

# Cherry County, Nebraska



Zoning Resolution  
Resolution No.

Adopted by Cherry County,  
Nebraska

2023





TABLE OF CONTENTS

Article 1: Title, Intent and Purpose..... 1

Section 1.01 Short Title ..... 1

Section 1.02 Purpose and Intent ..... 1

Section 1.03 Jurisdiction ..... 1

Section 1.04 Highest Standard ..... 1

Section 1.05 Comprehensive Development Plan Relationship ..... 1

Section 1.06 Planning Commission Recommendations ..... 1

Section 1.07 Conflict with Public and Private Provisions ..... 1

Section 1.08 Savings Provisions ..... 2

Article 2: Construction and Definitions ..... 3

Section 2.01 Construction and General Terminology ..... 3

Section 2.02 Abbreviations and Acronyms..... 3

Section 2.03 Definitions..... 4

Article 3: General Regulations..... 63

Section 3.01 General ..... 63

Section 3.02 Zoning Affects Every Building and Use ..... 63

Section 3.03 Disclaimer of Building and Other Codes and County Liability ..... 63

Section 3.04 Principal Uses ..... 63

Section 3.05 Conditional Uses ..... 63

Section 3.06 Accessory Uses ..... 63

Section 3.07 Nonconforming, General Intent ..... 63

Section 3.08 Nonconforming Lots of Record ..... 64

Section 3.09 Nonconforming Structures ..... 64

Section 3.10 Nonconforming Uses ..... 65

Section 3.11 Repairs and Maintenance..... 65

Section 3.12 Uses Under Conditional Use Permit Not Nonconforming Uses ..... 65

Section 3.13 Interpretation..... 65

Section 3.14 Scope of Regulations ..... 66

Section 3.15 Zoning Standards ..... 66

Section 3.16 District Regulations, Restrictions, Boundary Creation ..... 66

Section 3.17 Right-of-Way Splits and Minimum Lot Requirements ..... 66

Section 3.18 Lot ..... 66

Section 3.19 Yard Requirements ..... 67

Section 3.20 Caretaker's Quarters ..... 67

Section 3.21 Accessory Buildings and Uses ..... 67

Section 3.22 Reductions in Lot Area Prohibited ..... 67

Section 3.23 Yard Requirements ..... 67

Section 3.24 Drainage ..... 68

Section 3.25 Permitted Obstructions in Required Yards ..... 68

Section 3.26 Occupancy of Basements and Cellars..... 68

Section 3.27 Well Fields..... 68

Section 3.28 Permitted Modifications of Height Regulations..... 69

Section 3.29 Corner Lots or County Road Intersections ..... 69

Section 3.30 Recreation Equipment, Storage ..... 69

Section 3.31 Storage of Goods and Equipment ..... 69

Section 3.32 Building Setback ..... 69

Section 3.33 Temporary Structures..... 70

Section 3.34 Screening..... 70

Section 3.35 Fences, Walls, Hedges and Trees..... 70

Section 3.36 Public Utility Facilities Lot Size Requirements..... 70

Section 3.37 Irrigation Equipment Setbacks Requirements ..... 71

Section 3.38 Secondary Dwellings on an Agricultural Operation..... 71

Section 3.39 Prohibited Uses ..... 71

Section 3.40	Fees.....	71
<b>Article 4: Zoning Districts .....</b>		<b>72</b>
Section 4.01	Establishment of Districts .....	72
Section 4.02	Provision for Official Zoning Map .....	72
Section 4.03	Zoning Map.....	72
Section 4.04	Rules for Interpretation of District Boundaries on the Official Zoning Map ....	72
Section 4.05	Land Use Categories Table Explanation .....	73
Section 4.06	Annexation Rule .....	73
Section 4.07	Land Use Categories/Matrix.....	74
Section 4.08	CCAG – Cattle Country Agricultural District.....	81
Section 4.09	NRCAG – Niobrara River Corridor Agricultural District .....	83
Section 4.10	AH Airport Hazard Area District .....	86
<b>Article 5: Conditional Uses .....</b>		<b>91</b>
Section 5.01	Purpose and Intent .....	91
Section 5.02	Procedure .....	91
Section 5.03	Authority to Initiate .....	91
Section 5.04	Application .....	91
Section 5.05	Legal Publication and Notice Requirements for all Bodies .....	91
Section 5.06	Coordination with Other Entities .....	92
Section 5.07	Planning Commission Public Hearing .....	92
Section 5.08	Board of Commissioners Public Hearing .....	92
Section 5.09	Conditions of Approval .....	92
Section 5.10	Standards for Review.....	92
Section 5.11	Issuance of Permits .....	93
Section 5.12	Modification of Conditional Use Permit Requirements .....	93
Section 5.13	Scope of Approval .....	93
Section 5.14	Effective Date .....	93
Section 5.15	Conditional Use Permits Approved Under Previous Regulations\Resolutions	93
Section 5.16	Conditional Use Permit Reviews .....	93
<b>Article 6: Off-Street Parking and Loading Requirements.....</b>		<b>94</b>
Section 6.01	Applicability.....	94
Section 6.02	Off-Street Automobile Storage .....	94
Section 6.03	Schedule of Minimum Off-Street Parking and Loading Requirements .....	95
Section 6.04	Off-Street Parking: Shared Parking Requirements.....	95
Section 6.05	Off-Street Parking: Parking for Individuals with Disabilities .....	96
Section 6.06	Off-Street Parking Design Criteria .....	97
<b>Article 7: Sign Regulations .....</b>		<b>98</b>
Section 7.01	Applicability .....	98
Section 7.02	On and Off-Site Signs on Interstate or Federal Aid Primary Highways.....	98
Section 7.03	Prohibited Signs .....	98
Section 7.04	Obstructing Visibility at Corners.....	98
Section 7.05	Exemptions.....	98
Section 7.06	Gross Area of Sign .....	99
Section 7.07	Sign Height .....	99
Section 7.08	Illuminated Signs.....	99
Section 7.09	Flashing or Moving Signs .....	99
Section 7.10	Required Setback and Distance Between Signs .....	99
Section 7.11	Nonconforming Signs .....	99
Section 7.12	Classification of Signs .....	99
<b>Article 8: Supplemental Regulations.....</b>		<b>101</b>

Section 8.01	Home Occupations and Home-Based Businesses.....	101
Section 8.02	Radio, Television and Wireless Communication Towers.....	101
Section 8.03	Recreational Vehicle Parks.....	106
Section 8.04	Screening.....	107
Section 8.05	Sand and Gravel Mineral, Stone, Rock, and Soil Extraction and Quarries. .	107
Section 8.06	Small Wind Energy Systems.....	108
Section 8.07	Commercial/Utility Grade Wind Energy Systems.....	110
Section 8.08	Livestock Regulations.....	113
Section 8.09	Adult Entertainment.....	117
Section 8.10	Conservation/Preservation Easements.....	122
Section 8.11	Above ground Storage Tanks (AST).....	123
Section 8.12	Bed and Breakfast.....	123
Section 8.13	Junk Yards or Salvage Yards.....	123
Section 8.14	Biofuels and Distillation Facilities.....	123
Section 8.15	Self-Storage Units (Mini-Warehouses).....	124
Section 8.16	Waste Disposal Sites.....	124
Section 8.17	Sanitary Landfill Regulations.....	125
Section 8.18	Solar Energy Uses.....	128
Section 8.19	Dwelling Unit, Special Types.....	136
Section 8.20	Short-term Rentals.....	139
Section 8.21	Accessory Dwelling Units.....	139
<b>Article 9: Board of Adjustment.....</b>		<b>141</b>
Section 9.01	Intent.....	141
Section 9.02	Membership.....	141
Section 9.03	Rules and Meetings.....	141
Section 9.04	Powers.....	141
Section 9.05	Appeal of Board Decisions.....	142
<b>Article 10: Administration and Enforcement.....</b>		<b>143</b>
Section 10.01	Zoning Administrator.....	143
Section 10.02	Zoning Permit Required.....	143
Section 10.03	Application for a Zoning Permit.....	143
Section 10.04	Enforcement by the Zoning Administrator.....	143
<b>Article 11: Amendments.....</b>		<b>144</b>
Section 11.01	Amendments.....	144
<b>Article 12: Legal Status Provisions.....</b>		<b>146</b>
Section 12.01	Severability.....	146
Section 12.02	Purpose of Catch Heads.....	146
Section 12.03	Repeal of Conflicting Resolutions.....	146
Section 12.04	Effective Date.....	146

## COUNTY OF CHERRY, NEBRASKA

### ZONING RESOLUTION

A resolution, consistent with the Comprehensive Development Plan, adopted for the purpose of promoting health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of the County of Cherry, Nebraska, to regulate and restrict the location, height, bulk, number of stories, size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; the percentage of lot areas which may be occupied, building setback lines; size of yards, courts, and other open spaces; the density of population; the uses of buildings; and the uses of the land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses; to divide the County into districts of such number, shape, and area as may be best suited to carry out the purposes of this resolution to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration or use of non-farm buildings or structures, and the use, conditions of use or occupancy of land in the unincorporated areas of the County; to provide for the adoption of a zoning map; to provide for a board of adjustment, its members, powers, and duties; to provide for off-street parking and loading area requirements; to provide for conditional uses by conditional use permit; to provide for the proper subdivision and development of land, as provided in the Subdivision Regulations; to provide for non-conforming uses, to provide for the administration and the enforcement of these provisions, and for the violations of its provisions and the prescribed penalties, and including among others such specific purposes as:

1. Developing both urban and non-urban areas.
2. Lessening congestion in the streets or roads.
3. Reducing the waste of excessive amounts of roads.
4. Securing safety from fire and other dangers.
5. Lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or run-off of storm or flood waters.
6. Providing adequate light and air.
7. Preventing excessive concentration of population and excessive and wasteful scattering of population or settlement.
8. Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements.
9. Protecting the tax base.
10. Protecting property against blight and depreciation.
11. Securing economy in governmental expenditures.
12. Fostering the County's agriculture, recreation, and other industries.
13. Encouraging the most appropriate use of land in the County; and
14. Preserving, protecting, and enhancing historic buildings, places, and districts, all in accordance with the comprehensive plan.

WHEREAS Nebraska Revised Reissued Statutes, 1943, Sections 23-114 through 23-114.05 and 23-164 through 23-174.06 as amended, empowers the County to adopt a zoning and subdivision resolution and to provide for its administration, enforcement, and amendment; and

WHEREAS, the County Board of Commissioners of the County of Cherry, Nebraska, deem it in the interest of the public health, safety, morals, convenience, order, prosperity, and welfare of said County and its present and future residents; and

WHEREAS, the County Board of Commissioners of the County of Cherry, Nebraska, has adopted a Comprehensive Development Plan pursuant to Neb. R. R. S. 1943, Sections 23-114 through 23-114.03, as amended, and known as Cherry County Comprehensive Development Plan, 2012, as amended; and

WHEREAS, the Planning Commission of the County of Cherry, Nebraska, has recommended the division of the unincorporated areas of the County into districts and recommended regulations pertaining to such districts consistent with the adopted Comprehensive Development Plan based on a future land use plan designed to lessen congestion on roads and highways, to secure safety from fire, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to conserve agricultural land and values, to facilitate sewerage, schools, parks, and other public needs; and

---

WHEREAS, the Planning Commission of the County of Cherry, Nebraska, has given reasonable consideration, among other things, to the prevailing agricultural and rural characteristics now predominant in the County, to the character of the districts and their peculiar suitability for the particular permitted uses, with a reasonable understanding of the objective to conserve the value of lands and improvements while encouraging the development of the most appropriate uses of land throughout the County; and

WHEREAS, the Planning Commission of the County of Cherry, Nebraska, has made a preliminary report, held public hearings, submitted its recommended final report to the County Board of Commissioners; and the County Board of Commissioners have given due public notice of hearings relating to the Comprehensive Development Plan, to the zoning districts, regulations, subdivision regulations, and restrictions, and has held such public hearing; and

WHEREAS, The County Board of Commissioners of the County of Cherry, Nebraska, have deemed it necessary to adopt the Comprehensive Development Plan, the zoning districts, regulations, subdivision regulations, and restrictions for the purpose of the conservation of the existing rural agricultural developments and land uses, of providing for the harmonious development and orderly expansion of urban areas radiating outwardly from existing rural communities, for the orderly extension and planned arrangements of county roads, utilities, for adequate sanitary facilities, for safe and healthy drinking water, and for reducing flood damage potentials; and

WHEREAS the requirements of Neb. R.R.S. 1943, Section §23-114 through 23-124.05, Sections 23-164 through 23-174, and Section 23-174.02, as amended, with regard to the recommendations of the Planning Commission, the Comprehensive Development Plan, the zoning districts, regulations, subdivision regulations and restrictions and the subsequent action of the County Board of Commissioners have been met;

NOW THEREFORE BE IT RESOLVED BY THE COUNTY BOARD OF COMMISSIONERS OF THE COUNTY OF CHERRY, NEBRASKA.





