to chapter 32-15, or otherwise any street, alley, or highway over, under, or across, or to construct or lay any sewer, water pipe, or main under or through, any railroad track, right of way, or land of any railroad company within the corporate limits.
23. Culverts, drains, and cesspools. To construct and keep in repair culverts, drains, sewers, catch basins, manholes, cesspools, vaults, cisterns, areas, and pumps within the corporate limits.
24. Licenses. To fix the amount, terms, and manner of issuing and revoking licenses.
25. Plumbers and plumbing business. To adopt, by ordinance, if it has a system of waterworks or sewerage, rules and regulations governing plumbing, drainage, and ventilation of plumbing within the limits of the municipality. The standards provided for in such ordinance, however, shall not be lower than the minimum standards provided for in any state plumbing code adopted pursuant to chapter 43-18, but may be higher than such standards. It may prescribe rules and regulations for all materials, constructions, alteration and inspection of pipes, tanks, and fixtures by which water is supplied to the citizens of the municipality, or by which waste or sewage is carried, and may provide that such pipes, tanks, and fixtures shall not be placed in any building in the municipality except in accordance with plans which are approved under the provisions of said ordinance, and that no plumbing shall be done except by plumbers

registered and licensed under state law and under the ordinance, except by a property owner on that person's own premises which are occupied as that person's home or place of residence. The ordinance may provide that all work done by an owner upon that person's own premises must comply with the provisions of the state plumbing code or a local ordinance, whichever shall prescribe the highest standards. Before the municipality may require a plumber to be licensed by the municipality, it shall provide standards for plumbing in a municipality equal to or in excess of those provided by the state plumbing code. A municipality may adopt the state plumbing code as a whole as an ordinance of the municipality by reference without the necessity of publishing the text therefor.

26. Transient business and amusements. To license, tax, regulate, remove, suppress, and prohibit fortune-tellers, astrologers, and all persons practicing palmistry, clairvoyancy, mesmerism, and spiritualism, hawkers, peddlers, pawnbrokers, theatricals and other exhibitions, shows and amusements, ticket scalpers, and employment agencies, and to revoke the license at pleasure, except that the provision in this subsection with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on land within this state.
27. Draymen, taxi drivers, porters, and others pursuing like occupations. To license, tax, regulate, and prescribe the rates charged by draymen, parcel delivery men, busdrivers, taxi drivers, porters, expressmen, watermen, and others pursuing like occupations, and the operation of taxicabs. Provided, all motor vehicles used in ridesharing arrangements, as defined in section 8-02-07, are not taxicabs.
28. Runners for stages and other things or persons. To license, regulate, tax, and restrain runners for stages, buses, cars, public houses, or other things or persons.
29. Alcoholic beverages. To regulate the use and to regulate and license the sale of alcoholic beverages subject to the provisions contained in title 5.
30. Bowling alleys, pool, billiards, theaters, and motion picture theaters. To license, regulate, and tax bowling alleys, theaters, motion picture theaters, and pool or billiard tables, or any other tables or implements kept or used for similar purposes in any public place.
31. Markets, market houses, and slaughterhouses. To establish, purchase, erect, lease, rent, manage, maintain, regulate, and provide for the use of markets and market houses, municipal slaughterhouses, or abattoirs.
32. Dairy, meat, and food products - Inspection and regulation of sale. To provide for the inspection of milk, cream, and butter sold within the limits of the municipality, and of any dairy or dairy herd kept for the production of such milk, cream, and butter. To prescribe the terms upon which sales of such milk, cream, and butter may be made and to fix penalties for violations. To prescribe regulations for the slaughtering of animals to be sold as meat. To prescribe generally sanitary and regulatory provisions as applied to food products sold within the limits of the municipality and to prohibit the sale of impure and diseased milk or other food products.
33. Public peace in municipality. To provide for keeping and preserving the peace and quietude of the municipality, prevent disorderly conduct, prohibit public intoxication, and prevent and suppress riots, affrays, disturbances, and disorderly assemblies in any place.
34. Fire limits. To prescribe fire limits within which wooden buildings shall not be erected, placed, or repaired without permission; provide that when a building within such limits has been damaged by fire, decay, or otherwise to the extent of fifty percent of its valuation, it shall be torn down and removed; prescribe the manner of ascertaining such damage; provide for the removal of any structure or building erected contrary to the prescribed rules; declare each day's continuance of such building or structure a separate offense and to prescribe the penalties therefor; and define fireproof material.
35. Fire hazards. To prevent and provide for remedying any dangerous construction or condition of any building, enclosure, or manufactory, or any equipment used therein; regulate and prevent the carrying on of manufactories creating a fire hazard; prevent a

deposit or keeping of ashes or refuse in unsafe places; and require all buildings and places to be put and kept in a safe condition.

36. Waterworks system. To purchase, acquire by eminent domain in accordance with chapter 32-15, erect, lease, rent, manage, and maintain any system of waterworks, well reservoirs, pipes, machinery, buildings, and all other property comprising a waterworks system, such as hydrants, supply of water, fire stations, fire signals, fire engines, or fire apparatus that may be of use in the prevention and extinguishment of fires, and to fix and regulate the rates, use, and sale of water.
37. Fire equipment - Use beyond municipal limits. To use its fire department to attend to fires and render assistance to other municipalities within or without this state, or to private property, including farm buildings located outside the city limits, and the fire department, its members, and apparatus, when engaged outside the limits of the municipality, shall be deemed to be engaged in the performance of a public duty as fully as if serving within the limits of the municipality.
38. Storage of combustible material - Use of fireworks and open flame lights. To regulate and prohibit the storage of combustible or explosive material, the use of open flame lights, the building of bonfires, and the use or sale of firecrackers and fireworks.
39. Lumberyards. To regulate or prohibit the keeping of any lumberyard and the keeping or selling of any lumber or other combustible material within the fire limits.
40. Steam boilers. To provide for the inspection of steam boilers.
41. Jails. To establish, maintain, and regulate a jail and, with the consent of the board of county commissioners, to use the county jail for the confinement of persons charged with or convicted of the violation of any ordinance.
42. Cruelty to animals. To prohibit and punish cruelty to animals.
43. Vagrants and prostitutes. To restrain and punish vagrants, mendicants, and prostitutes.
44. Nuisances. To declare what shall constitute a nuisance and to prevent, abate, and remove the same.
45. Health regulations. To make regulations necessary or expedient for the promotion of health or for the suppression of disease.
46. Cemeteries. To establish, maintain, and regulate cemeteries within or without the municipality, acquire land therefor by purchase or otherwise, and cause cemeteries to be removed, and to prohibit the establishment thereof within, or within one mile [1.61 kilometers] of, the corporate limits.
47. Animals and poultry. To regulate or prohibit the running at large of animals and poultry, provide for the establishment and maintenance of public pounds for the impounding of any animals or poultry running at large or tethered in any street in violation of municipal ordinances, establish procedures for the impounding and discharging of animals and poultry impounded, make the expenses and fines imposed a lien upon such stock or poultry, and provide for the sale of the stock or poultry to satisfy such lien.
48. Packinghouses and other offensive businesses. To control the location and regulate the management and construction of packinghouses, renderies, bone and soap factories, slaughterhouses, livery stables, and blacksmith shops, and to prohibit any offensive or unwholesome business within, or within one mile [1.61 kilometers] of, the corporate limits.
49. Unwholesome or nauseous places. To compel the owner of any cellar, stable, pigsty, privy, sewer, or other unwholesome or nauseous thing or place to cleanse, abate, or remove the same, and to regulate the location thereof.
50. Public buildings. To construct, operate, and maintain all public buildings necessary for the use of the municipality.
51. Auctioneers, brokers, lumberyards, and public scales. To license, tax, and regulate auctioneers, brokers, lumberyards, and public scales.
52. Supplies. To provide that supplies needed for the use of the municipality shall be furnished by contract let to the lowest responsible bidder.

53. Secondhand and junk stores. To license, tax, and regulate secondhand and junk stores and to forbid and punish the purchase and receipt by them from minors of any articles without the written consent of their parents or guardians.
54. Insure public property. To insure the public property of the municipality.
55. Real and personal property. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits or outside this state for all purposes authorized by law or necessary to the exercise of any power granted.
56. Transfer property. To convey, sell, dispose of, or lease personal and real property of the municipality as provided by this title.
57. Franchises. To grant franchises or privileges to persons, associations, corporations, or limited liability companies, any such franchise, except when given to a railroad company, to extend for a period of not to exceed twenty years, and to regulate the use of the same, franchises granted pursuant to the provisions of this title not to be exclusive or irrevocable but subject to the regulatory powers of the governing body.
58. Airports. To acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate, and police airports and landing fields within or without the geographic limits of the municipality as provided in title 2.
59. Public works project. To accept aid from, cooperate and contract with, and to comply with and meet the requirements of any federal or state agency for the establishment, construction, and maintenance of public works, including dams and reservoirs for municipal water supply, for water conservation, flood control, prevention of stream pollution, or sewage disposal. In furtherance thereof to acquire by purchase, lease, gift, or condemnation the necessary lands, rights of way, and easements for such projects, and to transfer and convey to the state or federal government, or any agency thereof, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project. To enter into an agreement with any such government, agency, or municipality within or without this state, to hold such government, agency, or municipality harmless from any and all liability or claim of liability arising from the establishment, construction, and maintenance of such works, and to indemnify such government, agency, or municipality for any such liability sustained by it and to pay all costs of defending against any such claim. In furtherance thereof to acquire by purchase, lease, gift, or, subject to chapter 32-15, condemnation, the necessary lands, rights of way, and easements for such projects, and to transfer and convey to such government, agency, or municipality, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project, or to pay the cost of the acquisition of such lands, rights of way, and easements by such government, agency, or municipality. All actions herein authorized may be taken by resolution duly adopted by the governing body of the municipality. Any and all actions and proceedings heretofore taken by any municipality which are within the authority granted by this subsection are hereby legalized and validated.
60. Special improvement assessments - Satisfaction. To make assessments as limited by the laws of this state for local improvements on property adjoining or benefited thereby, to collect the same in the manner provided by law, and to satisfy the tax lien on lands subject to special assessments.
61. Public water supply. To prevent the pollution of or injury to any water supply belonging to the municipality or any public water supply within, or within one mile [1.61 kilometers] of, the limits of the municipality.
62. Band. To levy a tax as provided in this title for the purpose of providing a fund for the maintenance or employment of a band for municipal purposes.
63. Radio reception. To regulate the installation and operation of motors and other electrical or mechanical devices so as to prevent interference with radio reception.