## ARTICLE 1: TITLE, INTENT AND PURPOSE

### Section 1.01 Short Title

This Resolution shall be known, cited, and referred to as the "Zoning Regulations of the County of Cherry, Nebraska."

### Section 1.02 Purpose and Intent

In pursuance of and in compliance with the authority conferred to Nebraska counties by Section 23 of the Nebraska Statutes as amended, this Resolution is enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Cherry County and for implementation of the duly adopted Cherry County Comprehensive Plan. This Resolution is also enacted to preserve and protect the customs and culture of the people of the County and the following specific purposes:

1. Developing both urban and non-urban areas and lessening congestion in the streets or roads and reducing the waste of excessive amounts of roads.
2. Securing safety from fire and other dangers and lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters.
3. Protecting light and air and preventing excessive concentration of population and excessive scattering of population or settlement.
4. Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements.
5. Protecting the tax base and protecting property against blight and depreciation.
6. Securing economy in governmental expenditures.
7. Fostering the state's agriculture, recreation, and other industries.
8. Encouraging the most appropriate use of land in the County, and;
9. Preserving, protecting, and enhancing historic buildings, places and districts.

### Section 1.03 Jurisdiction

These regulations shall be known and cited as the regulations approved and adopted in the Zoning Regulations of the County of Cherry, Nebraska. The area of jurisdiction shall be all the area within the limits of the county of Cherry, Nebraska, not including the jurisdiction explicitly granted to a municipality by the Nebraska Reissue Revised Statutes, 1943.

### Section 1.04 Highest Standard

Whenever the regulations of this Resolution impose or require higher standards than are required in any other statute, local Regulations, or regulation, the provisions of the regulations made under authority of this Resolution as provided by the cited Nebraska R. R. S., 1943 sections shall govern.

### Section 1.05 Comprehensive Development Plan Relationship

These zoning regulations are designed to implement various elements of the Comprehensive Development Plan as required by state statutes. Any amendment to the district regulations or map shall conform to the Comprehensive Development Plan adopted by the governing body.

### Section 1.06 Planning Commission Recommendations

Pursuant to Section 23-114.01 et. seq., (Nebraska Reissue Revised Statutes, 1943), it shall be the purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the County Board of Commissioners shall not hold its public hearings or take action until it has received the final report of the Commission.

### Section 1.07 Conflict with Public and Private Provisions

1. **Public Provisions:** These regulations are not intended to interfere with, abrogate or annul any other resolution, Resolution, statute or other provision of law. Where these regulations impose restrictions different from those imposed by any other resolution, Resolution or statute, whichever provisions are more restricting, or impose higher standards, shall control.
2. **Private Provisions:** These Regulations are not intended to abrogate any easement, covenant, or any other private agreement or restriction, provided however that where these Regulations are more restrictive or impose higher standards they shall control. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the

provisions of these Regulations, then such private provisions shall be operative and supplemental to these Regulations.

**Section 1.08 Savings Provisions**

These Regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations, or as discontinuing, abating, modifying or altering any penalty accruing, or as affecting the liability or rights of the County lawfully existing pursuant to prior Regulations.

## ARTICLE 2: CONSTRUCTION AND DEFINITIONS

### Section 2.01 Construction and General Terminology

1. For the purpose of these Regulations, certain numbers, abbreviations, terms and words used herein shall be used, interpreted and defined as set forth in this section. Words or terms not herein defined shall have their ordinary meaning in relation to the context.
2. Unless the context clearly indicates to the contrary:
  - A. The phrase "Cherry County" or "Cherry County, NE" shall also be deemed the same as "The County of Cherry, NE".
  - B. The word "Assessor" shall mean the County Assessor of Cherry County, NE.
  - C. The word "Board" shall mean the Board of Commissioners of Cherry County, NE.
  - D. The words "Board of Commissioners" shall mean the Board of Commissioners of Cherry County, NE.
  - E. The term Zoning Administrator shall mean the zoning administrator and/or Zoning Administrator for Cherry County, NE.
  - F. The word "Building" includes the word "Structure," but shall not include "Temporary Structures".
  - G. The word "Commission" shall mean the Planning Commission of Cherry County, NE.
  - H. The word "County" shall mean "The County of Cherry, Nebraska".
  - I. The words "Register of Deeds" shall mean the County Register of Deeds of Cherry County, NE.
  - J. The word "Federal" shall mean the Government of the United States of America
  - K. Words used in the present tense include the future tense.
  - L. Words used in the singular include the plural and words used in the plural include the singular.
  - M. The word "shall" is always mandatory; the word "may" is always permissive.
  - N. The word "Regulations" means the Regulations approved and adopted in the Zoning Regulations of The County of Cherry, NE, and all amendments thereto.
  - O. "Person" shall mean any person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
  - P. "Used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."
  - Q. The word "permit" can apply to any and all required permits by Cherry County.

### Section 2.02 Abbreviations and Acronyms

For purposes of this Resolution, this section contains a listing of abbreviations and acronyms used throughout this document.

- |            |  |
|------------|--|
| 1. AFO     | Animal Feeding Operation   |
| 2. AU      | Animal Unit  |
| 3. CUP     | Conditional Use Permit   |
| 4. FAA     | Federal Aviation Administration  |
| 5. FCC     | Federal Communication Commission   |
| 6. FEMA    | Federal Emergency Management Agency                                      |
| 7. FT      | Foot or Feet   |
| 8. GIS     | Geographic Information System  |
| 9. HUD     | United States Department of Housing and Urban Development                |
| 10. kV     | Kilovolt   |
| 11. kW     | Kilowatt   |
| 12. NDA    | Nebraska Department of Aeronautics or successor department               |
| 13. NDEE   | Nebraska Department of Environment and Energy or successor department    |
| 14. NSFM   | Nebraska State Fire Marshall or successor department                     |
| 15. NHHS   | Nebraska Department of Health and Human Services or successor department |
| 16. NDNR   | Nebraska Department of Natural Resources or successor department         |
| 17. NDOT   | Nebraska Department of Transportation or successor department            |
| 18. R.O.W. | Right-of-Way or Rights-of-Way  |
| 19. SF     | Square Feet  |
| 20. SY     | Square Yard  |
| 21. USDA   | United States Department of Agriculture                                  |
| 22. YD     | Yard   |

## Section 2.03 Definitions

## A

**Abandonment:** To cease or discontinue a use or activity without demonstrated intent to resume as distinguished from short term interruptions such as during periods of remodeling, maintenance, or normal periods of vacation or seasonal closure.

**Abut, Abutting:** To border on, being contiguous with or have property or district lines in common, including properties separated by an alley, but not those separated by a roadway.

**Access or Access Way:** The means or way pedestrians and/or vehicles have safe, adequate and usable ingress and egress to a property or use as required by these regulations.

**Accessibility Ramp:** A slope surface used for moving individuals with disabilities from one level to the next; provided the slope of the ramp meets the requirements found in the Americans with Disabilities Act. Said ramp may be attached to any type of land use.

**Accessory Apartment:** A second dwelling unit either in or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the main dwelling, for use as a complete, independent living facility with provisions within the accessory apartment for cooking, eating, sanitation, and sleeping. Such a dwelling is an accessory use to the main dwelling.

**Accessory Agricultural Buildings:** One or more buildings defined as accessory to the primary use of an agricultural operation. These may include machine sheds, grain bins, and others.

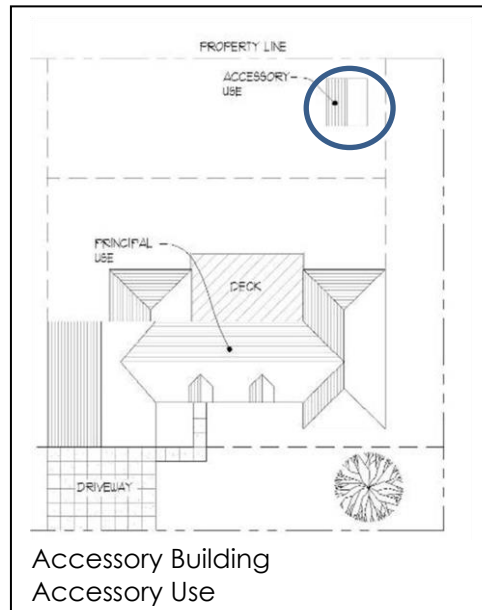
**Accessory Building:** A detached building which is clearly incidental or subordinate to the principal building which is located on the same premises as the principal building. These shall not include buildings used as part of an agricultural operation.

**Accessory Dwelling Unit:** A separate, complete housekeeping unit with a separate entrance, kitchen, sleeping area, and full bathroom facilities, which is an attached or detached extension to an existing single-family structure, also referred to as "Granny Flats".

**Accessory Irrigation Equipment:** Equipment used with any irrigation system including gravity flow, center pivot or others. This shall include pivot points, well head, irrigation motors, etc. but does not include any structures over a motor or well head.

**Accessory Structure:** A detached subordinate structure located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure.

**Accessory Use:** A use incidental, related, appropriate and clearly subordinate to the main use of the lot or building, which accessory use does not alter the principal use of the subject lot or affect other properties in the district.



Accessory Building  
Accessory Use



Example of Accessory Dwelling



Agricultural Accessory Building  
Accessory Use



Example of an Accessory  
Structure



Example of an Agricultural  
Cooperative Production/  
Distribution Facility



Example of Agricultural and  
Farm Buildings and Structures

**Acre:** A full acre containing 43,560 square feet of area within the property lines of a lot or parcel.

**Acresage:** Any tract or parcel of land that does not qualify as a farm or development.

**Active Recreation:** A recreational activity requiring physical exertion such as swimming, tennis, soccer, baseball, softball, running and playgrounds.

**Addition:** Any construction which increases the size of a building or structure.

**Adjacent:** Near, close, or abutting; for example, an industrial district across the street or highway from a residential district shall be considered as "adjacent".

**Adult Care Homes:** A facility providing care for the elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day.

**Advertising Structure:** Any notice or advertisement, pictorial or otherwise, and all such structures used as an outdoor display, regardless of size and shape, for the purposes of making anything known, the origin or place of sale of which is not on the property with such advertising structure.

**Agricultural Accessory Equipment:** This includes such things as well motors, well heads, pivot pads, open sided structures covering wells.

**Agricultural Complex/Compound:** A use where several family members or employees associated with a farming and/or ranching operation all have their homes on as few as one lot with shared infrastructure and access.

**Agricultural Cooperative Production/Distribution Facility:** Any facility owned and operated by a cooperative or other corporation for the purpose of manufacturing, distributing, and storage of fertilizers, herbicides and grain. This includes the offices, scales and parking areas necessary for trucks and other vehicles.

**Agricultural and Farm Buildings and Structures:** Any structure which is necessary or incidental to the normal conduct of a farm including but not limited to barns, buildings and sheds for housing livestock, poultry and farm machinery, buildings for the storage or shelter of grain seed, hay and other crops, silos, windmills and water storage tanks.