64. Municipal plants. To sell, convey, and dispose of the plant or equipment of any public utility owned by the municipality and to contract for the leasing or operation of such plant, equipment, or utility by others, and to grant to the lessee or operator under such a contract the right to purchase such plant, equipment, or utility upon such terms and conditions as may be expressed in the contract, after authorization as provided by this title.
65. Public dances. To license, tax, and regulate public dances or public dancehalls.
66. Light and power plants and gas transmission or distribution systems. To purchase, acquire by eminent domain in accordance with chapter 32-15, erect, lease, rent, manage, and maintain electric light and power plants, gasworks, steam heating plants and appurtenances for distribution, and to regulate and fix the rates to its patrons and to jointly, with other municipalities, acquire by eminent domain, erect, construct, lease, rent, manage, and maintain any artificial or natural gas transmission or distribution lines or plants.
67. Flood control projects. To acquire, construct, maintain, operate, finance, and control flood control projects, both within and adjacent to such municipality, and for such purpose to acquire the necessary real property and easements therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.
68. Public restrooms. To acquire, construct, maintain, operate, finance, and control public restrooms and facilities within such municipality, and for such purpose to acquire the necessary real property therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.
69. Employee pension system. To adopt, by ordinance, a city employee pension system that may provide all rules and regulations governing its operation and discontinuance, provided other pension systems allowed by statute are not in effect, excepting firefighters relief associations and federal social security, or in order to consolidate existing pension plans. In addition to all other rules and regulations deemed necessary and proper by the governing body, it may provide as to matters pertaining to membership, tax levies in an amount not exceeding the total levies authorized by chapters 40-45 and 40-46, membership fees and assessments, management, investments, acceptance of money and property, retirement conditions and payment amount, continuance of system and discontinuance procedures, discontinuance payments, entrance into contracts with an insurance firm or firms for coverage of the employee pension system.
70. Television towers. To construct and maintain relay and booster towers for the improved reception of educational and entertainment television programs.
71. Contracts. To contract and be contracted with.
72. Community development block grant program. To loan or grant money to and secure a mortgage from individuals, associations, corporations, or limited liability companies and to purchase ownership shares or membership interests in corporations, limited liability companies, or other business associations as provided through the procedures established by the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383; 88 Stat. 633; 42 U.S.C. 5301 et seq.]. This power applies to all community development block grant transactions of the governing body, including any transactions prior to July 1, 1987. A city is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the city is incurred.
73. Encouragement of arts. To, consistent with section 54-54-01, appropriate and disburse city moneys and to accept and disburse moneys received from federal, state, county, city, or private sources for the establishment, maintenance, or encouragement of arts within the city. The authority of a city under this subsection is supplemental to the authority provided in chapter 40-38.1.

74. To expend city funds for the purpose of participating in an organization of city governments under section 40-01-23.
75. To participate and enact or adopt ordinances necessary for participation in the nation's historic preservation program as a certified local government, as provided for under 36 CFR 61.5.
76. Lease of waterworks or sewage systems. To lease, for a term not to exceed ninety-nine years, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01 or to lease, for a term not to exceed ninety-nine years, any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19.
77. Appointed board budgets. To require that financial records, including all revenues, expenditures, fund balances, and complete budgets, be submitted to the governing body of the municipality at a time and in a format requested by that governing body by all boards, authorities, committees, and commissions with members appointed by the governing body before the governing body's approval of the budget and tax levy.
78. To expend city funds as a donation for a capital improvement project to a nonprofit health care facility within the city.

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Whenever it becomes necessary for the general welfare, public health, fire protection, or public safety to order an owner or occupant of property to do certain work provided for by ordinance, and such owner or occupant refuses to conduct or comply with such order, the work may be done by the municipality and the owner or occupant of such property billed for the same by the municipality, or whenever a municipality for the general welfare, public health, fire protection, or public safety establishes by ordinance and maintains and operates a garbage and rubbish collection and removal system, the cost of such service may be charged to the owner or occupant of the property served. If such bill is not paid when due, the amount thereof may be assessed against the premises on which such work is done, or for which the service is rendered, and collected and returned in the same manner as other municipal taxes are assessed, certified, collected, and returned. This section shall not be construed to limit or affect in any manner any methods which now or in the future may be used for the collection of costs incurred by the municipality for the purposes set forth in this section, but the remedies provided for herein shall be in addition to such methods.

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Every city ordinance regulating the operation or equipment of motor vehicles or regulating traffic shall apply to the private ways, streets, lanes, and alleys of mobile home parks, trailer parks, and campgrounds containing five or more lots for occupancy by mobile homes, travel trailers, or tents.

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The city council in a city operating under the council form of government and the board of city commissioners in a city operating under the commission system of government, in addition to the powers possessed by all municipalities, shall have power:

1. Street railway and railway tracks. To permit, regulate, or prohibit the locating, constructing, or laying of railway or street railway tracks in any street, alley, or public place, and any permission given to a street railway may not be for a longer period than fifty years.
2. Sale of milk. To license the sale of milk.
3. Lumber, wood, coal, hay, and merchandise - Municipal scales. To regulate the inspecting, weighing, and measuring of lumber, firewood, coal, hay, and other articles

of merchandise; establish or purchase one or more city scales and to require dealers in hay, coal, firewood, or any other commodity, which, in the judgment of the governing body, should be weighed upon the city scales, to use such scales in the sale of such commodity; and charge a reasonable fee for the use of such scales.

4. Fences and party walls. To regulate partition fences and party walls.
5. Jail, house of correction, workhouse. To establish, maintain, and regulate a city jail, house of correction, and workhouse for the confinement and reformation of disorderly persons convicted of violating any city ordinance and to appoint necessary jailers and keepers.
6. Building permits. To provide by ordinance and to fix the fees for the issuance of building permits.
7. Building construction - Fire escapes. To prescribe the manner of constructing buildings, structures, and the walls thereof, require and regulate the construction of fire escapes on buildings, and provide for the inspection of all buildings within the limits of the municipality and for the appointment of a building inspector.
8. Bridges, viaducts, tunnels, and overhead pedestrian bridges. To construct, keep in repair, and regulate the use of bridges, viaducts, overhead pedestrian bridges, and tunnels.
9. Police. To regulate the police of the municipality and to pass and enforce all necessary police ordinances.
10. Hospitals and medical dispensaries. To establish, control, and regulate hospitals and medical dispensaries.
11. Census. To provide for the taking of a census of the city, but no city census may be taken more often than once in every three years.
12. Redistricting city. To redistrict the city into wards and to prescribe the boundaries thereof.
13. Zoning. To adopt a zoning ordinance as provided in this title; regulate the location of junk shops, coalyards, garages, machine shops, power laundries, hospitals, and undertaking establishments; and establish building lines fixing the distance from the property line at which buildings may be erected.
14. Traffic regulation. To regulate, control, or restrict within designated zones, or congested traffic districts, except that the speed limit for vehicles on those streets designated as part of any state highway must be as determined by mutual agreement with the director of the department of transportation, the use of streets, alleys, or other public ways by various classes of traffic.
15. Driving while intoxicated. To prohibit by ordinance the operation of any motor vehicle or other conveyance upon the streets, alleys, or other public or private areas to which the public has a right of access for vehicular use within the city by any person under the influence of intoxicating liquor or a controlled substance.
16. Tourist camps. To license, regulate, and fix the location of any public or private tourist camp within the city.
17. Water supply. To withdraw from any stream, watercourse, or body of water within or without a city, or within or without, or bordering upon, this state, a supply of water reasonably sufficient for the needs of the inhabitants of the city, and to supply the facilities for the storage of water for all other necessary municipal purposes.
18. Dams for municipal water purposes. To erect dams upon or across streams, watercourses, or bodies of water within or without, or bordering upon, the boundaries of this state, and to improve, alter, or protect the bed, banks, or course thereof.
19. Water supply - Acquire necessary property. To acquire by gift, grant, lease, easement, purchase, or, subject to chapter 32-15, by eminent domain, and to own, operate, maintain, and improve, all lands, structures, power plants, public works, and personal property, whether within or without this state, necessary for the maintenance and conservation of its water supply.
20. Abandoned or unclaimed personal property. To provide by ordinance for the taking, storage, and disposal of any personal property abandoned or left unclaimed upon the streets, alleys, or other public ways of the city for a period exceeding ten days, and,

after holding such property for a period of not less than sixty days, to sell the same at public sale after a notice published or posted at least ten days before the sale, and at such place, and in such manner as may be provided by ordinance. Upon the sale of the property, the city shall convey to the purchaser a merchantable title by a bill of sale. At any time within six months after the sale, the owner of the property, upon written application, is entitled to receive the proceeds of the sale from the city, less the necessary expense of taking, storing, and selling the property. The owner of the property may reclaim it at any time prior to the sale upon payment of the necessary expense of taking and storing.

21. Auditoriums and public buildings. To take charge of a fully completed auditorium or other property originally purchased or acquired for public use by public subscription, donation, sale of stock, or otherwise, if such auditorium or other property has been abandoned or lost by the original owner or owners, their successors or assigns, and to operate, maintain, repair, and keep such property for public use. In the ownership, management, use, or operation thereof, the city must be deemed to be exercising a governmental function.
22. Dogs. To license dogs, and to regulate the keeping of dogs, including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public provided, however, that license fees are waived in the case of an assistance dog.
23. Substandard buildings or structures. The governing body of any city shall have the authority to provide by ordinance for the demolition, repair, or removal of any building or structure located within the limits of such city or other territory under its jurisdiction, which creates a fire hazard, is dangerous to the safety of the occupants or persons frequenting such premises, or is permitted by the owner to remain in a dilapidated condition. Any such ordinance must provide for written notice to the owner of a hearing by the governing body before final action is taken by such body. It must also provide a reasonable time within which an appeal may be taken by the owner from any final order entered by such governing body to a court of competent jurisdiction. The amount of the cost of any demolition, repair, or removal of a building or structure constitutes a lien against the real property from which the cost was incurred and the lien may be foreclosed in judicial proceedings in the manner provided by law for loans secured by liens on real property. If this amount is not adequate to cover the cost of demolition, repair, or removal, the city has a lien for the amount of the additional costs on all real property owned, or later acquired, by the owner in the city. If the city provides the amount of the lien and the name of the owner, the county auditor shall enter on the tax list the amount of the additional cost as a tax lien. The tax lien is enforceable by the city in the same manner as a tax lien by a county. This subsection in no way limits or restricts any authority which is now or may hereafter be vested in the state fire marshal for the regulation or control of such buildings or structures.
24. Assault and battery. To prohibit by ordinance and prescribe the punishment for the commission of assault and battery within the jurisdiction of the city.
25. Theft. To prohibit by ordinance and prescribe the punishment for the commission of theft, as defined by chapter 12.1-23, within the jurisdiction of the city.
26. Peace bonds. To provide by ordinance for the issuance of peace bonds by the municipal judge in accordance with the procedure in chapter 29-02.
27. Public transportation. To provide by ordinance for the purchase, acquisition, or establishment, and operation of a public transportation system. In the alternative, to provide for payments under a contract, approved by the governing body of the city, with a private contractor, for the provision and operation of a public transportation system within the city.
28. Traffic violation hearings. To enact an ordinance equivalent to section 39-06.1-04; provided, that the penalty assessed may not exceed that authorized by section 40-05-06.
29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one ounce [28.35 grams] of

marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 10 of section 19-03.1-23.