**Agricultural Irrigation System:** An artificial means for the delivery of water-via ditches, pipes, streams, hose, etc. to supply water to dry lands that are used primarily in the production of crops- corn, beans, beets, sorghum, etc., that may include, but not limited to, pivot point systems, center point systems, gravity (furrow) systems, subsurface drip irrigation systems (SDI), and/or irrigation wells.

**Agricultural Operations:** A farmstead of 20 acres or more which produces \$1,000 or more of farm products each year.



**Agricultural Processing:** The processing of crops after harvest, to prepare them for on-site marketing or processing and packaging elsewhere. Includes the following: alfalfa cubing; corn shelling; cotton ginning; custom grist mills; custom milling of flour, feed and grain; dairies (but not feedlots); drying of corn, rice, hay, fruits, and vegetables; grain leaning and custom grinding; hay baling and cubing; pre-cooling and packaging of fresh or farm-dried fruits and vegetables; sorting, grading, and packing of fruits and vegetables, tree nut hulling and shelling, and the distillation of grains, fruits and vegetables.

**Agriculture:** The use of a tract of land for the growing of crops, pasturage, nursery, or the raising of livestock, including the structures necessary for carrying out farming operations, the residence or residences of those owning or operating the premises, a member of the family, or persons employed thereon, as well as their family.

**Agritourism Enterprise:** Activities conducted on a working farm or ranch and offered to the public for the purpose of recreation, education, or active tourism related involvement in the farm or ranch operation. These activities must be incidental to the primary agricultural operation on the site or related to natural resources present on the property. This term includes farm tours, hayrides, corn mazes, pumpkin patches, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above.

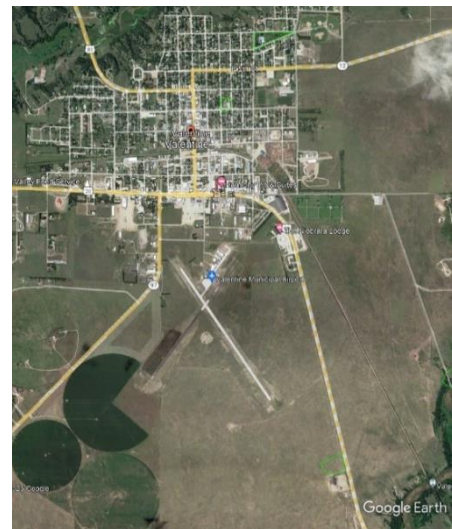
**Agronomic Rates:** The application of plant nutrients, from all sources, to meet, but not exceed, the estimated annual nutrient needs of the crop being produced, based upon past or projected yields, so as to avoid build-up of nutrients including, but not limited to, nitrate, chloride, and phosphorus. Determination of the agronomic rate shall include the available nutrients in the soil, the nitrogen content of any irrigation water, and the nutrient content of any waste, sludges and commercial or other fertilizers to be applied.

**Airport:** Any area which is used or is intended to be used for the taking off and landing of aircraft, including helicopters, and any appurtenant areas which are used or are intended to be used for airport buildings or facilities, including open spaces, taxiways, and tie-down areas.

**Airport Hazard Zone:** Consists of operation zones, approach zones, turning zones and transition zones. The outer boundary of the hazard zone is composed of a series of connected tangents and simple curves that also constitute the outer boundaries of the approach and turning zones.



An example of Agriculture



Airport

**All-Terrain Vehicle:** For purposes of this Resolution this shall comply with sections §§60-6,355 to 60-6,362 of the Nebraska Revised Statutes. An all-terrain vehicle shall mean:

1. All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of twelve hundred pounds or less, (iii) travels on three or more nonhighway tires, and (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.
2. (i) Utility-type vehicle means any motorized off-highway vehicle which (A) is seventy-four inches in width or less, (B) is not more than one hundred eighty inches, including the bumper, in length, (C) has a dry weight of two thousand pounds or less, (D) travels on four or more nonhighway tires. (ii) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.
3. All-terrain vehicles and utility-type vehicles which have been modified or retrofit

**Alteration:** As applied to a building or structure, a change or rearrangement in the structural components, or an enlargement, whether by extending on a side or by increasing in height, or the moving of one location or position to another, shall be considered as an alteration.

**Amendment:** A change in the wording, context, or substance of these regulations, an addition or deletion or a change in the district boundaries or classifications on the zoning map. "Amendment" does not include correction of typographical errors.



Example of an Animal Confinement Building

**Anaerobic Digestion:** A biological process that occurs in the absence of oxygen. In very large animal production operation, it is sometimes used to produce biogas (a low energy gas which is a combination of methane and carbon dioxide) from the biodegradable organic portion of manure. This gas can be used as an energy source. After anaerobic digestion, the remaining semi-solid (which is relatively odor free but still contains most of its nutrients) can be used as a fertilizer.

**Animal Confinement Building:** Walled facilities where animals have been, are, or will be stabled or confined, fed and maintained.

**Animal Feeding Operation (AFO):** Any farming operation exceeding the per acre Animal Unit (A.U.) ratio as defined under "farming" or the feeding, farrowing, or raising cattle, swine, sheep, poultry, or other livestock, in a confined area where grazing is not possible, and where the confined area is for more than 210 consecutive days in an area not used to grow crops or considered pasture, and where the number of animals so maintained exceeds 300 Animal Units as defined below. The confined area of the AFO shall include the pens, corrals, sheds, buildings, feed storage areas, waste disposal ponds, and related facilities. Such facilities shall be constructed and operated in conformance with applicable county, state, and federal regulations. Two or more AFO's under common ownership are deemed to be a single AFO if they are adjacent (within 3/8 mile) to each other or if they utilize a common area of system for the disposal of livestock wastes.



Example of an Animal Feeding

**Animal Hospital or Clinic:** An establishment where animals are admitted principally for examination, treatment, board or care by a Doctor of Veterinary Medicine.

**Animal Units (A.U.):**

One A.U. = One Cow/Calf combination  
One A.U. = One Slaughter, Feeder Cattle;  
One A.U. = One-half Horse;  
One A.U. = Seven Tenths Mature Dairy Cattle;  
One A.U. = Two and One-half Swine (55 pounds or more);  
One A.U. = 25 Weaned Pigs (less than 55 pounds);  
One A.U. = Two Sows with litters;  
One A.U. = 10 Sheep;  
One A.U. = 11.25 Goats;  
One A.U. = 50 Turkeys;  
One A.U. = 100 Chickens  
One A.U. = Five Ducks if a liquid manure handling system;  
One A.U. = 3.7 Ostriches  
One A.U. = One Buffalo  
One A.U. = One Elk

**Animal Waste:** Any animal excrement, animal carcass, feed waste, animal water waste, or any other waste associated with animals.

**Animal Waste Water:** Any liquid, including rainfall, which comes into contact with any animal excrement, manure, litter, bedding or other raw material or intermediate or final material or product used in or resulting from the production of animals or from products directly or indirectly used in the operation of a AFO, or any spillage or overflow from animal watering systems, or any liquid used in washing, cleaning or flushing pens, barns, or manure pits, or any liquid used in washing or spraying to clean animals, or any liquid used for dust control on the premises of a AFO.

**Animals, Farm:** Livestock commonly kept or raised as a part of an agricultural operation including but not limited to horses, cattle, sheep, swine, goats, chickens and turkeys.

**Antenna:** Any attached or external system of wires, poles, rods, reflecting disks or similar devices used for the transmission or reception of electromagnetic waves.

**Antenna Support Structure:** Any building other than a tower which can be used for the location of telecommunications facilities.

**Apartment:** A room or a suite of rooms within an apartment house or multiple family dwelling arranged, intended or designed for a place of residence of a single family or group of individuals living together as a single housekeeping unit. (See dwelling unit.)

**Apartment Hotel:** A multiple family dwelling under resident supervision which maintains an inner lobby through which all tenants must pass to gain access to the apartments, and which may furnish services ordinarily furnished by hotels, such as drug store, barber shop, beauty parlor, shoeshine shop, cosmetologists' shop, cigar stand or newsstand. when such uses are located entirely within the building with no entrance from the street nor visible from any public sidewalk and having no sign or display visible from the outside of the building indicating the existence of such use.

**Applicant:** The owner or duly designated representative of land proposed to be subdivided, or for which a special permit, zoning amendment variance, building permit or certificate of occupancy has been requested.

**Application:** A process by which the owner of a tract of land within the zoning jurisdiction of the County submits a request to develop, construct, modify, or operate upon such tract of land. The term application includes all written documentation, verbal statements, and representations, in whatever, formal forum, made by an applicant to the County concerning such request.



**Appropriate:** The sympathetic, or fitting, to the context of the site and the whole community.

**Appurtenances:** The visible, functional objects accessory to and part of buildings.



Example of an Aquaculture

**Aquaculture:** Land devoted to the hatching, raising, and breeding of fish or other aquatic plants or animals for sale or personal use.

**Aquifer:** A geological unit in which porous and permeable conditions exist and thus are capable of bearing and producing usable amounts of water.

**Aquifer, confined (artesian):** Aquifers found between layers of clay, solid rock, or other material of very low permeability. Water in confined aquifers is often under pressure because the aquifer is confined between impermeable layers and is usually recharged at a higher elevation than the top confining layer.

**Aquifer, unconfined (or water table):** An aquifer where the top of the aquifer is identified by the water table. Above the water table, known as the zone of aeration, interconnected pore spaces are open to the atmosphere. Also known as a water table aquifer.

**Aquifer Recharge Area:** An area that has soils and geological features that are conducive to allowing significant amounts of surface water to percolate into groundwater.

**Archery Range:** A facility that may include buildings used for target practice with bows and arrows.

**Area:** A piece of land capable of being described with such definiteness that its location may be established, and boundaries definitely ascertained.

**Areas of Contribution:** The upland recharge area and cone of depression from which well water is drawn.

**Areas of Influence:** The two-dimensional area (as viewed on a map) of water table drawdown created by a pumping well, also see Cone of Depression.

**Armor Coat:** A bituminous liquid sprayed on road surfaces to provide a wear surface or dust control. Roads treated with armor coat are not considered as pavement.

**Artisan Production Shop:** A building or portion thereof used for the creation of original handmade works of art or craft items by more than three but less than six artists or artisans, as either a principal or accessory use.

**Artist Studio:** A place designed to be used, or used as, both a dwelling place and a place of work by an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, and writing.

**Asphaltic Concrete:** a dark brown to black cement-like

material in which the predominating constituents is bitumen, which occur in nature or are obtained in petroleum processing. Asphalt is a constituent in varying proportions of most crude petroleum and used for paving, roofing, industrial and other special purposes.

**Assisted Living Facility:** A special combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living. A facility with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential.

**Attached Permanently:** Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent foundation or structural change in such structure in order to relocate it to another site.

**Attractive:** Having qualities that arouse interest and pleasure in the observer.

**Automobile Service Station:** Buildings and premises where gasoline, oil, grease, batteries, tires and automotive accessories may be supplied and dispensed at retail, and where, in addition, servicing, repair, and replacement of parts may be done.

**Automobile Sales-Retail:** A retail business housed either in a structure or on a tract of land that sells or leases new or used automobiles, trucks, vans, recreational vehicles, boats or motorcycles or other similar motorized transportation vehicles. Retail automobile sales shall include any operation with three or more vehicles, as stated above, for sale at any time and/or a total of 10 sold during the course of a calendar year.

**Automobile Sales – Wholesale:** a wholesale business housed either in a structure or on a tract of land that sells new or used automobiles, trucks, vans, recreational vehicles, boats, or motorcycles or other similar motorized transportation vehicles to automobile sales retail outlets.

**Automobile Wrecking Yard:** Any lot, or the use of any portion of a lot, for the dismantling or wrecking of automobiles, tractors, farm machinery, or other motor vehicles, or for the storage or keeping for sale of parts and equipment resulting from such dismantling or wrecking.