30. Establishment of administrative boards. To establish administrative boards or committees for the limited purpose of adjudicating a violation of a noncriminal city ordinance or noncriminal city code. An administrative board or committee may impose fines or other noncriminal penalties, including issuing orders of suspension and revocation of a permit or license. A decision by an administrative board or committee is subject to appeal to the governing body of the municipality.

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Repealed by S.L. 1967, ch. 293, § 5.

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1. Any city, through the enactment of an ordinance to such effect, may levy a local excise tax, not in excess of fifty percent, upon the proceeds from gross sales of liquor, as defined by subsection 6 of section 5-01-01, by any nonprofit corporation licensed by the city to sell such liquor; provided, however, that no city may levy the tax herein provided for unless such nonprofit corporation is the only person, firm, association, corporation, or limited liability company within the corporate limits of such city licensed to sell such liquor.
2. The city in levying the excise tax provided for in subsection 1 shall provide within the levying enactment a method of computation, collection, and disposition of such tax revenue, and a procedure whereby any person aggrieved by such procedure may appeal to the governing body of the city. The right of appeal from a decision of the governing body of such city to the district court of the district wherein such city is located may not be restricted. An appeal taken under this section must be in accordance with the procedure provided in section 28-34-01.

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The governing body of any city having a population of fifteen thousand or more may enact ordinances providing for the regulation and inspection of food markets, stores, and other places where food intended for human consumption is sold at retail.

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Repealed by S.L. 1967, ch. 323, § 285.

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The governing body of any city may enter into a contract with any person, partnership, association, corporation, limited liability company, or the United States or any department or agency thereof to provide for:

1. The furnishing of electrical energy or gas to the inhabitants of the city and to the city for all purposes; or
2. The sale to and the purchase by the city for a term of not to exceed ten years, of electrical energy or gas required for city purposes.

The making and execution of any such contract must be authorized by a resolution of the governing body adopted by a majority of the members thereof at a regularly assembled meeting of such body. Nothing contained in this section shall deprive the public service commission of any of its regulatory powers with reference to contract rates.

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1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed one thousand five hundred dollars, and the imprisonment may not exceed thirty days for one offense.

2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.
3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

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Repealed by S.L. 1967, ch. 323, § 285.

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No municipality shall impose any license fee or charge against the producer or grower of any agricultural product grown or produced upon lands located in this state nor in any manner limit or restrict the free sale thereof by such grower or producer. This provision, however, shall not restrict the right of any municipality to utilize any power given to it to regulate, as reasonable health measures, the inspection and sale of products intended for human consumption.

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Upon a declaration by resolution duly passed that an emergency exists and that it is desirable and necessary that firefighting apparatus and equipment be acquired for municipal purposes, the governing body of any municipality may enter into a contract or contracts for the purchase of such property. The purchase price of such property may be payable in annual installments, but all moneys paid annually under any such contract shall be available and shall be paid from the authorized tax levy of the municipality. Under this section, contracts may not be entered into which will create aggregate future obligations of the municipality in an amount in excess of one percent of the value of all taxable property within the municipality and such contracts shall not be in excess of ten thousand dollars.

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Repealed by S.L. 2015, ch. 439, § 104.

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Any city may contract with a nonprofit corporation for the provision of fire protection and firefighting services if the nonprofit corporation has been in existence and has provided fire protection and firefighting services to the contracting city for a period of not less than twenty years.

The governing body of the city may provide funding from revenues derived from its general fund levy authority for contracted fire protection services and may also expend moneys otherwise available for the provision of such service.

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In addition to the powers conferred by this title, each incorporated municipality shall have and shall exercise, within its limits and in the manner prescribed by law, the same powers as are conferred upon townships by the laws of this state.

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Any city of another state situated within five miles [8.05 kilometers] of the boundary line of this state may purchase, lease, own, and hold real estate in this state for waterworks or

sewerage purposes and may improve the land for municipal purposes in the same manner as a city situated in this state, and may lease, let, or convey the land. Any city so situated may acquire, by purchase, gift, devise, or, subject to chapter 32-15, condemnation, any property, corporeal or incorporeal within this state, as may be necessary or convenient for the construction and maintenance of an electric power transmission line, which electric power transmission line has the function of connecting a municipal power plant, owned and operated by that city, with distribution facilities owned by the government of the United States for distributing electric power generated at Garrison Dam. Such foreign city is liable for all damages growing out of or incident to the ownership, use, or occupation of any such real estate in this state as if it were a municipality of this state.

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Any city of another state authorized by section 40-05-11 to own, lease, occupy, or hold real estate in this state shall have the same right as a city of this state to sue by its corporate authorities and in its corporate name in the courts of this state for the protection of any rights acquired in real estate in this state and to defend actions in its corporate name relating to the ownership, use, or occupation of real estate acquired.

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Any real estate in this state owned by a city situated in another state may be conveyed by a warranty or quitclaim deed executed by and on behalf of such city in its corporate name by its executive officer and city auditor. The deed, when so executed and when acknowledged by the executive officer and city auditor for and on behalf of the city, before an officer competent to take acknowledgments, shall be entitled to record.

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The governing body of any municipality of ten thousand population or less and the boards of county commissioners of the several counties may enter into agreements for the construction and maintenance of streets within such municipalities by the boards of county commissioners. Said municipalities shall pay, on a reimbursable basis, such sums as are agreed upon.

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Repealed by S.L. 1973, ch. 319, § 15.

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The governing body of any city is authorized to establish or maintain programs and activities for senior citizens, including the expansion of existing senior citizen centers which will provide recreational and other leisure-time activities, informational, health, welfare, counseling, and referral services for senior citizens, and assist such persons in providing volunteer community or civic services. The governing body is authorized to expend funds received from state, federal, or private sources for the public purposes provided for in this section. No expenditure authorized by this section shall be made to defray any expenses of any organization or agency until such organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the governing body in regard to the manner in which such funds will be expended and the services to be provided. An organization or agency and its program which receives such funds shall be reviewed or approved annually by the governing body to determine its eligibility to receive funds under the provisions of this section.

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1. As used in this section, unless the context otherwise requires:
   a. "Adult bookstore" means a bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to

specified sexual activities or specified anatomical areas as defined in this subsection.

b. "Adult establishment" means either an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business, all as defined in this subsection.
c. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
d. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.
e. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
f. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
g. "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.
h. "Specified anatomical areas" means:
    (1) Less than completely and opaquely covered human genitals and pubic regions, buttocks, or female breasts below a point immediately above the top of the areola.
    (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
i. "Specified sexual activities" means:
    (1) Human genitals in a state of sexual stimulation or arousal;
    (2) Acts of human masturbation, sexual intercourse, or sodomy; or
    (3) Fondling or other erotic touchings of human genitals and pubic regions, buttocks, or female breasts.

2. A determination of preponderance need not be based on whether or not a numerical majority or plurality of the materials are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. When making a determination as to whether an establishment displays, sells, distributes, or exhibits a preponderance of materials which are so distinguished or characterized, the governing body or factfinder shall consider the totality of the circumstances and may consider, among other factors deemed relevant, any of the following:
    a. Dominant theme of the establishment.
    b. Total impression of the emphasis placed on such materials by the establishment.
    c. Externalities of the establishment, including the manner of packaging or display and advertising which demonstrates the dominant theme or emphasis being placed on such materials by the establishment.
    d. Obtrusive characteristics of the materials which tend to distract from and dominate the other classes of materials.
    e. Manner of display of the materials.
    f. Advertising emphasis.
    g. Whether the establishment prohibits minors from entering the premises or any portion thereof.
3. The governing body of any city may, by ordinance, provide that:

a. No building, premises, structure, or other facility that contains any adult establishment, as defined in subsection 1, shall contain any other kind of adult establishment.
b. No building, premises, structure, or other facility in which sexually oriented devices, as defined in subsection 1, are sold, distributed, exhibited, or contained shall contain any adult establishment, as defined in subsection 1.

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In any city with a population of not less than five thousand persons, the governing body shall, if permitted by ordinance or by law to allow more than one person or firm to contract with commercial enterprises for the private collection or removal of garbage, allow all persons or firms wishing to do so to enter into private garbage removal contracts with commercial enterprises.

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The governing body of the city may provide funding from revenues derived from its general fund levy authority for the construction, operation, or maintenance of animal shelters. Voter-approved levy authority authorized by electors of a city under this section before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first.

The levy authorized by this section may be used to defray expenses of any organization or agency incorporated under the laws of this state as a nonprofit corporation that has contracted with the governing body of the city in regard to the manner in which the funds will be expended and the services will be provided. No unclaimed dog or cat may be released for adoption by an animal shelter that receives funds from the levy under this section without being first sterilized, or without a written agreement and deposit from the adopter guaranteeing that the animal will be sterilized.

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The governing body of any city or park district may establish or maintain programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. The governing body may provide funding from revenues derived from its general fund levy authority and may expend funds received from state, federal, or private sources for the public purposes provided for in this section. No expenditure may be made to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the governing body in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives the funds must be reviewed or approved annually by the governing body to determine its eligibility to receive funds under this section.

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Repealed by S.L. 2011, ch. 54, § 15.

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The governing body of a city may allow by an ordinance the operation of golf carts on the city streets. The ordinance may not allow a golf cart on federal, state, or county highways in the city, except for the perpendicular crossing of these highways. The ordinance may not allow the operation of a golf cart on city streets except for daytime travel between the owner's place of residence and a golf course. Golf carts that are allowed to operate on the city streets as the result of an ordinance are exempt from the title, registration, and equipment provisions of title 39.

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Notwithstanding any other law, a city may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

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1. Notwithstanding any other provision of law, before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of a city shall send the chairman of each county commission and the president of each school district affected by the property tax incentive a letter, by certified mail, which provides notice of the terms of the proposed property tax incentive.
2. Within thirty days from receipt of the letter, each affected county and school district shall notify the city, in writing, whether the county or school district elects to participate in granting the tax incentive on the county or school district portion of tax levied on the property. The notification from a county or school district electing not to participate must include a letter explaining any reason for which the entity elected not to participate and whether the county or school district is willing to negotiate the terms of the property tax incentive with the city.
3. If the city does not receive a response from an affected county or school district within thirty days of delivery of the letter, the county and school district must be treated as participating in the property tax incentive.
4. The term "negotiation" as used in this section means the governing body of an affected county or school district may negotiate the terms of participating in the tax incentive, including the duration of the tax incentive and the taxable value selected for the base year for purposes of computing tax increments.
5. If an agreement is reached through negotiation under this section, the property tax incentive must be applied in accordance with the agreement.
6. Property subject to a development agreement entered pursuant to section 40-58-20.1 before August 1, 2017, and all amendments to the development agreement, is not subject to the requirements under this section. (Effective for property tax incentives approved after July 31, 2017)

CHAPTER 40-11
ORDINANCES

40-11-01. Enacting clause for ordinances.