## **B**

**Backgrounding:** Growing program for feeder cattle from time calves are weaned until they are on a finishing ration in the feedlot.

**Ballroom:** A place or hall used for dancing, other than those listed under the definition of "Adult Cabaret". Ballrooms shall also be used for reunions, weddings and receptions.

**Bar:** Any establishment whose principal business is serving alcoholic beverages at retail for consumption on the premises.

**Basement:** A portion of a building which has more than one-half of its interior height, measured from floor to finished ceiling below the average finished grade of the ground adjoining the building.

**Basin:** A tract of land in which the ground is broadly tilted toward a common point. Water that falls onto any portion of the basin is carried toward the common point by a single river system.

**Beacon:** any light with one or more beams directed into the atmosphere or directed at one or more points not on the same zone lot as the light source; also, any light with one or more beams that rotate or move.

**Bed and Breakfast Inn:** A house, or portion thereof, where short-term lodging rooms and meals are provided. The owner/operator of the inn shall live on the premises.

**Bedding:** Material such as straw, sawdust, wood shavings, shredded newspaper, sand or other similar material used in animal confinement areas for the comfort of the animal or to absorb excess moisture. Bedding can drastically affect the characteristics of the manure and must be taken into consideration in the design of the storage facility.

**Bedroom:** A room within a dwelling unit planned and intended for sleeping, separable from other rooms by a door.

**Berm:** A mound or embankment of earth, usually two to six feet in height.

**Best Interest of the County:** shall mean interests of the county at large and not of the immediate neighborhood.

**Best Possible Management Practices:** Livestock management techniques and practices as set forth by various agencies, including the Nebraska Department of Environment and Energy, which encourage and protect the environment and public.

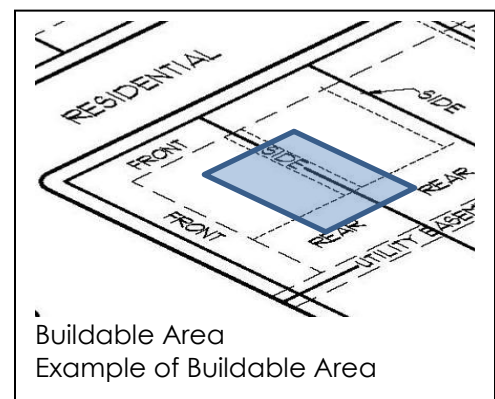
**Bio-fuels Manufacturing:** A facility constructed for the purpose of processing a natural product such as corn and soybeans into an alcohol-based fuel/additive.

**Block:** A parcel of land platted into lots and bound by public streets or by waterways, rights-of-way, unplatted land, city-county boundaries, or adjoining property lines.

**Block Frontage:** That section of a block fronting on a street between two intersecting streets or another block boundary.

**Bluffs:** The steep slopes along the Niobrara River Corridor. More specifically, the land included in the following soils mapping units as identified on the field sheets of the Cherry County Soil Survey, 1996: McF/McP - McKelvie Loamy Sand 9-30% slopes; MeG/MuG - McKelvie-Fishberry Rock Outcrop complex, 11-60% slopes; MfG/MtG - McKelvie-Rock Outcrop complex, 20-60% slopes; and, MsF/MtF - McKelvie-Fishberry complex, 9-30% slopes.

**Board of Adjustment:** That board established by the County, and which has the statutory authority to hear and determine appeals, interpretations of, and variances to the zoning regulations.



**Boarding and Lodging Houses:** Any dwelling where, for compensation and by pre-arrangement for definite periods, meals, or lodging and meals are provided for more than three but less than 10 persons.

**Borrow Pit:** Any place or premises where dirt, soil, sand, gravel or other material is removed below the grade of surrounding land for any purpose other than that necessary and incidental to site grading or building construction.

**Brew-On Premises Store:** A facility that provides the ingredients and equipment for a customer to use to brew malt liquor at the store. Brew-on-premises stores do not include the sale of intoxicating liquor, unless the owner of the brew-on-premises store holds the appropriate liquor license.

**Brew Pub:** A restaurant or hotel which includes the brewing of beer as an accessory use. The brewing operation processes water, malt, hops, and yeast into beer or ale by mashing, cooking, and fermenting. By definition, these establishments produce no more than 20,000 barrels of beer or ale annually. The area, by definition, used for brewing, including bottling and kegging, shall not exceed 25 percent of the total floor area of the commercial space.

**Brewery, Manufacturer:** An industrial use that brews ales, beers, meads and/or similar beverages on site. Breweries are classified as a use that manufactures more than 40,000 barrels of beverage (all beverages combined) annually.

**Brewery, Craft:** A brew pub or a micro-brewery.

**Brewery, Micro:** A facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail or wholesale, on or off premises, with a capacity of not more than 40,000 barrels per year. The development may include other uses such as standard restaurant, bar, or live entertainment as otherwise permitted in the zoning district.

**Broiler:** Meat-type chicken typically marketed at 6.5 weeks of age. Live weight at market generally averages 4 to 4.5 pounds per bird.

**Buffer:** A strip of land established to protect one type of land use from another incompatible land use or to intervene between a land use and a private or public road. (See screening)

**Buffer Zone:** An area of land that separates two zoning districts and/or land uses to soften or mitigate the effects of one use on the other.

**Buildable Area:** That portion of a lot remaining after required yards have been allocated.

**Buildable Lot:** A lot that meets all of the minimum size requirements of a specific zoning district and shall apply to area not submerged under water of any kind (lakes, creeks, river).

**Building:** Any structure built for the support, shelter or enclosure of: persons, animals, chattels, or movable property of any kind, and including any structure.

**Building Area:** The sum, in square feet, of the area occupied by all buildings and structures on a lot.

**Building Envelope:** That area shown on a lot that encompasses all building development including but not limited to storage, structures, decks, roof overhangs, porches, patios and terraces, pools, access ways and parking. Approved plantings of landscape materials on natural grade and approved walkways may occur outside of a building envelope. Otherwise, all areas outside of a building envelope shall remain in pristine and untouched condition unless stated in the conditions of approval of the subdivision plat.

**Building Height:** The vertical distance above grade to the highest point of the coping of a flat roof or to the highest point of a gable, hip, mansard or shed roof.

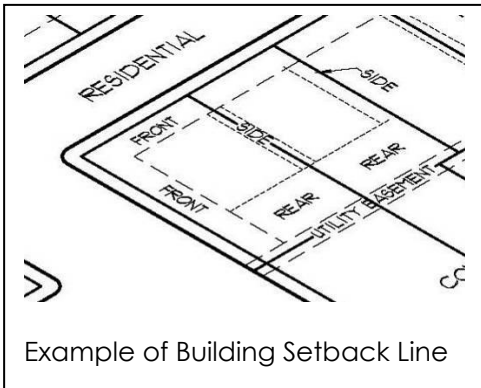
**Building, Portable:** A structure that may be attached to skids and can be easily moved without disconnecting it from a concrete slab or foundation.

**Building, Principal:** A building in which is conducted the main or principal use of the lot on which said building is situated.

**Building Setback Line:** The minimum distance as prescribed by these regulations between any property line and the closest point of the building line or face of any structure related thereto.

**Bulk regulations:** The prescribed requirements for lot area, lot area per dwelling unit, lot frontage, width, depth and height of buildings.

**Business Services:** Uses providing services to people, groups, businesses, dwellings and other buildings. Business services shall include janitorial services, carpet and upholstery cleaning, painting and decorating, building maintenance, swimming pool maintenance, security service, graphics/advertising agency, photocopying/duplication, quick print shops, printing, blueprinting, sign painting, non-vehicle equipment rental, photographic studios.



Cabin, hunting and fishing

## C

**Cabin:** A house built and designed for temporary living.

**Cabin, hunting and fishing:** Buildings used only during hunting and fishing season as a base for hunting and fishing, and outdoor recreation.

**Campground:** Any premises where two or more camping units are parked or placed for camping purposes, or any premises used or set apart for supplying to the public camping spaces, which include any buildings, structures, vehicles or enclosures used or intended for use for the accommodation of transient campers and camping vehicles.

**Campground, Leased:** A single tract of land with or without individually leased lots used for camping by the lease holders only. No transient camping is allowed.

**Campground, Primitive:** A campground accessible only by walk-in, pack-in, or equestrian campers where no facilities are provided for the comfort or convenience of the campers.

**Campground, Semi-Primitive:** A campground accessible only by walk-in, pack-in, equestrian, or motorized trail vehicles where rudimentary facilities (privies and/or fireplaces) may be provided for the comfort and convenience of the campers.

**Campground, Semi-developed:** A campground with two or more camping unit sites, accessible by vehicular traffic. Roads, facilities (toilets and/or privies) are provided.

**Campground, Developed:** A campground with two or more camping unit sites, accessible by vehicular traffic where sites are substantially developed and tables, refuse containers, flush toilets, bathing facilities, and water are provided.

**Campground, Fully developed:** A campground with two or more camping unit sites, accessible by vehicular traffic and provided with one or more service buildings. These sites may have individual water, sewer, and electrical connections.

**Camping:** Temporary living in a camper, travel trailer, pick-up camper, camping bus, converted truck, tent trailers or camping tent or other non-building shelter or by sleeping in the open.

**Car Wash, Industrial:** A mechanical facility for the washing, waxing and vacuuming of heavy trucks and buses.

**Caregiver:** Caregiver means a person nineteen years of age or older who is designated by a patient or a patient's legal guardian to provide aftercare.

**Carport:** A permanent roofed structure with not more than two enclosed sides used or intended to be used for automobile shelter and storage.

**Cattle Country Easement:** A perpetual, non-exclusive, easement which runs with the land, granted by the purchaser of any property for development of any non-farm or non-ranch building or use to all adjacent property owners, which acknowledges that said property is located in an agricultural area and may be

subjected to impacts from agricultural operations including noise, dust, odors, heavy truck traffic and other conditions which are normal and necessary for cultivation, application of chemicals, irrigation and harvesting of crops, for raising of livestock, and for other normal and customary agricultural activities and holding the owners of all adjacent properties harmless from objection to all such agricultural activities when legally conducted regardless of any conflict with the grantor's property.

**Cellar:** A building space having more than two-thirds of its height below the average adjoining grade lines.

**Cemetery:** Land used or intended to be used for the burial of the dead and dedicated for such purposes, including columbarium, crematoriums, and mausoleums.

**Centerline:** The same meaning as "street or road center line".

**Centralized Sewer:** A sewer system established by an individual(s), sanitary improvement district or developer for the purpose of serving two or more buildings, structures, and/or uses. Said system shall have a central point of sanitary waste collection and processing.

**Centralized Water:** A water supply system established by an individual(s), sanitary improvement district or developer for the purpose of serving two or more buildings, structures, and/or uses. Said system shall have a central point(s) of supply with pressurized distribution from said supply points.

**Certificate of Zoning Compliance/Certificate of Occupancy:** A written certificate issued by the zoning administrator, stating that the premises has been inspected after erection, construction, reconstruction, alteration or moving of a building or structure or after a change in the use of land stating that the premises complies in all respects with the requirements of this Resolution and may be occupied for the use declared.

**Change of Use:** The replacement of an existing use type by a new use type.

**Channel:** The geographical area within either the natural or artificial banks of a watercourse or surface drain.

**Charitable:** A public or semi-public institutional use of a philanthropic, charitable, benevolent, religious, or eleemosynary character, but not including sheltering or caring of animals.

**Child Care Center:** An establishment other than a public or parochial school, which provides day care, play groups, nursery schools or education for nine or more children under age 13, at any one time, from families other than that of the provider. In addition to these regulations, Child Care Centers shall meet all requirements of the State of Nebraska.



Example of Cemetery  
(Foreground)



## ARTICLE 2: CONSTRUCTION AND DEFINITION

**Child Care Home:** An operation in the provider's place of residence, which serves at least four, but not more than eight children at any one time from families other than that of the provider. A Family Child Care Home provider may be approved to serve no more than two additional school-age children during non-school hours. In addition to these regulations, Child Care Homes shall meet all requirements of the State of Nebraska.