The enacting clause of every ordinance adopted by a municipal corporation shall be: "Be it ordained by the _____ (governing body) of the city of _____." Such caption, however, may be omitted when the ordinances are published in book form or are revised and digested.

40-11-02. Procedure in passing ordinances.

All ordinances shall be read twice and the second reading and final passage shall not be had in less than one week after the first reading. After the first reading and before final passage, an ordinance may be amended. Except as otherwise specifically provided, a majority of all of the members of the governing body must concur in the passage of an ordinance and in the creation of any liability against the city and in expending or appropriating money.

40-11-03. Yea and nay vote on passage - When required.

The yeas and nays shall be taken and entered on the journal of the governing body's proceedings upon the passage of all ordinances and upon all propositions creating any liability against the city or providing for the expenditure or appropriation of money, and in all other cases at the request of any member.

40-11-04. Ordinance required for the transfer of property.

Every municipality shall enact an ordinance providing for the conveyance, sale, lease, or disposal of personal and real property of the municipality. When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, the property may be sold only at public sale or as provided under section 40-11-04.2. This section and sections 40-11-04.1 and 40-11-04.2 do not apply to a lease by a municipality to the state, or any agency or institution of the state, of any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any real property related thereto pursuant to subsection 5 of section 40-33-01 or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19.

40-11-04.1. Real property transfer requirements.

Upon resolution by the governing body of a city authorizing the public sale of real property, a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held shall be published in the city's official newspaper as provided in section 40-01-09 once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the governing body of the city. The property advertised shall be sold to the highest bidder if that person's bid is deemed sufficient by a majority of the members of the governing body.

40-11-04.2. Transfer of real property by nonexclusive listing agreements.

As an alternative to the procedure established under section 40-11-04.1, the governing body of a city may by resolution describe the real property of the city which is to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the city reserves the right to reject any and all offers determined to be insufficient. After adoption of the resolution, the governing body of a city may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements.

40-11-05. Ordinances and resolutions adopted in council cities - Mayor's veto power - Reconsideration after veto.

An ordinance or resolution adopted by the city council of a city operating under the council form of government is not enacted until the ordinance or resolution is approved by the mayor or passed over the mayor's veto. An ordinance or resolution passed by the governing body of a city operating under the council form of government must be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves the ordinance or resolution, the mayor shall sign the ordinance or resolution. An ordinance or resolution not approved by the mayor must be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the council occurring not less than five days after the passage of the ordinance or resolution. The veto may extend to an entire ordinance or resolution or to any one or more items or appropriations contained in any ordinance or resolution making an appropriation. If a veto extends to only a part of an ordinance or resolution, the residue takes effect. If the mayor fails to return any ordinance or resolution with the mayor's objections within the time specified in this section, the mayor is deemed to have approved the ordinance or resolution. Any veto of an ordinance or resolution may be overridden by the city council, if two-thirds of its members pass a motion to override the veto. Upon such action, the ordinance or resolution is effective notwithstanding the veto. The vote to pass an ordinance or resolution over the mayor's veto must be taken by yeas and nays and entered in the journal.

40-11-06. Publication of ordinances.

The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment, or forfeiture for a violation of its provisions, after the final adoption of the ordinance, shall be published in one issue of the official newspaper of the city.

40-11-07. Effective date of ordinances.

Ordinances finally approved by the governing body of a municipality and which require publication shall take effect and be in force from and after the publication thereof unless otherwise expressly provided in the ordinance. Ordinances which do not require publication shall take effect and be in force from and after the final approval thereof unless otherwise expressly provided therein.

40-11-08. Ordinance book required - Ordinance book and certified copies of ordinances as evidence.

Each municipality shall keep an ordinance book. The city auditor shall record in such book all ordinances finally passed and approved, and when any ordinance has been published, the city auditor shall record therein the affidavit of publication or of posting. The ordinance book, or copies of ordinances as recorded therein, certified by the city auditor, shall be received as evidence without further proof. If the ordinances of a municipality have been printed in book or pamphlet form by authority of the governing body of the municipality, such book or pamphlet shall be received as evidence of the existence of the ordinances therein contained.

40-11-09. Enactment and revision of ordinances.

The executive officer of a municipality may appoint, by and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body, for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, shall be appointed as one of the persons to prepare and submit such ordinance. The compensation of the revisor or revisors, including that of the attorney, shall be determined by the governing body and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting.

40-11-09.1. Presumption of regular adoption, enactment, or amendment of resolution or ordinance.

Three years after the adoption or amendment of a resolution or the enactment or amendment of an ordinance by the governing body of a city it is conclusively presumed that the resolution or ordinance was adopted, enacted, or amended and published as required by law.

40-11-10. Action for violation of ordinance in corporate name - Previous prosecution, recovery, or acquittal no defense.

Any action brought to recover any fine, to enforce any penalty, or to punish any violation of an ordinance of any municipality shall be brought in the corporate name of the municipality as plaintiff. A prosecution, recovery, or acquittal for the violation of any such ordinance may not constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, notwithstanding that the different claims for relief existed at the time of the previous prosecution and if united, would not have exceeded the jurisdiction of the court.

40-11-11. Summons to issue on violation of ordinance - When warrant of arrest to issue.

In all actions for the violation of an ordinance, the first process shall be a summons, but a warrant for the arrest of the offender shall be issued upon the sworn complaint of any person that an ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty of such violation. Any person arrested under a warrant shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

40-11-12. Commitment of guilty person for nonpayment of fines or costs.

Any person upon whom any fine or costs, or both, has been imposed for violation of a municipal ordinance may, after hearing, be committed upon order of the court to jail or other place provided by the municipality for the incarceration of offenders until the fine or costs, or both, are fully paid or discharged by labor as provided in section 40-18-12. The court may not commit a person under this section when the sole reason for the person's nonpayment of fines or costs, or both, is the person's indigency. An order of commitment under this section shall not be for a period in excess of thirty days. As used in this section, "fine" does not include a fee established pursuant to subsection 2 of section 40-05-06.

40-11-13. Fines and forfeitures for violation of ordinances paid into treasury.

All fines, penalties, and forfeitures collected for offenses against the ordinances of a city, including those fines, penalties, and forfeitures collected as a result of a judgment of a district court rendered pursuant to section 40-18-19, must be paid into the city's treasury at such time and in such manner as may be prescribed by ordinance.

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For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

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For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section 23.1-04-04.

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1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
   (1) One mile [1.61 kilometers] if the city has a population of fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
   (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
   (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.

   b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.

   c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.

2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications

and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.

3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city.

The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
   a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
   b. The proximity of the land in dispute to the corporate limits of each city involved;
   c. The proximity of the land in dispute to developed property in the cities involved;
   d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
   e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
   f. The growth pattern of the cities involved in the dispute; and
   g. Any other factor determined to be relevant by the administrative law judge.
8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
10. For the purposes of this section, a section or a quarter quarter section is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

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The zoning commission or governing body may not require as a condition of approval of a request to amend or modify a zoning regulation the execution of an agreement by the owner of the property requesting the amendment or modification stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile [.40 kilometer] of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

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The governing body may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter, and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within such districts. All regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

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The regulations provided for in this chapter shall be made in accordance with a comprehensive plan and shall be designed to:

1. Lessen congestion in the streets;
2. Provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Prevent the overcrowding of land;
6. Avoid undue concentration of population; and
7. Facilitate adequate provisions for transportation, water, sewage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration as to the character of each district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

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1. The governing body of a city which uses zoning regulations shall provide for the manner in which the regulations and restrictions must be established, enforced, or supplemented, and for the manner in which the boundaries of the districts must be established and from time to time changed. A copy of each proposed regulation, restriction, or boundary must be filed with the city auditor. No regulation, restriction, or boundary may become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice must contain the following items:
   a. The time and place of the hearing.
   b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.

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 city auditor.

2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall cause notice of the same to be published in the official newspaper of the city. The notice must describe the nature, scope, and purpose of the regulation, restriction, or boundary and must state the times at which it will be available to the public for inspection and copying at the office of the city auditor.
3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

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Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending one hundred fifty feet [45.72 meters] from the area to be changed, excluding the width of streets,

the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city. The provisions of section 40-47-04 relating to public hearings, official notice, and publication of regulations, restrictions, and boundaries shall apply equally to all changes or amendments provided in this section; provided, that protests in writing must be filed with the city auditor prior to the time set for the hearing.

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The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. In addition to the members appointed by the city, the zoning commission shall include at least one person residing outside of the corporate limits of a city having a population of less than five thousand, two persons residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three persons residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

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The governing body may provide for the appointment of a board of adjustment consisting of five members, each member to be appointed for a term of three years. The board of adjustment

shall hear and decide appeals from and shall review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this chapter. It shall hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Upon request of the board, the governing body shall have the right to appoint an alternate member of said board of adjustment, who shall sit as an active member when and if a member of said board is unable to serve at any hearing.

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An appeal to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city. The appeal shall be taken within the time prescribed by rule of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken forthwith shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

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The board of adjustment shall fix a reasonable time for the hearing of the appeal and shall give due notice thereof to the parties. It shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board may reverse or affirm, in whole or in part, or may modify, the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end, the board shall have all the powers of the officer from whom the appeal is taken. If there is practical difficulty or unnecessary hardship in the way of carrying out the strict letter of the ordinance, the board, in passing upon an appeal, may vary or modify any of the regulations or provisions of the ordinance relating to the use, construction, or alteration of buildings or structures or the uses of land so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

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An appeal to the board of adjustment stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay, in the officer's opinion, would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order which may be granted by the board of adjustment or by a court of record on application and on due cause shown after notice to the officer from whom the appeal is taken.

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Every decision of the board of adjustment is subject to review in the following manner:

1. A decision of the board of adjustment may be appealed to the governing body of the city by either the aggrieved applicant or by any officer, department, board, or bureau of the city. The appeal must be filed with the city auditor within fifteen days after notice of the decision of the board of adjustment. The governing body of the city shall fix a time, within thirty days, for the hearing of the appeal and shall give due notice of the hearing to the parties. The governing body of the city shall decide the appeal within a reasonable time. Any party may appear in person or by agent or by attorney at the hearing of the governing body on the appeal. The governing body of the city may reverse or affirm the decision of the board of adjustment, in whole or in part, or may modify the order, decision, or determination appealed.

2. A decision of the governing body of the city on an appeal from a decision of the board of adjustment may be appealed to the district court in the manner provided in section 28-34-01.

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If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under the authority conferred by this chapter, the proper local authorities of the city, in addition to other remedies, may institute any appropriate action or proceeding:

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

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If the regulations made under the authority of this chapter require a greater width or size of yards or courts, or require a lower height of building or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under the authority of this chapter shall govern. If the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under the authority of this chapter, the provisions of such statute or local ordinance shall govern.

CHAPTER 40-48
MUNICIPAL MASTER PLANS AND PLANNING COMMISSIONS

40-48-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Street" includes streets, highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements and rights of way, and other ways.
2. "Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

40-48-02. Official master plan may be established - Filing - Effect - Purpose.

Any municipality, by an ordinance of its governing body, may establish an official master plan of the municipality. Such ordinance shall make it the duty of some appropriate official or employee of the municipality to file for record immediately, with the recorder of the county in which the area covered by the plan is situated, a certificate showing that the municipality has established an official master plan. Such plan shall be final and conclusive with respect to the location and width of streets, ways, plazas, open spaces, and public easements, and the location of parks and playgrounds, and the establishment of public rights in lands shown thereon. The official master plan is declared to be established to conserve and promote the public health, safety, and general welfare of the municipality.

40-48-03. Planning commission - Creation - Members - Ex officio members.

The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. In addition to the members appointed by the city, the planning commission shall include at least one person residing outside of the corporate limits of a city having a population of less than five thousand, two persons residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three persons residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such subdivision authority is to be exercised and shall reside within the territorial limits of the subdivision regulation authority exercised by the city, if such persons are available and will serve on the planning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. The executive officer, the engineer, and the attorney of the city shall be ex officio members of the commission.

40-48-04. Terms of members of commission - Vacancies.

The present members of the commission shall hold office for the balance of their tenure. Of the members of the commission newly appointed, pursuant to this chapter, the first member appointed, if one be appointed, shall hold office for the term of one year, if a second member is appointed that member shall hold office for the term of two years, if a third member is appointed that member shall hold office for the term of three years, if a fourth member is appointed that member shall hold office for the term of four years, and if a fifth member is appointed that member shall hold office for the term of five years from and after that member's appointment. Thereafter, the members shall be appointed for terms of five years. The terms of the ex officio members of the commission shall correspond to their respective official tenures. If a vacancy

occurs otherwise than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term.

40-48-05. Traveling expenses.

When duly authorized by the commission, members thereof may attend planning conferences or meetings of planning institutes or hearings upon pending legislation, and the commission may pay the reasonable traveling expenses incident to such attendance pursuant to a resolution spread upon its minutes.

40-48-06. President of commission - Meetings - Record to be kept - Appointment officers and employees - Power to contract.

The planning commission shall elect its president for a term of one year from among the appointed members. The commission shall hold at least one regular meeting in each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, and such record shall be a public record. The commission may appoint such officers and employees as it may deem necessary for its work, and the appointment, promotion, demotion, and removal of such officers and employees shall be subject to the same provisions of law as govern other corresponding civil employees. The commission may contract with architects, city planners, engineers, and other consultants for such services as it may require.

40-48-07. Limitations on expenditures of commission - Tax levy authorized.

The expenditures of the planning commission, exclusive of gifts, must be within the funding provided from revenues derived from the general fund levy authority of the governing body of the municipality. The governing body shall provide the funds, equipment, and accommodations it deems necessary for the commission's work.

40-48-08. Master plan - Adoption - Contents - Part of plan may be published - Amending.

The planning commission shall make and adopt a master plan for the physical development of the municipality and of any land outside its boundaries which, in the commission's judgment, bears a relation to the planning of the municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of the territory, including:

1. The general locations, character, and extent of streets, waterways, waterfronts, playgrounds, plazas, squares, and open spaces, parks, aviation fields, and other public ways and grounds;
2. The general location of public buildings and other public property;
3. The general location and extent of public utilities and terminals whether publicly or privately owned or operated;
4. The removal, relocation, widening, narrowing, vacation, abandonment, change of use, or extension of any of the foregoing ways, grounds, open spaces, buildings, property, terminals, or utilities; and
5. Other matters authorized by law.

The commission, from time to time, may adopt and publish a part of the plan covering one or more major sections or divisions of the territory under its jurisdiction or one or more of the subjects set out in this section or other subjects. The commission, from time to time, may amend, extend, or add to the master plan.

40-48-09. Surveys and studies made before making plan - Purpose of plan.

In the preparation of the master plan, the planning commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs, which, in accordance with present and future needs, best will

promote the amenities of life, health, safety, morals, order, convenience, prosperity, and general welfare as well as efficiency and economy in the process of development, including adequate provision for light and air, distribution of population, good civic design and arrangement, wise and efficient expenditure of public funds, the adequate provision of public utilities and other public requirements, the improvement and control of architecture, and the general embellishment of the area under its jurisdiction.

40-48-10. Hearing on plan before adoption by commission - Resolution to adopt - Action recorded on plan and maps - Governing body to receive copy of plan.

Before adopting the master plan or any part of it or any substantial amendment thereof, the planning commission shall hold at least one public hearing thereon. Notice of the time of such hearing shall be given by one publication in the official municipal newspaper. The adoption of the plan, or of a part thereof or amendment thereto, shall be by a resolution of the commission carried by the affirmative votes of not less than two-thirds of the members thereof. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan or amendment. The action taken by the commission shall be recorded on the map, plan, and descriptive matter by the identifying signature of the secretary of the commission. An attested copy of the master plan shall be certified to the governing body of the municipality.

40-48-11. Hearing on plan by governing body - Notice - Changes in plan - Notice to planning commission - Disapproval of changes.

Upon receipt of an attested copy of the master plan or of any part thereof after the adoption thereof by the planning commission, the governing body shall hold a public hearing thereon. At least ten days' notice of such hearing shall be published in the official municipal newspaper. No change or addition to the master plan or any part of it as adopted by the planning commission shall be made by the governing body until the proposed change or addition shall have been referred to the planning commission for report thereon and an attested copy of the commission's report is filed with the governing body. The failure of the planning commission to report within thirty days after the date of the request for the report by the governing body shall be deemed to be an approval by the commission of the additions or changes. If the additions or changes are disapproved by the commission, a two-thirds vote of the entire governing body shall be necessary to pass any ordinance overruling such disapproval.

40-48-12. Permission to construct when plan adopted - Disapproval of permission - Overruling - Failure to act on permission.

When the governing body shall have adopted the master plan of the municipality or any major section or district thereof, no street, square, park, or other public way, ground, or open space, or public building or structure shall be constructed or authorized in the area shown on the master plan until the location, character, and extent thereof shall have been submitted to and approved by the planning commission. In case of disapproval thereof, the commission shall communicate its reasons to the governing body, which may overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground, space, building, or structure is one the construction, financing, or authorization of which does not fall within the province of the governing body, the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than two-thirds of its membership. The failure of the commission to act upon such submission within sixty days from and after the date of the official submission to the commission shall be deemed to be an approval.

40-48-13. Miscellaneous duties of planning commission.

The planning commission shall:

1. Recommend to the appropriate public officials, from time to time, programs for specific improvements and for the financing thereof.

2. Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens relative to the carrying out of the plan.

40-48-14. Miscellaneous powers of planning commission.

The planning commission may:

1. Promote public interest in and understanding of the master plan, and for that purpose, it may publish and distribute copies of the plan or of any part thereof or of any report, and may employ such other means of publicity and education as it may determine.
2. Accept and use gifts for the exercise of its functions.
3. By its members, officers, and employees in the performance of their functions, enter upon any land and make examinations and surveys thereof and place and maintain necessary monuments or marks thereon.
4. Exercise such other powers as may be necessary to enable it to fulfill its functions and carry out the provisions of this chapter.

40-48-15. Public officials to cooperate with planning commission.

All public officials, upon request, shall furnish to the planning commission, within a reasonable time after such request, such information as the commission may require in connection with its work.

40-48-16. Governing body may add to or change master plan - Notice.

Whenever the governing body of the municipality may deem it for the public interest, it may change or add to the official master plan by laying out new streets, improvements, or conveniences mentioned in this chapter or by widening, enlarging, closing, or abandoning existing streets, improvements, or conveniences. At least ten days' notice of a public hearing on any proposed action with reference to such change in the official master plan shall be published in the official newspaper of the municipality. Before any such addition or change is made, the matter shall be referred to the planning commission for report thereon as provided in section 40-48-11. Such additions and changes, when adopted by an ordinance of the governing body, shall become a part of the official master plan of the municipality and shall be deemed to be final and conclusive with respect to all matters shown thereon. The layout, widening, enlarging, closing, or abandoning of streets, plazas, open spaces, and parks or playgrounds by the municipality under provisions of the laws of this state other than those contained in this chapter shall be deemed to be a change or addition to the official master plan and shall be subject to all the provisions of this chapter.

40-48-17. Submission of matters to planning commission before governing body takes action thereon.

The governing body creating the planning commission, by a general or special rule, may provide for the reference of any other matter or class of matters to the commission before final action is taken thereon by the governing body, or by the municipal officer having the final authority thereon, with the provision that final action shall not be taken thereon until the planning commission has submitted its report or has had a reasonable time, as fixed in said rule, to do so. The planning commission may make such investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the municipality as to it seems desirable, but the total expenditures of the board in such matters shall not exceed the funds available therefor.

40-48-18. Extraterritorial subdivision regulation - Mediation - Determination by administrative law judge.

1. A city may, by ordinance, extend its regulation of subdivisions beyond its corporate limits to the same extent as a city is authorized to extend its zoning authority under section 40-47-01.1.

2. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial subdivision regulation authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial subdivision regulation authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial subdivision regulation authority of a city, and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
3. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial subdivision regulation authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 2 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed subdivision regulation, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the subdivision regulation authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
   a. The proportional extraterritorial subdivision regulation authority of the cities involved in the dispute;
   b. The proximity of the land in dispute to the corporate limits of each city involved;
   c. The proximity of the land in dispute to developed property in the cities involved;
   d. Whether any of the cities has exercised extraterritorial subdivision regulation authority over the disputed land;
   e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
   f. The growth pattern of the cities involved in the dispute; and
   g. Any other factor determined to be relevant by the administrative law judge.

40-48-18.1. Agreements to not oppose annexation void.

The planning commission or governing body may not require as a condition of approval of a request for approval of a plat the execution of an agreement by the owner of the property requesting the approval stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile [.40 kilometer] of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

40-48-19. Major street plan adopted by commission - Filing and approval of plat.

Whenever a planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of a part thereof, and shall have filed a certified copy of such plan in the office of the recorder of the county in which such territory or part is located, no plat of a subdivision of land within such territory or part thereof shall be filed or recorded until it shall have been approved by such planning commission and such approval shall have been entered in writing on the plat by the chairman or secretary of the commission.

40-48-20. Regulations governing subdivision of land - Contents - Hearing - Publication - Filing regulations.

Before exercising the powers referred to in this chapter, the planning commission shall adopt general regulations governing the subdivision of land within its jurisdiction to provide:

1. For the proper arrangement of streets in relation to other existing and planned streets and to the master plan; and
2. For adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air, for the avoidance of congestion of population, and for easements for building setback lines or for public utility lines.

Such regulations may include requirements as to the minimum width and area of building lots, the extent to which streets and other public ways shall be graded and improved, and to which water and sewer and other utility mains or other facilities shall be installed as a condition precedent to the approval of the plat. Before the adoption of such regulations, a public hearing shall be held thereon. All such regulations shall be published as provided by law, and a copy thereof shall be certified by the governing body of the municipality and filed for record by the commission with the recorders of the counties in which the commission and territory are located.