**Church:** a place where religious worship is conducted including accessory uses as schools, day care centers, bingo parlors, and halls.

**Club:** An association of persons (whether or not incorporated), religious or otherwise, for a common purpose, but not including groups which are organized primarily to render a service carried on as a business for profit and shall follow the expanded definitions in §53-103.09 of the Nebraska Revised Statutes.

**Cluster Development:** a development designed to concentrate buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, and the preservation of environmentally sensitive areas.

**Commenced Work:** The performing of substantial work, at the site, in relationship to the total project.

**Commercial Building:** A structure housing a use defined as commercial.

**Commercial Uses:** A business use or activity at a scale greater than a home business involving retail or wholesale marketing of goods and services. Examples of commercial uses include offices and retail shops.

**Commission:** The Cherry County Planning Commission.

**Common Area or Property:** A parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners of the individual building sites in a planned development or condominium development.

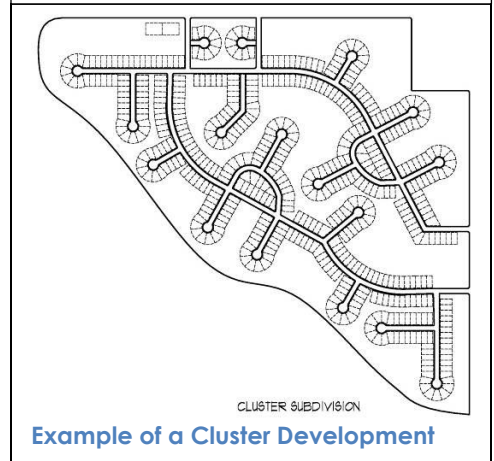
**Common Open Space:** An area of land or water or combination thereof planned for passive or active recreational use by more than one homeowner or apartment dweller. Such space shall not include areas utilized for streets, parking, loading, alleys or driveways.

**Common Sewer System:** A sanitary sewage system in public ownership which provides for the collection and treatment of domestic effluent in a central sewage treatment plant which meets the minimum requirements of the Nebraska Department of Environment and Energy for primary and secondary sewage treatment, and which does not include individual septic tanks or portable sewage treatment facilities.

**Common Water System:** A water system which provides for the supply, storage and distribution of potable water on an uninterrupted basis, and which is in public ownership.



Example of Church (background)





**Community Center:** A place, structure, or other facility used for and providing religious, fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve various segments of the community.

**Community or Public Sanitary Sewer System:** An approved central sewer collecting system, meeting state and county requirements, available to each platted lot and discharging into a treatment facility. This does not include individual septic systems.

**Community or Public Water Supply System:** A public water supply system which serves at least 15 service connections used by year-round residents or uses, or regularly serves 25 or more people year-round.

**Compatible Uses:** A land use, which is congruous with, tolerant of, and has no adverse effects on existing neighboring uses. Incompatibility may be affected by pedestrian or vehicular traffic generation, volume of goods handled and environmental elements such as noise, dust, odor, air pollution, glare, lighting, debris generated, and contamination of surface or groundwater, aesthetics, vibration, electrical interference and radiation.

**Compost:** Decomposed organic material resulting from the composting process. Used to enrich or improve the consistency of soil.

**Composting:** Processing waste in a controlled environment to produce a stable product by microbiologically degrading organic matter under aerobic conditions. **Comprehensive Development Plan:** The Comprehensive Development Plan of Cherry County, Nebraska, as adopted by the County Board of Commissioners, setting forth policies for the present and foreseeable future community welfare as a whole, and meeting the purposes and requirements set forth in Chapter 23 of the Revised Statutes of Nebraska, as the same, from time-to-time, may be amended.

**Conditional Use:** A use allowed by the district regulations that would not be appropriate generally throughout the entire zoning district without special restrictions. However, said use if controlled as to number, size, area, location, relation to the neighborhood or other minimal protective characteristics would not be detrimental to the public health, safety, and general welfare.

**Conditional Use Permit:** A permit that authorizes the recipient to make use of property in accordance with the provisions of these regulations and in accordance with any additional conditions stipulated in the issued permit. A Conditional Use Permit may be a specific form called a "Conditional Use Permit" or by another name specifying a specific type of use such as a "Livestock Feeding Operation Permit".

**Condominium:** As defined in the Nebraska State Statutes Section 76-824 - 76-894, The Condominium Law, whereby four or more apartments are separately offered for sale.



Example of Composted Manure



Example of an Outdoor Manure Composting Process Manure

**Cone Of Depression:** The three-dimensional area of water table created by a pumping well. The pumping well creates an artificial discharge area by drawing down (lowering) the water table around the well.

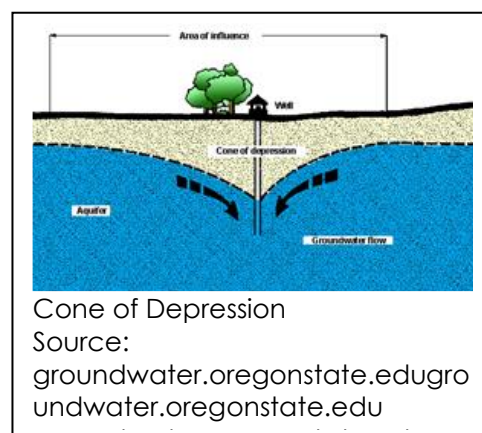
**Confinement:** Totally roofed buildings, which may be open sided (for ventilation purposes only) or completely enclosed on the sides, wherein animals or poultry are housed over solid concrete or dirt floors or slatted (partially open) floors over pits or manure collection areas in pens, stalls, cages, or alleys, with or without bedding materials and mechanical ventilation. The word "confinement" shall not mean the temporary confined feeding of livestock during seasonal adverse weather.

**Conflicting Land Use:** The use of property that transfers over neighboring property lines, negative economic or environmental effects. Including, but not limited to, noise, vibration, odor, dust, glare, smoke, pollution, water vapor, mismatched land uses and/or density, height, mass, mismatched layout of adjacent uses, loss of privacy, and unsightly views.

**Congregate Housing:** A residential facility for people 55 years or over, their spouses, or surviving spouses, providing living and sleeping facilities. Said facilities might include meal preparation, dining areas, laundry services, room cleaning and common recreational, social, and service facilities for the exclusive use of all residents including resident staff personnel who occupy a room unit in the residential facility.

**Conservation Areas:** Environmentally sensitive and valuable lands (including but not limited to wetlands, floodways, flood plains, drainage ways, river or stream banks, and areas of significant biological productivity or uniqueness) protected except for overriding public interest, from any activity that would significantly alter their ecological integrity, balance or character.

**Conservation Easement:** As defined by Nebraska RRS 76-2,111 a right, whether or not stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of retaining or protecting the property in its natural, scenic, or open condition. Assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use, protecting air quality, water quality, or other natural resources, or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code.





Conventional Subdivision  
Source: Google Earth

**Construction and Demolition Waste:** Waste which results from land clearing, the demolition of buildings, roads, or other structures, including but not limited to, beneficial fill materials, wood (including painted and treated wood), land clearing debris other than yard waste, wall coverings (including wallpaper, paneling, and tile), drywall, plaster, non-asbestos insulation, roofing materials, plumbing fixtures, glass, plastic, carpeting, electrical wiring, pipe and metals. Such waste shall also include the above-listed types of waste that result from construction projects. Construct and demolition waste shall not include friable asbestos waste, special waste, liquid waste, hazardous waste and waste that contains polychlorinated biphenyl (PCB), putrescible waste, household waste, industrial solid waste, corrugated cardboard, appliances, tires, drums, and fuel tanks as described herein or otherwise within NDEE Title 132.

**Construction and Demolition Waste Disposal Area:** Any area for the sole purpose of disposal of construction and demolition waste.

**Construction Permit, Livestock:** A permit required of an LFO by NDEE, prior to construction.

**Containment:** Structures used to control runoff of precipitation that comes into contact with manure, feed and other wastes on open feedlots. Examples of containment structures are lagoons and holding ponds.

**Convenience Store:** A retail store that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket."), it is dependent on, and is designed to attract and accommodate large volumes of stop-and-go traffic.

**Convent:** A building or group of buildings designed to provide group housing for persons under religious vows or orders.

**Conventional Subdivision:** A subdivision which literally meets all nominal standards of the Subdivision Regulations for lot dimensions, setbacks, street frontage, and other site development regulations.

**Contiguous:** Property adjoined at the property line and not separated by roads or alleys.

**Country Club:** Buildings and facilities owned and operated by a corporation or association of persons for social and recreational purposes, but not operated for profit. The affairs and management, of such club, are conducted by a board of directors, executive committee, or similar body chosen by the members. It is designed to serve food and alcoholic beverages on such premises to members and their guests, provided that the serving of food and alcoholic beverages is secondary to some other principal purpose of the association or corporation.

**County:** The County of Cherry, Nebraska.

**County Board:** The County Board of Commissioners of Cherry County, Nebraska.



Creative/Conservation Subdivision  
Source: Google Earth



**Cover Crop:** A close-growing crop grown to protect and improve soils between periods of regular crops.

**Creative Subdivision:** A subdivision that, while complying with the Subdivision Resolution, diverges from nominal compliance with site development regulations in the Land Development Resolution. Creative subdivisions imply a higher level of pre-planning than conventional subdivisions. They may be employed for the purpose of environmental protection or the creation of superior community design. Types of Creative Subdivisions include Cluster Subdivisions and New Urban Residential Districts.

**Crop Production:** Commercial agricultural field and orchard uses including production of field crops, flowers and seeds, fruits, grains, melons, ornamental crops, tree nuts, trees and sod, vegetables. Also includes associated crop preparation services and harvesting activities, such as mechanical soil preparation, irrigation system construction, spraying, crop processing, and sales in the field not involving a permanent structure.

**Culvert:** A pipe, conduit, or similar enclosed structure with appurtenant works which carries surface or stormwater under or through an embankment or fill, roadway, or pedestrian walk, or other structure.

**Curb Level:** The mean level of the curb in front of the lot, or in case of a corner lot, along that abutting street where the mean curb level is the higher.

## D

**Dairy Farm:** Any place or premises upon which milk is produced for sale or other distribution.

**Dead Animal Disposal:** The disposal of dead animals by methods authorized by law such as rendering, composting, burial, and incineration.

**Deciduous Screen:** Landscape material consisting of plants which lose their leaves in winter and eventually will grow and be maintained at six feet in height, at least.

**Density:** Restrictions on the number of dwelling units or other structures that may be constructed per acre or per square feet of zoning lot area.

**DEE Site Plan:** The site plan or layout diagram on file at NDEE for construction of a Livestock Waste Control Facility.

**Detached:** Fully separated from any other building or not joined to another building in such a manner as to constitute an enclosed or covered connection.

**Detention Basin:** A facility for the temporary storage of stormwater runoff.



Example of Cover Crop



Example of Crop Production



Aerial view of Dairy Farm



Deciduous Screen



Detention Basin

**Developer:** Any person, corporation, partnership, or entity that is responsible for any undertaking that requires a building or zoning, conditional use, or sign permit.

**Development:** Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling operations for which necessary permits may be required.

**Development Area:** An area of land that may or may not have been subdivided that contains three or more homes per nine acres.

**Development Impact Fee:** A fee imposed on developers to pay for the costs to the county of providing services to a new development based upon the impact of the development.

**Development of Livestock Confinement Operation:** Development of a confined livestock operation shall consist of but not be limited to contacting NDEE, an engineer, a contractor, and/or NRCS, or by doing dirt work, excavation, or construction.

**Development Review:** The review, by the county, of subdivision plats, site plans, rezoning requests, or permit review.

**Discontinuance of Use and Discontinue the Use of or Abandonment – Animal Feeding Operation:** The situation where an animal feeding operation or concentrated animal feeding operation removes the animals that were principally using the animal waste storage facility and empties the animal waste storage facility within 180 days.