40-48-21. Approval of plats by commission - Hearings - Notice - Effect.

Within thirty days after the submission of a plat, the planning commission shall approve or disapprove the plat. If the plat is not approved or disapproved within that time, the plat is deemed to have been approved, and a certificate to that effect must be issued by the commission on demand. The applicant, however, may waive the requirement that the commission act within thirty days and may consent to an extension of the period. The commission shall state the grounds upon which any plat is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission. Any plat submitted to the commission must contain the name and address of an individual to whom notice of a hearing must be sent. No action may be taken by the commission upon any plat until the commission has afforded a hearing thereon. At least five days before the date fixed for the hearing, a notice of the time and place of the hearing must be sent by registered mail to the address shown on the plat. Public notice of all hearings also must be given. Every plat approved by the commission may be adopted by the commission as an amendment of or addition to the master plan without further hearing.

40-48-22. Items considered in approving plat - Notations made on plat - Deed delivered to municipality or county.

Before the approval of a plat, the planning commission and the governing body shall take into consideration the prospective character of the development of the area included in the plat and of the surrounding territory. The owner of the land or the owner's agent who files the plat may add as a part of the plat a notation to the effect that no offer or dedication of the streets, parks, or playgrounds shown thereon, or of any of them, is made to the public. The owner or the owner's agent may show by a dotted line on the plat the dedication of an easement for building setback lines or for use in establishing public utility lines. At the time of the filing of the plat, the planning commission or the governing body may require that a deed to the fee for streets or other areas offered for dedication to the public on said plat be delivered to the municipality or county, as the case may be, where the same are located.

40-48-23. Penalty for transfer of lots in unapproved subdivision - Injunction - Civil action.

Any owner, or the agent of any owner, of land located within the territory of a subdivision that is subject to the approval of a planning commission or governing body of a municipality who transfers, sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of a plat of a subdivision, or by any other use thereof, before such plat has been approved by the planning commission and governing body and recorded as approved in the office of the appropriate recorder, shall forfeit and pay a penalty of one hundred dollars for each lot or parcel transferred or sold or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer, sale, or agreement by an action for injunction, or it may recover the penalty by a civil action.

40-48-24. Improvements in unapproved streets.

The municipality shall not accept, lay out, open, improve, grade, pave, or curb any street, or lay or authorize the laying of sewers or connections in any street or right of way within any portion of territory for which the planning commission shall have adopted a major traffic street plan unless such street:

1. Shall have been accepted or opened as, or otherwise shall have received the legal status of, a public street prior to the adoption of such plan; or
2. Corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street map made and officially adopted by the commission.

The governing body, however, may accept any street not shown or not corresponding with a street on the official master plan or on an approved subdivision plat or an approved street map if the ordinance or other measure accepting such street first is submitted to the planning commission for its approval, and, if approved by the commission, it is enacted or passed by not less than a majority of the entire membership of the governing body, or, if disapproved by the commission, it is enacted or passed by not less than two-thirds of the entire membership of the governing body. A street approved by the planning commission upon submission by the governing body or a street accepted by a two-thirds vote of the governing body after disapproval by the planning commission shall have the status of an approved street as fully as though it originally had been shown on the official master plan or on a subdivision plat approved by the planning commission or originally had been mapped by the commission.

40-48-25. Erection of buildings on unapproved streets.

After the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of any part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor, unless the street giving access to the lot upon which it is proposed to place such building shall have been accepted or opened as is provided in section 40-48-24. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and to be removed.

40-48-26. Exclusive jurisdiction of planning commission - Exception.

After the adoption of a major traffic street plan by any planning commission, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, except as otherwise provided in section 40-48-18.

40-48-27. Interpretation of harmonious and conflicting statutes.

All statutory control over plats or subdivisions of land granted by other statutes, insofar as such control is in harmony with the provisions of this chapter, shall be deemed transferred to the planning commission, and insofar as such control is inconsistent with the provisions of this

chapter, the provisions of this chapter shall govern in a municipality which has established a planning commission.

40-48-28. Maps showing reservations and future acquisitions for streets - Hearing - Notice - Approval by governing body - Modifications - Filing.

After it has adopted any part of a master plan for any part of the territory within its planning jurisdiction, the planning commission may make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets shown in any portion of such master plan and may make a map of the land thus surveyed showing precisely the land which it recommends to be reserved for future acquisition for public streets. Before adopting any such map, the planning commission shall hold a public hearing thereon. A notice of the time and place of the hearing, with a general description of the district or area covered by the map, shall be given not less than ten days previous to the time fixed for the hearing by one publication in the official newspaper of the municipality if the district or area affected is within the municipality, and in a newspaper of general circulation in the county if the district or area affected is outside of the municipality. After such hearing, the commission may transmit the map as originally made, or as modified by it, to the governing body together with the commission's estimate of the time or times within which the lands shown on the map as street locations should be acquired by the municipality. The governing body, by resolution, may approve and adopt or may reject such map, or it may modify the map with the approval of the planning commission, or in the event of the planning commission's disapproval, the governing body by a favorable vote of not less than two-thirds of its entire membership, may modify such map and adopt the modified map. In the resolution adopting the map, the governing body shall fix the period of time for which the street locations shown upon the map shall be deemed reserved for future taking or acquisition. The city auditor shall file for record an attested copy of the map with the recorder of each county in which the mapped land is located and shall retain one copy for examination by the public.

40-48-29. Effect of approval and adoption of map.

The approval and adoption of a map as provided in section 40-48-28 shall not be deemed the opening or establishment of any street or the taking of any land for street purposes or for public use or as a public improvement, but shall operate solely as a reservation of the street location shown on the map for the period specified in the resolution for future taking or acquisition for public use.

40-48-30. Commission may secure releases of claims for damages or compensation - Effect.

The commission, at any time, may negotiate for or secure from the owner or owners of any lands described in any map releases of claims for damages or compensation for the reservations shown in the resolution adopting such map or agreements indemnifying the municipality or county from such claims by others. Such releases or agreements shall be binding upon the owner or owners executing the same and upon their successors in title. The commission, however, shall not make awards or fix compensation.

40-48-31. Modification of street lines - When allowed - Agreement - Approval of new map - Filing map - Abandoning reservation.

At any time after the filing of a map of the kind described in section 40-48-28 for record with the recorder and during the period specified for the reservation, the planning commission and the owner of any land containing a reserved street location may agree upon a modification of the location of the lines of the proposed street. Such agreement shall include a release by the owner of any claim for compensation or damages by reason of such modification. Thereupon, the commission may make a map corresponding to the modification and transmit the map to the governing body. If the modified map is approved by the governing body, the city auditor shall file for record an attested copy thereof with the recorder, and the modified map shall take the place

of the original map. The governing body, by resolution, may abandon any reservation at any time. Any such abandonment shall be filed for record with the recorder.

40-48-32. Resolution adopting street map - When effective - Notice - Contents - Protest.

The resolution of the governing body adopting any street map provided for in section 40-48-28 shall provide that it shall not become effective for forty days, and shall provide further that it shall not become effective until a notice of the adoption of such resolution has been published once each week for four successive weeks in the official newspaper of the city as provided by section 40-01-09. The resolution and the notice shall state a time within which the owners of property lying within or immediately adjoining the lines of the proposed future street opening or widening, or between any future street line and the street nearest the public highway may protest in writing against the adoption of the future street lines.

40-48-33. Examination of protests by engineer and attorney - Hearing - Notice.

Upon the receipt of any protests within the time fixed by the resolution and the notice, the governing body may cause the same to be examined by its engineer and by its attorney and shall set a time for the hearing of the same. Notice of the hearing shall be given to each protestant at that person's address, which shall be stated in the protest.

40-48-34. Granting or denying protests - When resolution effective.

Upon the hearing of any protest, the governing body may grant or deny the same except that it shall not deny the written protests of the owners of a majority of the area of property lying within any proposed street to be opened or of a majority of the owners of the frontage of a street to be widened and upon which a future street line is established except by a four-fifths vote of such governing body. The governing body may grant or sustain protests as to the entire proposed future street line or lines or only as to a portion thereof. The governing body may deny the protest or protests as to any portion of such proposed future street line or lines concerning which a protest is not granted or sustained. Upon the denial of any such protest, the resolution shall become effective immediately. If no protests are filed, such resolution shall take final effect at midnight of the last day for filing protests.

40-48-35. Resolution and map recorded upon adoption.

Whenever any resolution adopting a street map shall have become final, the city auditor shall record in the office of the recorder of the appropriate county a notice referring to the resolution by number and other appropriate description, including the date of its adoption, and setting forth a description of the property contained within the proposed opening and widening lines or between the future street lines and the nearest public highway, together with a copy of the map showing any such line or lines.

40-48-36. Protest against resolution as a taking of property.

If any owner of property lying within any lines for the proposed opening and widening, or the opening and widening of any street, or between any future street line and the nearest public highway, shall claim that the adoption of any resolution or ordinance or the refusal to issue a building permit to the owner or the prohibition of building or construction by the owner shall constitute a taking of the owner's property by the municipality, said owner, within three months after the recording in the office of the appropriate recorder of the notice provided in section 40-48-35, may file with the governing body a protest against the alleged taking of the owner's property and a demand that the municipality adopting such resolution either vacate the same as to the property of such owner, or compensate the owner therefor, or commence the condemnation thereof within three months after the filing of the owner's written protest and claim. If the municipality shall fail to vacate such resolution as to the property of the protesting owner, or to compensate the owner for the right to construct any building, fence, or other structure, or to commence proceedings for the condemnation thereof within three months after

the receipt of such written protest and demand, such resolution shall be vacated automatically and annulled as to the property of such protesting owner.

40-48-37. Failure to file claim is waiver.

Any owner of property lying within any of the lines set forth or described as future street lines in any resolution adopted as provided for in this chapter who shall fail, within the time specified, to file a protest and claim shall be deemed conclusively to have waived any such claim, but that person shall not be deemed to have waived any title to the property within any such future street line or lines or any interest therein other than the right to erect or construct thereon any building, fence, or other structure.

40-48-38. Penalty for violations.

A person who violates any of the provisions of this chapter shall be guilty of a class A misdemeanor.

CHAPTER 40-50.1
PLATTING OF TOWNSITES

40-50.1-01. Laying out townsites, additions, and subdivisions - Survey and plat required - Contents of plat.

Any person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land shall cause the land to be surveyed and a plat made of the land. The written plat must comply with the following:

1. The plat must describe particularly and set forth all the streets, alleys, and public grounds, and all outlots or fractional lots within or adjoining the townsite or jurisdiction, together with the names, widths, courses, boundaries, and extent of all such streets, alleys, and public grounds, and giving the dimensions of all lots, streets, alleys, and public grounds.
2. All lots and blocks, however designated, must be numbered in progressive numbers and their precise length, width, and area be stated on the map or plat. The streets, alleys, or roads which divide or border the lots must be shown on the map or plat.
3. The plat must indicate that all outside boundary monuments have been set and indicate those interior monuments that have been set. There must be shown on the plat all survey and mathematical information, including bearings and distances, and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines appearing on the plat. All interior lot lines and exterior boundary lines of the plat must be correctly designated on the plat and show bearings on all straight lines, or angles at all angle points, and central angle, radius, and arc length for all curves. All distances must be shown between all monuments as measured to the hundredth of a foot [0.3048 centimeter]. All lot distances must be shown on the plat to the nearest hundredth of a foot [0.3048 centimeter] and all curved lines within the plat must show central angles, radii, and arc distances. A north arrow and the scale of the plat must be shown on the plat. The scale must be of a dimension that the plat may be easily interpreted. If a curved line constitutes the line of more than one lot in any block of a plat, the central angle for that part of each lot on the curved line must be shown.
4. Ditto marks may not be used on the plat for any purposes.
5. If a river, stream, creek, or lake constitutes a boundary line within or of the plat, a survey line must be shown with bearings or angles and distances between all angle points and their relation to a waterline, and all distances measured on the survey line between lot lines must be shown, and the survey line shown as a dashed line.
6. The unadjusted outside boundary survey and the plat survey data must close by latitude and departure with an error that does not exceed one part in ten thousand parts.
7. All rivers, streams, creeks, lakes, and all public highways, streets, and alleys of record must be correctly located and plainly shown and designated on the plat.
8. The names and adjacent boundary lines of any adjoining platted lands must be dotted on the plat.
9. The scale must be shown graphically and the basis of bearings must be shown. The plat must be dated as to the completion of the survey and preparation of the plat.
10. The purpose of any easement shown on the plat must be clearly stated. Building setbacks may not be shown on the plat.
11. Any plat which includes lands abutting upon any lake, river, or stream must show a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and

elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

40-50.1-02. Monuments required for survey - Destruction - Penalty.

Durable ferromagnetic monuments must be set at all angle and curve points on the outside boundary lines of the plat. The monuments must be at least eighteen inches [45.72 centimeters] in length and at least one-half inch [1.72 centimeters] in sectional dimension. Any monument of the survey must bear the registration number of the land surveyor making the survey. Any person who disturbs, removes, or destroys any survey or reference monument or landmark evidencing a property line or cornerpost is guilty of a class B misdemeanor.

40-50.1-03. Instruments of dedication - Certifying and recording plat.

The plat must contain a written instrument of dedication, which is signed and acknowledged by the owner of the land. When there is divided ownership, there must be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat must be written with black ink, not ballpoint ink. The instrument of dedication must contain a full and accurate description of the land platted. The registered land surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correct and monuments are placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat. The dedication and certificate must be sworn to before an officer authorized to administer an oath. The plat must be presented for approval to the governing body affected by the plat, together with a copy of a title insurance policy or an attorney's opinion of title, running to the benefit of the governing body affected by the plat, stating the name of the owner of record.

40-50.1-04. Recording plat.

Upon final approval of a plat under section 11-33.2-11 or 40-48-21, the subdivider shall record the plat in the office of the recorder of the county where the plat is located. Whenever plat approval is required by a jurisdiction, the recorder may not accept any plat for recording unless the plat officially notes the final approval of the governing body of the jurisdiction and acknowledgment of the planning and zoning commission.

40-50.1-05. Conveyance of land by noting or marking map or plat - Status as general warranty - Land for public use.

When the plat has been made out and certified, acknowledged, and recorded as required by sections 40-50.1-01, 40-50.1-03, and 40-50.1-04, every donation or grant to the public, or to any individual, religious society, corporation, or limited liability company, marked or noted as such on the plat or map is a sufficient conveyance to vest the fee simple title in the parcel of land as designated on the plat. The mark or note made on a plat or map is for all intents and purposes a general warranty against the donors, their heirs and representatives, to the donees or grantees for the expressed and intended uses and purposes named in the plat and for no other use or purpose. The land intended to be used for the streets, alleys, ways, or other public uses in any jurisdiction or addition thereto must be held in the corporate name of the jurisdiction in trust for the uses and purposes set forth and expressed and intended.

40-50.1-06. Correction of plats - Declaration of necessity by resolution - Publication.

If any part of any platted addition, outlot, or parcel of ground, in any jurisdiction, is found to be inadequately or erroneously described in the plat, or if the plat is in error or is deficient as to marked or scaled distances, angles, or descriptions, or has other defects which make it incorrect or deficient, the governing body of the jurisdiction, by resolution, may declare it necessary to correct the plat or plats or to replat the property. In that case, the resolution must be published in the official newspaper of the jurisdiction at least ten days before the meeting of the governing body to consider objections to the procedure.

40-50.1-07. Resolution declaring necessity for correcting plat - Contents.

The resolution mentioned in section 40-50.1-06 must set forth:

1. The description of the property affected.
2. The nature of the errors or defects.
3. An outline of the proposed corrections.
4. An estimate of the probable cost of having the corrections made.
5. Notice that any interested owner may file objections to the proposed work or to its cost and that the objections will be heard and considered at a meeting designated for that purpose.
6. The time the governing body of the jurisdiction will meet to consider all the objections.

40-50.1-08. Governing body to order work done after hearing objections.

After all the objections filed before the meeting have been heard and considered, the governing body of the jurisdiction, if it deems the work advisable and if the owners of the majority of the property affected have not filed a protest, shall order a land surveyor registered in this state to do the work in accordance with the resolution. If no interested owner has demanded the resurvey, the jurisdiction shall pay for the resurvey.

40-50.1-09. Requirements governing land surveyor in correcting plat or in replatting - Affidavit and certification.

The land surveyor designated to make the correction or to do the replatting shall follow the original hubs, stakes, monuments, and lines, and, by actual survey and measurements on the ground, shall make the plat conform to the divisions, subdivisions, blocks, lots, outlots, pieces, and parcels of land as originally laid out. All lost or disputed points, lines, and angles must be determined by actual survey and made to conform with the original survey and must be marked on the ground in a manner customary and as is provided in sections 40-50.1-01 through 40-50.1-17. All numbers, letterings, and names of references to blocks, lots, outlots, additions, streets, avenues, and alleys must be the same as on the original plat and the revised and corrected plat must be a true plat of the survey as made originally. The registered land surveyor shall make an affidavit and certificate that the plat has been made to the best of the land surveyor's ability. The registered land surveyor shall affix that affidavit and certificate to the plat.

40-50.1-10. Filing completed plat - Publication of notice of completed plat.

The completed plat must be filed with the chief administrative officer of the jurisdiction, who shall publish a notice of the filing. The notice must stipulate that all interested parties may view the plat. The notice must set the date the governing body of the jurisdiction will meet to hear and consider objections to the survey as made and must be published at least ten days before the hearing.

40-50.1-11. Resurveys to determine merits of objections.

After hearing objections to the corrected plat, the governing body may order surveys and resurveys to determine the merit of any claim or objection. The governing body may adjourn the hearing until the necessary information is available.

40-50.1-12. Acceptance or rejection of corrected plat - Recording - Effect of corrected plat.

After completing the hearing, the governing body shall affirm or reject the corrected plat by resolution. If the plat is affirmed by a majority vote of the governing body, the plat must be recorded in the office of the recorder within sixty days and a blueprint of the plat must be filed in the office of the chief administrative officer. The plat so recorded and filed is the true and correct plat of the property described and supersedes all previous plats.

40-50.1-13. Assessment of costs of new plat - Publication of assessments - Approval of assessments.

The chief administrative officer shall assess the cost of making the plat against the properties benefited proportionally to the benefits received. The assessments are subject to the approval of the governing body of the jurisdiction after due consideration and hearing of all objections at a meeting designated for that purpose. At least ten days before the hearing, the assessments must be published in full by the chief administrative officer of the jurisdiction in the official newspaper of the jurisdiction. The chief administrative officer shall certify the assessments, when approved by the governing body.

40-50.1-14. Notice of errors on recorded plat - Certificate by original surveyor.

Notwithstanding section 40-50.1-06, if a plat, or what purports to be a plat, has been signed and filed in the office of the recorder of the county where the land is situated, and the plat fails to identify or correctly describe the land to be so platted or subdivided, or to show correctly on its face the tract of land intended or purported to be platted or subdivided, or is defective because the plat or subdivision and the description of land purported to be so platted or subdivided is inconsistent or incorrect, the registered land surveyor who prepared the plat may sign a certificate stating the nature of the error, omission, or defect and stating the information that surveyor believes corrects the error, supplies the omission, or cures the defect, referring, by correct book and page or document number, to the plat or subdivision and designating its name, if it has a name. The registered land surveyor shall date and sign the certificate.

40-50.1-15. Filing and recording of surveyor's certificate.

The recorder of the county in which the land platted or subdivided is located shall accept each certificate for filing and recording upon payment of a fee commensurate with the length of the certificate. Neither witnesses nor an acknowledgment is required on any such certificate, but it must be signed by the registered land surveyor and must include a statement that the signing surveyor holds valid registration in this state. The recorder shall make suitable notations on the record of the plat or subdivision to which the certificate refers to direct the attention of anyone examining the plat or subdivision to the record of that certificate. No such certificate has the effect of destroying or changing vested rights acquired based on an existing plat or subdivision despite errors, defects, or omissions.

40-50.1-16. Vacation of plat - Before and after sale of lots - Effect.

1. Before the sale of lots, a plat, any part of a plat, a subdivision of land, or a townsite may be vacated by the proprietors by a written instrument declaring the plat to be vacated. The instrument must be signed, acknowledged or approved, and recorded in the office in which is recorded the instrument to be vacated. The signing and recording of that instrument destroys the force and effect of the recording of the plat which is so vacated and divests all public rights in the streets, alleys, easements, and public grounds laid out as described in the plat.
2. If lots have been sold, a plat or any part of a plat may be vacated by all owners of the lots in the plat joining in the signing of the instrument declaring the vacation. Vacation of streets and public rights is not effective without endorsement by the governing body that has the power to approve the plat. The endorsement must indicate the public rights to be vacated.

40-50.1-17. Action by recorder.

The recorder shall write in plain, legible letters, in black ink that is not ballpoint ink, across that part of a plat which has been vacated the word "vacated" and shall make a reference on the plat to the volume and page or document number in which the instrument of vacation is recorded.

CHAPTER 40-51.2
ANNEXATION AND EXCLUSION OF TERRITORY

40-51.2-01. Short title.

This chapter may be cited as the Municipal Annexation Act of 1969.

40-51.2-02. Declaration of purpose.

It is hereby declared that the policies and procedures contained in this chapter are necessary and desirable for the orderly growth of urban communities in the state of North Dakota. It is the purpose of this chapter:

1. To encourage natural and well-ordered development of municipalities of the state;
2. To extend municipal government to areas which form a part of the whole community;
3. To simplify government structure in urban areas; and
4. To recognize the inter-relationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto,

and to these ends this chapter shall be liberally construed. For the purposes of this chapter, contiguity will not be affected by the existence of a platted street or alley, a public or private right of way, or a public or private transportation right of way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land to be annexed.