**Discontinuance of Use and Discontinue the Use of or Abandonment – Other Uses:** The situation where a non-conforming or use under a Conditional Use Permit is not used for a period of 12 consecutive months.

**Dirt Surface:** (as pertains to roads) roads typically found in non-residential areas as they only provide minimum design characteristics.

**District:** Any area designated on the zoning map for which detailed regulations are established herein pertaining to the uses permitted, the bulk of buildings and structures, and the size of yards and buildable area.

**Dog Day Care Facility:** A facility providing such services as canine day care for all or part of a day, obedience classes, training, grooming, or behavioral counseling, provided that overnight boarding is not permitted.

**Domestic Well:** Well water used for human consumption and/or household purposes.

**Dormitory:** A building used as group living quarters for a student body, religious order, or other group as accessory use to a college, university, boarding school, orphanage, convent, monastery, farm labor camp, or other similar use where group kitchen facilities may be provided to serve all residents.

**Downzoning:** A change in zoning classification of land to a less intensive or less restrictive district such as from commercial district to residential district or from a multiple family residential district to single family residential district.

**Drainageway or Surface Drain:** Any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine months of the year, having a bed and well-defined banks.

**Driveway:** Any vehicular access to an off-street parking or loading facility.

**Dry Lot (dry operation):** An operation using confinement buildings and handling manure and bedding exclusively as dry material, an operation using a building with a mesh or slatted floor over a concrete pit, or an operation scraping manure to a covered waste storage facility is referred to as a "dry" operation.

**Dry Waste:** Manure (urine or feces), litter, bedding, or feed waste from animal feeding operations.

**Dry Waste Management System:** A system where animal waste in the lots, pens and/or buildings of an AFO is not removed by flushing out such waste by water but is removed by shoveling out such waste by hand and/or machinery.

**Dude Ranch:** A ranch operated wholly or in part as a resort offering horse riding related activities as outdoor recreation opportunities and offering only temporary rental accommodations for vacation use by nonresidents.

**Dump:** A place used for the disposal, abandonment, discarding by burial, incineration, or by any other means for any garbage, sewage, trash, refuse, rubble, waste material, offal or dead animals. Such use shall not involve any industrial or commercial process.



Example of a Drainageway or Surface Drain



Example of a Dry Lot Operation/Dry Waste Management





Example of a Dwelling, Manufactured Home

Source:  
<http://transportablehomesspecialist.com/>

**Dwelling:** Any building or portion thereof, other than a mobile home, which is permanently affixed to a foundation imbedded in the soil and used exclusively for residential purposes. This also includes a dwelling in connection with a farm operation.

**Dwelling, Manufactured Home:** A factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying it was built in compliance with standards promulgated by HUD. However, the following criteria shall be met:

1. The home shall have no less than 900 square feet of floor area, above grade, for single story construction.
2. The home shall have no less than an 18-foot exterior width.
3. The roof, unless covered by at least two feet of earth, shall be pitched with a minimum vertical rise of two and one-half inches for each 12 inches of horizontal run.
4. The exterior material shall be of a color, material and scale comparable with those existing in residential site-built, single-family construction.
5. The home shall have a non-reflective roof material that is or simulates asphalt or wood shingles, tile, or rock. Metal roofs are acceptable only if they are non-reflective.
6. The home shall be placed on a continuous permanent foundation and have wheels, axles, transporting lights, and removable towing apparatus removed.
7. The home shall meet and maintain the same standards uniformly applied to all single-family dwellings in the zoning district; and
8. Permanent foundation: Base on which building rests; to be constructed from either poured concrete or laid masonry block or brick on a footing to be placed a minimum of 36 inches below the final ground level.

**Dwelling, Mobile Home:** Any prefabricated structure, composed of one or more parts, used for living and sleeping purposes, shipped or moved in essentially a complete condition and mounted on wheels, skids or roller, jacks, blocks, skirting or a permanent or temporary foundation or any prefabricated structure which has been or reasonably can be equipped with wheels or other devices for transporting the structure from place to place, whether by motor power or other means. The term mobile home shall include trailer home and camp car, but the definition shall not apply to any vehicle lawfully operated upon fixed rails.

1. Permanently Attached: Attached to real estate in such a way as to require dismantling, cutting away, unbolting from permanent continuous foundation or structural change in such mobile home in order to relocate it on another site in accordance to manufacturers recommendations.
2. Permanent Foundation: Base on which building rests; to be constructed from either poured concrete or laid masonry block or brick.



Example of a Dwelling, Mobile Home

**Dwelling, Modular:** (Is considered a conventional type single-family dwelling). Any prefabricated structure, used for dwelling purposes, moved on to a site in an essentially complete constructed condition, in one or more parts, and when completed is a single-family unit on a permanent foundation, attached to the foundation with permanent connections. To be a modular home it shall meet or be equivalent to the construction criteria as defined by the NHHS under the authority granted by Section 71-1555 through 71-1567 Revised Statutes of Nebraska 1943.

**Dwelling, Multiple Family:** A building or portion thereof having accommodations for and intended to be used for occupancy by three or more families living independently from one another.

**Dwelling, Seasonal:** A dwelling designed and used as a temporary residence and occupied less than six months each year. (Also see, Cabin and Cabin, hunting and fishing)

**Dwelling, Single Family:** A building having accommodations for or occupied exclusively by one family.

**Dwelling, Single Family Attached:** A portion of a residential building having accommodations for and occupied exclusively by one family, and which is located on a separate lot of record apart from the remaining portions of the building. Each such dwelling may be sold independently of other portions.

**Dwelling Unit, Special Types:** Any dwelling type consisting of single-family detached; single-family attached, multi-family, mobile home that is not meet the typical construction style of traditional stick framed structures.

1. **Cargo Container Dwelling:** a dwelling unit constructed of one or more new or used cargo containers used for multi-modal shipping and meeting the definition of dwelling unit above.
2. **Grain Bin Dwelling Unit:** A dwelling unit constructed of one or more grain bins, new or used meeting the definition of Dwelling Unit above.
3. **Park Model:** Also known as recreational park trailers are built on a single chassis on wheels. They are no larger than 400 square feet and built-in compliance with ANSI housing standards.
4. **Quonset home:** A home constructed beneath and in a structure referred to as a Quonset.
5. **Shouse:** A combination of a dwelling unit and machine shed under a common or connected roofing system. For purposes of a Shouse, these structures when on a farm, agricultural operation, or acreage shall not be classified as a farm building. In addition, the residence portion of the facility shall meet the definition of Dwelling Unit below.
6. **Tiny House:** A structure containing living spaces including sleeping and kitchen areas which measure 500 square feet or less in area. Tiny houses can be either portable, on wheels similar to a recreational vehicle, or on a permanent foundation.
7. **Tree House:** A dwelling unit where the primary structure of the unit is based on one or more tree clusters.
8. **Yurt (Modern):** a permanently built on a wooden platform using modern materials such as steam-bent wooden framing or metal framing, canvas or tarpaulin, plexiglass dome, wire rope, or radiant insulation.



Dwelling, Single-family



Example of Single-family Attached



				
Cargo Container Apartment	Cargo Container Home	Cargo Container Home	Grain Bin Home	Grain Bin Home
				
Shouse	Shouse	Grain Elevator Apartment	Tiny House	Tiny House
				
Tree House	Park Model	Quonset home	Quonset home	Quonset home



Example of Dwelling, Two-family

**Dwelling, Townhouse:** A one-family dwelling in a row of at least two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical wall(s).

**Dwelling, Two Family:** A building having accommodations for and intended for use or occupancy by two independent families.

**Dwelling Unit:** A building, or part thereof, containing complete housekeeping facilities for a single family.

## E



Earthen Home/Earth sheltered home

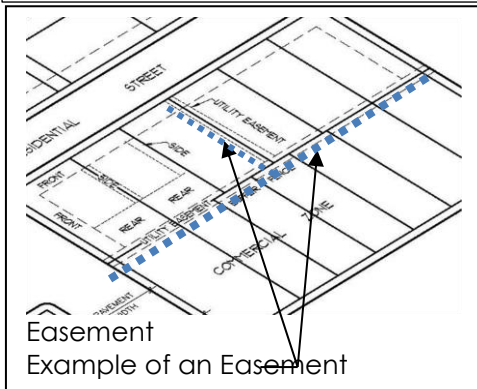
**Earthen Home:** A home built into a berm or hillside covered by earth on three sides and on the roof.

**Easement:** Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

**Educational Institution:** A public or nonprofit institution or facility which conducts regular academic instruction at preschool, kindergarten, elementary, secondary, or collegiate levels, including graduate schools, universities, junior colleges, trade schools, nonprofit research institutions and religious institutions.

**Effective Date:** The date that this resolution shall have been adopted, amended, or the date land areas shall have become subject to the regulations contained in this resolution as a result of such adoption or amendment.

**Electric Distribution Substation:** An electric substation with a primary voltage of less than 161 KV, with distribution circuits served therefrom.



**Electric Transmission Substation:** An electric transformation or switching station with a primary voltage of more than 161 KV without distribution circuits served therefrom.

**Emergency Shelter Mission:** A facility which provides temporary housing for one or more individuals who are indigent, needy, homeless or transient.

**Enclosed:** A roofed or covered space fully surrounded by walls.

**Encroachment:** An advancement or intrusion beyond the lines or limits as designated and established by the Regulation, and to infringe or trespass into or upon the possession or right of others without permission.

**Engineer** Any engineer qualified and licensed by any state or territory of the United States of America.

**Enlargement:** The expansion of a building, structure, or use in volume, size, area, height, length, width, depth, capacity, ground coverage, or in number.

**Environmentally Controlled Housing:** Any livestock operation meeting the definition of an Animal Feeding Operation (AFO) and is contained within a building which is roofed and may or may not have open sides and contains floors which are hard surfaced, earthen, slatted or other type of floor. The facility is capable of maintaining and regulating the environment in which the livestock are kept.

**Equestrian Arena:** An improved area, generally fenced, of at least 30 feet in width or length within which equestrian activities.

**Equestrian Center:** Commercial horse, donkey, and mule facilities including horse ranches, boarding stables, riding schools and academies, horse exhibition facilities, pack stations. This land use includes barns, stables, corrals, and paddocks accessory and incidental to the above uses.

**Equestrian Event:** Any exhibition or competition involving horses whose purpose is to test or advance the skills of a horse or its rider, such as but not limited to horse shows, schooling events, horse training seminars or clinics, open houses, cutting competitions, rodeos, or jackpot roping contests.

**Equestrian Facilities:** Commercial horse, donkey, and mule facilities including: horse ranches, boarding stables, riding schools and academies, horse exhibition facilities, pack stations. This land use includes barns, stables, corrals, and paddocks accessory and incidental to the above uses.

**Equestrian Trail:** A natural surfaced path for equestrian use.

**Erected:** Constructed upon or moved onto a site.

**Exceptions:** Uses that are not appropriate generally in a particular district without restriction, but which, if controlled as to number, area, location, relation to adjoining properties and other factors can be appropriate. Such uses that may be permitted in particular districts as exceptions are allowed only if expressly provided for herein.

**Existing And Lawful:** The use of a building, structure, or land was in actual existence, operation, and use, as compared to the use being proposed, contemplated, applied for, or in the process or being constructed or remodeled. In addition, the use must have been permitted, authorized, or allowed by law or any other applicable regulation prior to the enactment of a zoning regulation when first adopted or permitted, authorized or allowed by the previous zoning regulation prior to the adoption of an amendment to that zoning regulation.

**Extraterritorial Jurisdiction:** The area beyond the corporate limits, in which a city or village has been granted the powers by the state to exercise zoning and building regulations and is exercising such powers.

## F

**Facade:** The exterior wall of a building exposed to public view from the building's exterior.

**Factory:** A structure or plant within which something is made or manufactured from raw or partly wrought materials into forms suitable for use.

**Family:** One or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit; or a group of not more than four unrelated persons living together as a single housekeeping unit.