40-51.2-02.1. Annexation agreements.

The governing body of a city may enter a written annexation agreement with the governing body of another city regarding the annexation of property located within the extraterritorial zoning or subdivision regulation authority of the cities under chapter 40-47 or 40-48. An agreement is binding on the governing bodies of the cities for the term of the agreement unless the governing bodies agree otherwise or unless determined otherwise by an administrative law judge in accordance with this chapter. An agreement may not have a term greater than twenty years.

40-51.2-02.2. Annexation of land in the extraterritorial zoning or subdivision regulation authority of another city.

A city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city by ordinance or resolution unless:

1. Written consent is received from the governing body of the other city; or
2. The annexation is ordered by an administrative law judge in accordance with this chapter.

40-51.2-03. Annexation by petition of owners and electors.

Upon a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths in assessed value of the property in any territory contiguous or adjacent to any incorporated municipality and not embraced within the limits thereof, the governing body of the municipality, by ordinance, may annex such territory to the municipality.

40-51.2-04. Exclusion by petition of owners and electors.

Upon a petition signed by not less than three-fourths of the qualified electors and by the owners of not less than three-fourths in assessed value of the property in any territory within the limits of an incorporated municipality and contiguous or adjacent to such limits, the governing body of the municipality, by ordinance, may in its discretion, disconnect and exclude such territory from the municipality. This section, however, applies only to lands that have not been platted under either sections 40-50.1-01 through 40-50.1-17 or section 57-02-39, and where no municipal improvements have been made or constructed therein or adjacent thereto. Further, in the event any property for which exclusion is petitioned has been within the limits of an incorporated municipality for more than ten years prior thereto and, as of the time of filing the

petition, is not platted and has no municipal improvements thereon, the governing body of the municipality may disconnect and exclude such territory by ordinance from the municipality.

40-51.2-05. Notice - Petition of owners and electors - Mediation.

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has mailed at least seven days before the presentation, by certified mail, a notice of the time and place of consideration of the petition to the owner of each parcel of real property within the area described in the petition at the person's last-known mailing address. The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. At the same time, the governing body of the city also shall mail, by certified mail, the notice of the time and place of consideration of the petition to the governing body of each city, county, or township directly affected by the land area petitioned to be annexed.
2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

40-51.2-06. Petition of owners and electors - Annexation or exclusion - Classification of annexed agricultural lands for tax purposes.

If the governing body annexes the area, it shall do so by ordinance. When a copy of the ordinance and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder, the annexation becomes effective. An annexation is effective for the purpose of general taxation on and after the first day of the next January. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in the case of annexation.

40-51.2-07. Annexation by resolution of city.

1. The governing body of any city may adopt a resolution to annex contiguous or adjacent territory as follows:
   a. The governing body of the city shall adopt a resolution describing the property to be annexed.
   b. The governing body of the city shall publish the resolution and a notice of the time and place the governing body will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper once each week for two consecutive weeks. The governing body of the city shall mail at least seven days before the meeting, by certified mail, a notice to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of the resolution may file written protests with the city auditor protesting against the proposed annexation. The governing body of the city also shall mail at least seven days before the meeting, by certified mail, the notice of the time and place of the hearing to the

governing body of each city, county, or township directly affected by the land area proposed to be annexed. No state-owned property may be annexed without the written consent of the state agency or department having control of the property. The governing body of the city, at its next meeting after the expiration of the time for filing the protests, shall hear and determine the sufficiency of the protests.

c. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution becomes a part of the city. When a copy of the resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder, the annexation becomes effective. Annexation is effective for the purpose of general taxation on and after the first day of the next January. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use.

2. If the owners of one-fourth or more of the territory proposed to be annexed protest, or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests, the city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1.

40-51.2-07.1. Mediation.

The mediation committee must be comprised of a person appointed by the governor, representatives of the petitioners under section 40-51.2-03 or the protesters under section 40-51.2-07, the involved cities, counties, and townships, and any other parties having an interest in the proposed annexation. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until a resolution agreeable to all parties is reached or the mediator determines that continued mediation is no longer worthwhile.

40-51.2-08. Petition to office of administrative hearings.

If the governing body of a city involved in the dispute is not satisfied with the result of the mediation, the governing body may petition the director of the office of administrative hearings to hear the matter. If the annexation was initiated under section 40-51.2-07, the petition must include an accurate map of the area sought to be annexed, a description of the area, and the reasons for the annexation.

40-51.2-09. Administrative law judge to be appointed - Hearing set.

Upon receipt of a petition, the director of the office of administrative hearings shall appoint an administrative law judge to hear the petition. If the annexation was initiated under section 40-51.2-07, the administrative law judge shall determine whether the annexing city has substantially complied with all of the procedural requirements in the annexation process. If substantial compliance has been met, or if the annexation was initiated under section 40-51.2-03, the administrative law judge shall designate a time and place at which the petition will be heard. The time of the hearing may not be less than thirty days after receipt of the petition.

40-51.2-10. Annexation review commission - Composition.

Repealed by S.L. 1997, ch. 357, § 16.

40-51.2-11. Notice required.

At the time the administrative law judge sets the time and place of hearing, the administrative law judge shall direct the governing body of the annexing city to:

1. Publish a notice of the hearing and a copy of the petition, if the annexation was initiated under section 40-51.2-07, at least once a week for two successive weeks in the official newspaper of the city;

2. Mail a notice of the hearing and a copy of the petition, if the annexation was initiated under section 40-51.2-07, to the owner of each parcel of real property in the area to be annexed at the person's last-known mailing address;
3. Serve a copy of the notice and petition upon the chairman of the governing body of the county and township, if organized, in which the territory to be annexed lies; and
4. Serve a copy of the notice and petition upon the head of the governing body of any other city in whose extraterritorial zoning or subdivision regulation authority the land area petitioned to be annexed is located.

The hearing must be held not less than thirty days after the first publication of the notice. Proof of publication and service of the notice and petition must be filed with the administrative law judge before the time of the hearing.

40-51.2-12. Administrative law judge - Hearing.

At the time of the hearing, the administrative law judge shall hear all evidence with respect to the annexation and shall consider all studies, surveys, maps, data, reports, and other material prepared by any state or local governmental subdivision or planning or zoning commission. At the hearing, the governor's appointee who mediated the meetings under section 40-51.2-07.1 shall provide information to the administrative law judge on the proposed annexation and any proposed resolutions or recommendations made by a majority of the representatives of the interested parties. Any resident of or person owning property or having any interest in the area proposed to be annexed and any elector of the annexing city, or a representative of any such person, may appear at the hearing and present evidence upon any matter to be determined by the administrative law judge. All proceedings at the hearing must be recorded but need not be transcribed unless proceedings for judicial review are initiated as provided in section 40-51.2-15.

40-51.2-13. Decision.

1. In arriving at a decision, the administrative law judge shall consider the following factors:
   a. The present uses and planned future uses or development of the area sought to be annexed;
   b. Whether the area sought to be annexed is a part of the community of the annexing city;
   c. The educational, recreational, civic, social, religious, industrial, commercial, or city facilities and services made available by or in the annexing city to any resident, business, industry, or employee of the business or industry located in the area sought to be annexed;
   d. Whether any governmental services or facilities of the annexing city are or can be made available to the area sought to be annexed;
   e. The economic, physical, and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing city, and to the school districts and other political subdivisions affected;
   f. The economic impact of the proposed annexation on the property owners in the area of the proposed annexation, and the economic impact on the annexing city of a decision to deny the annexation;
   g. Whether the area proposed to be annexed is in the extraterritorial zoning or subdivision regulation authority of another city; and
   h. Any other factor determined to be relevant by the administrative law judge.
2. a. Based upon those factors, the administrative law judge may order the annexation if the administrative law judge finds that:
      (1) The area proposed to be annexed is now, or is about to become, urban in character;
      (2) City government in the area proposed to be annexed is required to protect the public health, safety, and welfare; or
      (3) The annexation would be in the best interest of the area proposed to be annexed.

b. The administrative law judge may deny the annexation if it appears that annexation of all or a part of the property to a different city would better serve the interests of the residents of the property.

3. If the administrative law judge is satisfied that the annexation should be granted, the administrative law judge shall determine the terms and conditions of the annexation and enter an order granting the petition. In all cases, the administrative law judge shall set forth in writing a decision, including findings of fact, conclusions of law, and an order. The decision must include the factors upon which the decision is based. The administrative law judge shall direct the governing body of the annexing city to mail a copy of the decision to all parties to the annexation proceedings.
4. An order granting the petition must include in detail all the terms and conditions upon which the petition is granted and the effective date of the petition. The annexing city shall file and record the order and an accurate map of the annexed area, certified by the executive officer of the city, in the office of the recorder of the county in which the annexed territory is situated.

40-51.2-14. Powers of the administrative law judge - Decision - Terms.

The administrative law judge shall enter an order setting forth what the administrative law judge deems to be fair and reasonable terms and conditions and shall direct the annexation in conformity with those terms and conditions. The administrative law judge may:

1. Approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation.
2. Determine the metes and bounds of the territory to be annexed and may include the same area or a smaller area than that described in the petition.
3. Require payment by the city of a sum determined by the administrative law judge payable to compensate for the value of public improvements acquired by the annexation proceedings and to require the assumption by the city of a pro rata share of any existing bonded indebtedness of any township from which territory is annexed.
4. Require payment by the city of a sum determined by the administrative law judge payable to compensate a water district for losses resulting from the annexation in accordance with section 61-35-26.

40-51.2-15. Review of determination of administrative law judge by certiorari.

Within thirty days after receipt of the administrative law judge's order, any interested party dissatisfied with the decision may apply to the district court for a writ of certiorari. The review upon the writ may extend only to the determination of whether the administrative law judge has acted regularly and has not exceeded the administrative law judge's jurisdiction or abused the administrative law judge's discretion under this chapter.

40-51.2-16. Effective date of annexation by administrative law judge - Classification of annexed agricultural lands for tax purposes.

Territory annexed to a city pursuant to petition to the director of the office of administrative hearings is annexed as of the date of the order of the administrative law judge, except for tax purposes, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the city, must be filed and recorded with the county recorder. Annexation is effective for the purpose of general taxation on and after the first day of the next January. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use.

40-51.2-17. Cost of annexation.

The costs of the annexation proceedings, and the costs for services rendered by an administrative law judge, must be paid to the office of administrative hearings by the annexing city. The costs of the annexation proceedings are the same as those allowed in any civil action.

40-51.2-18. Relation of this chapter to other laws.

The powers conferred and the limitations imposed by this chapter shall be in addition and supplemental to, and not in substitution for, powers conferred by any other law.

40-51.2-19. Savings clause.

Repealed by S.L. 1983, ch. 82, § 154.