**Family Child Care Home I:** A childcare operation in the provider's place of residence which serves between four and eight children at any one time. A Family Child Care Home I provider may be approved to serve no more than two additional school-age children during non-school hours. In addition to these regulations, a Child Care Home shall meet the requirements of NHHS.

**Family Child Care Home II:** A childcare operation either in the provider's place of residence or a site other than the residence, serving twelve or fewer children at any one time. In addition to these regulations, a Child Care Home shall meet the requirements of NHHS.

**Farm:** A tract of 20 or more acres of land or water producing at least \$1,000 in annual revenue from plants, animals or their products, which does not meet the criteria of a Livestock Feeding Operation.

**Farm Operation, General:** The current employment of land for the purposes of obtaining a profit in money by the raising, harvesting, and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or combination thereof. Farm use includes the preparation and storage of the products raised on such land for marketing or otherwise. It includes the construction and use of buildings customarily provided in conjunction with farm use. General farm operations do not include Animal Feeding Operations as defined herein.

**Farm Products:** Usual products produced on an Agricultural Operation or Farm in the county such as hay, vegetables, fruit, grain, and plants as well as raising thereon the usual animal units (A.U.'s) as defined within these regulations.

**Farm Winery:** Any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished products are grown in this state.

**Farmer's Market:** The seasonal selling or offering for sale at retail of home-grown vegetables or produce, occurring in a pre-designated area, where the vendors are generally individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale.

**Farming:** The planting, cultivating, harvesting and storage of grains, hay or plants commonly grown in Nebraska with the necessary accessory uses for treating or storing the produce and the feeding of livestock as prescribed hereunder, provided such accessory uses do not include the feeding of garbage or offal to swine or other animals.

**Farmstead:** In contrast to a farmstead dwelling, a tract of land of not less than one acre and not more than 20 acres, upon which a farm dwelling and other outbuildings and barns existed at the time of the adoption of this resolution and was used for single-family resident purposes.

**Feed Lot:** Lot or building or a group of lots or buildings used for the confined feeding, breeding or holding of animals. This definition includes areas specifically designed for confinement in which manure may accumulate or any area where the concentration of animals is such that a vegetative cover cannot be maintained. Lots used to feed and raise poultry are considered to be feedlots. Pastures are not animal feedlots.

**Feeder Cattle:** Cattle past the calf stage that have weight increased making them salable as feedlot replacements.

**Feeder Line:** Any power line that carries electrical power from one or more energy sources to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving any renewable energy system.

**Fence:** A free-standing structure of metal, masonry, composition or wood or any composition thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

**Final Plat:** The map or plan or record of a subdivision, and accompanying documents and materials, as described and defined in the subdivision regulations.

**Finish Pig:** A pig that is fed from 55 pounds until it reaches market weight.



Example of a Farmer's Market  
Copyright American Planning Association



Example of a Feed lot



**Finishing Stage:** Stage leading to and including full adulthood for swine is called the finishing stage. The pigs remain here until they reach market weight.

**Flea Market:** a building or open area in with stalls or sale areas are set aside, and rented or otherwise provided, and which are intended for the use by various unrelated individuals to sell articles that are either new, old, homemade, homegrown, handcrafted, obsolete, or antique and may include the selling of goods at retail by businesses or individuals who are generally engaged in retail trade. This definition does not include informal or private garage or yard sales.

**Flood:** The water of any watercourse or drainage way which is above the banks or outside the channel and banks of such watercourse or drainage way.

**Flood Plain:** The area adjoining a watercourse which has been or may be covered by flood waters.

**Floodway:** The channel of a watercourse or drainage way and those portions of the flood plain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainage way.

**Floor Area:** Whenever the term "floor area" is used in these regulations as a basis for requiring off-street parking for any structure, it shall be assumed that, unless otherwise stated, said floor area applies not only to the ground floor area but also to any additional stories of said structure. All horizontal dimensions shall be taken from the exterior faces of walls.

**Forty-acre tract:** (see Quarter-quarter)

**Freestanding Canopy:** A permanent, freestanding, unenclosed roof structure, typical of gas stations and financial institutions, designed to provide patrons shelter from the elements.

**Frontage:** That side of a lot abutting on a street and ordinarily regarded as the front of the lot.

**Fuel Station:** A designated facility offering the sale gasoline, diesel fuel, alternative fuel sources (electric, CNG, etc.) and propane.

**Fuel Storage:** Tanks used to storage fuel either above- or below-ground as part of an agricultural operation.

**Funeral Home:** A building or part thereof used for human funeral services. Such building may contain space and facilities for (1) a funeral chapel; (2) embalming and the performance of other services used in preparation of the dead for burial; (3) the performance of autopsies and other surgical procedures; (4) the storage of caskets, funeral urns, and other related funeral supplies; (5) the storage of funeral vehicles; and (6) facilities for cremation.

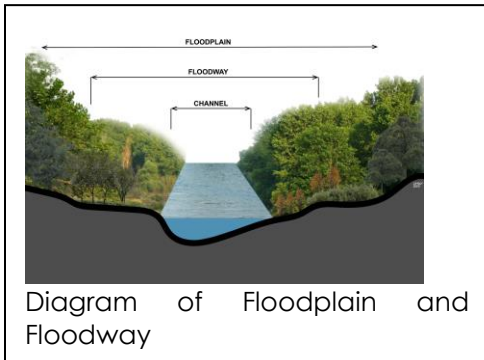


Diagram of Floodplain and Floodway



Freestanding Canopy

# G

**Garage:** A building for the storage of motor vehicles.

**Garage, Private:** A detached accessory building, including carports, on the same lot as a dwelling, used to house vehicles of the occupants of the dwelling.

**Garage, Public:** Any garage other than a private garage designed or used for equipment, repairing, hiring, servicing, selling, or storing motor driven vehicles.

**Garage, Storage:** A building or portion thereof, designed or used exclusively for housing four or more motor-driven vehicles.

**Garbage:** Any waste food material of an animal or vegetable nature, including waste that may be used for the fattening of livestock.

**Geothermal Heat Pump System:** A well, constructed for the purpose of utilizing the geothermal properties of the earth.

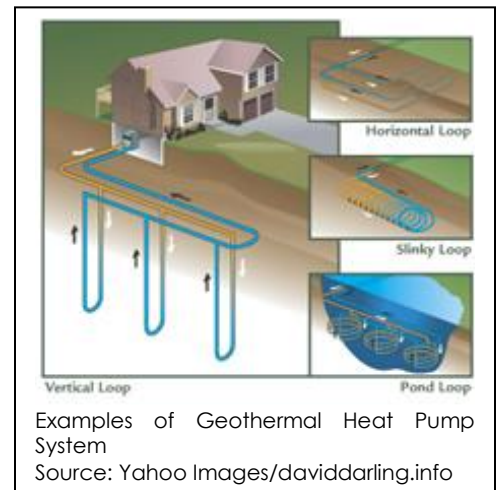
1. Open Loop Heat Pump well shall mean a well that transfers heat via pumped ground water which is discharged above and/or below ground. For below ground discharge, refer to NDEE Title 122.
2. Closed Loop Heat Pump well shall mean a well, constructed for the purpose of installing the underground closed loop pipe necessary to recirculate heat transfer fluid.
3. Horizontal Closed Loop means a trench or pit essentially parallel to the horizon and into which a closed loop pipe is placed for the purpose of heat transfer.
4. Vertical Closed Loop means a borehole essentially perpendicular to the horizon into which a closed loop pipe is placed for the purpose of heat transfer.

**Governing Body:** The Board of County Commissioners for Cherry County Nebraska.

**Government Facility:** A structure owned, operated, or occupied by a governmental agency to provide a governmental service to the public.

**Grade:** Except for Earthen Homes permitted under the Nebraska State Codes and Regulations, shall mean the following:

1. For buildings having walls facing one street only, the elevation of the sidewalk at the center of the wall facing the street shall be grade.
2. For buildings having walls facing more than one street, the grade shall be the average of the grades (as defined in "1". above) of all walls facing each street.
3. For buildings having no walls facing a street, the average level of the finished surface of the ground adjacent to the exterior walls of the building shall be at grade.
4. Any wall approximately parallel to and not more than 50 feet from a street line is considered as facing a street.



**Grain Handling Systems:** the moving, transferring, handling, storing, aerating and/or drying of grains by mechanical or natural means, which may include, but not limited to, stationary storage units (i.e. grain bins, hoppers, silos) grain-dump pits, fans, dryers, conveyors, augers, leg systems, and /or catwalks.

**Gravel and Crushed Rock:** (as it pertains to roads) materials added to the surface of dirt roads to provide all weather travel. This type of road surface is usually found in the rural areas of the County and generally less traveled in nature.

**Grassed Waterway:** Grassed waterways are areas planted with grass or other permanent vegetative cover where water usually concentrates as it runs off a field. They can be either natural or man-made channels. Grass in the waterway slows the water and can reduce gully erosion and aid in trapping sediment.

**Grazing Land:** Pasture, meadow, rangeland, or other similar area where livestock are put to feed on the vegetation.

**Greenhouse, Private:** A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of flowers or plants for personal enjoyment.

**Greenhouse, Public or Retail:** A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of flowers or plants for subsequent sale.

**Greenway:** A parcel or parcels of land, together with the improvements thereon, dedicated as an easement for access and/or recreation; usually a strip of land set-aside for a walkway, bicycle trail, bridle path, or other similar access-way.

**Grit:** Grit includes sand, gravel, cinder, or other heavy solid materials that are “heavier” (higher specific gravity) than the organic biodegradable solids in the wastewater. This includes eggshells, bone chips, seeds, coffee grounds, and large organic particles, such as food waste.

**Gross Acres:** The total area of a site, inclusive of all street and/or road rights-of-way, plus, any required supporting facilities.

**Groundwater:** Water occurring beneath the surface of the ground that fills available openings in the rock or soil materials such that they may be considered saturated.

**Groundwater Recharge:** The filling of groundwater aquifers by rain and melting snow percolating into the ground and saturating the pores between rock and soil particles.

**Group Care Home:** A home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home which is designed to provide 24-hour care for individuals in a residential setting.

**Group Home for the Handicapped:** A dwelling with resident staff shared by four or more handicapped persons who live together as a single housekeeping unit and in a long term, family-like environment in which staff persons provide care, education, and participation in community activities for the residents with the primary goal of enabling the residents to live as independently as possible in order to reach their maximum potential. As used herein, the term "handicapped" shall mean having: (1) A physical or mental impairment that substantially limits one or more of such person's major life activities so that such person is incapable of living independently; or (2) A record of having such impairment.

**Group Housing:** Two or more separate buildings on a lot, each containing one or more dwelling units.

**Guest House:** An attached or detached building used to house guests of the occupants of the principal building, and which is never rented or offered for rent.

**Guest Ranch:** A use incorporating two or more guest rooms, other than a boarding house, hotel or motel, and including outdoor recreational facilities, such as, but not limited to, horseback riding, swimming, tennis courts, shuffleboard courts, barbeque and picnic facilities intended primarily for use by the guests of the guest ranch. Bars and restaurants that cater primarily to those other than guests of the guest ranch are not permitted.

**Guest Room:** A room which is designed to be occupied by one or more guests for sleeping purposes, having no kitchen facilities, not including dormitories.

**Gun Club:** Any organization whether operated for profit or not, and whether public or private, which caters to or allows the use of firearms.

**Gun Range:** An area designated for the firing of firearms at stationary or mobile targets within the area.

## H

**Half-Story:** A story under a gable, hip or gambrel roof, plates of which are not more than three feet above the floor of such story.

**Halfway House:** A licensed home for individuals on release from more restrictive custodial confinement or initially placed in lieu of such more restrictive custodial confinement, living together as a single housekeeping unit, wherein supervision, rehabilitation and counseling are provided to mainstream residents back into society, enabling them to live independently.

**Hazardous Material:** Materials, products, or substances that, by reason of their toxic, caustic, corrosive, explosive, abrasive, radioactivity, infectious properties, or other characteristics, that cause or may be detrimental or harmful to the health of any person or to the environment. For specific and more detailed information, current definitions, lists of hazardous material and quantities determined to pose a hazard, reference Title 40, Code of Federal Regulations, Parts 261 and 302, and /or any subsequent amendments thereto.



**Hazardous Substances:** Any substance or materials, by reason of their toxic, caustic, corrosive, abrasive, or otherwise coming into contact with such material or substance.

**Hazardous Waste:** Waste products of industrial or chemical processes including finished surplus, used, contaminated or unwanted fertilizer, herbicide, petroleum products, or other such processed waste material.

**Health Care Facilities:** A facility licensed or approved by the state or an appropriate agency, if required. Health Care Facility may be any of the following:

1. Hospitals including offices or medical societies, offices of charitable public health associations, and private office space for the practice of medicine and dentistry under a license from the NHHS; provided, any such private offices for the practice of medicine and dentistry shall be occupied only by those on the staff of the hospital;
2. Convalescent or nursing home;
3. A facility for outpatient physical, occupational, or vocational therapy or rehabilitation;
4. Public health clinics and facilities; and
5. Ambulatory surgical care center which does not allow for overnight stay by patients. Unless an exception is made, health care facilities do not include doctors', or dentists', professional offices and private clinics.

**Health Recreation Facility:** An indoor or outdoor facility including uses such as game courts, exercise equipment, locker rooms, whirlpool spa and/or sauna and pro shop.

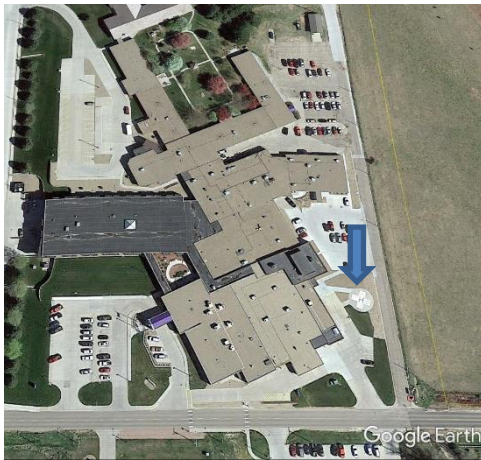
**Hedges:** A row of closely planted shrubs, bushes, or any kind of plant forming a boundary or fence.

**Heliport:** Any landing area used for the landing and taking off of helicopters, including all necessary passenger and cargo facilities, fueling, and emergency service facilities.

**Helistop:** An area designed to be used for the landing or takeoff of one helicopter, the temporary parking of one helicopter, and other facilities as may be required by federal and state regulations, but not including operation facilities such as maintenance, storage, fueling, or terminal facilities.

**Hemp:** the plant *Cannabis sativa* L. and any part of such plant, including the viable seeds of such plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Hemp shall be considered an agricultural commodity. Notwithstanding any other provision of law, hemp shall not be considered a controlled substance under the Uniform Controlled Substances Act.

**Hemp, USDA-licensed Hemp Producer:** a person licensed by the United States Department of Agriculture to produce hemp as provided in 7 C.F.R. part 990, subpart C, as such regulations existed on January 1, 2020.



Example of a Heliport

**Highway, Major Inter-Regional:** A "U.S." or "State" designated highway with 100 feet right-of-way or more on which partial control of access and geometric design and traffic control measures are used to expedite the safe movement of through vehicular traffic.

**Highway Setback Line:** The future right-of-way line or plan lines of any highway.

**Holding Pond:** Means an impoundment made by constructing an excavated pit, dam, embankment or combination of these for temporary storage of liquid livestock wastes, generally receiving runoff from open lots, trailer washouts and contributing drainage area.

**Home-based Business:** An accessory use of a single-family or two-family residential structure which does not meet the definition of a home occupation. A home-based business would consist of service-oriented uses and typically be more intense than a home occupation, due to factors such as intensity of use or clients coming to the residence. A Home-based Business typically will allow a minimum amount of employment from outside the individuals residing on the property.

**Home Occupation:** A business, occupation, trade or profession conducted for gain and carried on within a residential dwelling by the resident thereof.

**Homeowners Association:** A private, nonprofit corporation or association of homeowners of properties in a fixed area, established for the purpose of owning, operating, and maintaining various common properties and facilities.

**Hoop Building:** An anchored building erected for the purpose of storing materials, including but not limited to machinery and vehicles.

**Hoop Building, Livestock:** An anchored or freestanding building erected for the purpose of housing livestock. Floors are typically compacted dirt or concrete covered with dry bedding.

**Hospital:** An institution providing health and emergency services of medical or surgical nature to human patients and injured persons and are licensed by the state to provide facilities and services in surgery, obstetrics, and general medical practice.

**Hospital, Animal:** A place where animals or pets are given medical or surgical treatment and are cared for during the time of treatment. Use as a kennel shall be limited to short-time boarding and shall be only incidental to such hospital use.

**Hotel or Motel:** A building or portion thereof, or a group of buildings, offering transient lodging accommodations on a daily rate to the general public and providing services associated with restaurants, meeting rooms, and recreational facilities. The word "hotel" includes motel, inn, automobile court, motor inn, motor lodge, motor court, tourist court, motor hotel.

**House Trailer** (see Dwelling: Mobile Home)



Example of a hoop building



Example of a hoop building for livestock

**Household Pet:** An animal that is customarily kept for personal use or enjoyment within the home. Household pet shall include but not be limited to domestic dogs, domestic cats, domestic tropical birds, fish, and rodents.

**Housing for the Elderly:** A building or group of buildings containing dwellings in which each dwelling unit is occupied by at least one person of 55 years of age or more. This does not include developments containing convalescent or nursing facilities. (Also, see Congregate Housing.)

**Housing For The Physically Handicapped:** A building containing a dwelling or a group of dwellings in which each occupied dwelling unit is occupied by at least one physically handicapped person with a mobility impairment which requires certain construction design features for ingress, egress, and freedom of movement within the premises.

**Impact Easement:** An easement or deed restriction, recorded in the office of the Cherry County Register of Deeds. Impact easements shall run with the land, and is granted to the owner of a use including but not limited to:

1. industrial use,
2. a confined or intensive animal feeding use,
3. a waste handling facility use or
4. other use

Said easement shall be granted for the time period that such use shall exist. Said easement shall be between the grantor and the owners of adjoining or neighboring real property in which it is mutually agreed that the grantor shall hold the grantee harmless from odor, smoke, dust, or other legal impacts associated with such use on the grantor's property when such use is operated in accordance with the terms of such easement or deed restriction.

**Impervious Surface:** A surface that has been compacted or covered with a layer of material making the surface highly resistant to infiltration by water, such as compacted sand, rock, gravel, or clay and conventionally surfaced streets, sidewalks, parking lots, and driveways.

**Incidental Use:** A use that is subordinate to the main use of a premise.

**Incompatible Use:** A use which is unsuitable for direct association with certain other uses because it is contradictory, incongruous or discordant.

**Individual Septic System:** A wastewater treatment system for a dwelling that has a septic tank and absorption system.

**Industrial Building:** A structure designed and constructed to house industrial uses.

**Industrial Park:** A planned coordinated development of a tract of land with two or more separate industrial buildings. The development is planned, designed, constructed, and managed on an integrated and coordinated basis with an enforceable master plan and/or covenants, conditions, and restrictions with special attention to on-site vehicular circulation, parking, utility needs, building design, and orientation and open space.

**Industrial Uses:** A use or activity at a scale greater than home industry involving the manufacture and distribution of materials and/or products generated from raw materials or the assemblage of a product from several pre-manufactured pieces.

**Industrial Waste:** Any material resulting from a production or manufacturing operation has no net economic value to the source producing it.

**Industrial Waste Disposal:** The discarding of any Industrial Waste in either a legal or illegal manner.

**Industry:** The manufacture, fabrication, processing reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof and including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.

**Inoperable Motor Vehicle:** Any motor vehicle that:

1. Does not have a current state license plate; or,
2. May or may not have a current state license plate but is disassembled or wrecked in part or in whole, or is unable to move under its own power, or is not equipped as required by Nebraska State Law for operation upon streets or highways.
3. A vehicle that is wholly or partially dismantled shall not be considered inoperable when said vehicle is inside a completely enclosed building.

**Institutional Building/Use:** A nonprofit or quasi-public use and building, such as a religious institution, library, public, or private school, cemetery, hospital, or government- owned or government-operated structure or land used for public purpose.

**Intensity:** The degree of concentration or activity with which land is used. Agriculture and residential are considered low intensity uses. Heavy industrial is considered a high intensity use. High intensity uses normally generate high concentrations of vehicular traffic and daytime population.

**Intent and Purpose:** The Commission and Board, by the adoption of these regulations, have made a finding that the health, safety, and welfare of the Community will be served by the creation of the regulations prescribed therein.

**Intermittent Stream:** Has flowing water only during certain periods of time, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall or snowmelt is a supplemental source of water for the stream flow.



**Irrigation Accessory Equipment:** Equipment used with any irrigation system including gravity flow, center pivot or others. This shall include pivot points, well head, irrigation motors, etc. but does not include any structures over a motor or well head.

## J

**Junk:** Any worn-out, cast-off, old, or discarded articles of scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material.

**Junkyard (Salvage Yard):** An area of land with or without buildings, used for or occupied by a deposit, collection or storage, outside a completely enclosed building of used or discarded materials; used building materials, house furnishings, machinery, inoperable vehicles or parts thereof whether with or without the dismantling, processing, salvage, sale or other use or disposition of same.

## K

**Kenel, Commercial:** An establishment where 10 or more dogs or cats, or any combination thereof, other household pets, or non-farm/non-domestic animals at least four months of age are groomed, bred, boarded, trained, or sold as a business.

**Kenel, Private:** Any premises used for the keeping of nine or less dogs, cats, or a combination thereof, or other non-farm/non-domestic animals by the owner/occupant or occupant of the premises for the purpose of show, hunting, or as pets. The dogs and cats shall belong to the owner/occupant or occupant and their keeping shall be accessory to the main use of the premises.

**Kitchen Facilities:** A room or area equipped for the preparation and cooking of food when it has all of the following:

1. Kitchen sink.
2. Burner, cook stove, or microwave oven.
3. Refrigerator.

## L

**Laboratory, Medical:** An establishment which provides bacteriological, biological, medical, x-ray, pathological and other similar analytical or diagnostic services.

**Lagoon:** A shallow, artificial wastewater treatment facility where sunlight, bacterial action, and oxygen interact to restore wastewater to a reasonable state of purity. This includes both human and livestock wastes. All lagoons shall meet the minimum design criteria established by the NDEE and the NDHHS. All lagoons shall have the proper permits approved prior to starting construction.

**Landscaping:** The improvement of any parcel of land with grass, shrubs and/or trees. Landscaping may include pedestrian walks, flowerbeds, ornamental objects and other natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

**Laundry, Self Service:** An establishment that provides home-type washing, drying, and/or ironing facilities for customers on the premises.

**Law Enforcement Center:** A governmental facility working directly with the enforcement of laws through a municipality or county. A law enforcement center may be the base of operations for a sheriff, police department, or state agency, or it may be an incarceration facility (temporary or long-term), or a combination of all.

**Leapfrog Development:** New development separated from existing development by vacant land.

**Leased Campground:** A single tract of land with or without individually leased lots used for camping by the lease holders only.

**Life Care Facility:** A facility for the transitional residency of the elderly and/or disabled persons, progressing from independent living to congregate apartment living where residents share common meals and culminating in full health and continuing care nursing home facility. (See Congregate Housing and Housing for the Elderly.)

**Life Estate:** is an interest in real property, including the right to use and occupy the property for the duration of the lifetime of the life estate holder. A life estate terminates upon the death of the holder. The owner of life estate is called a life tenant. After the death of the life tenant the estate either reverts back to the title holder or to the survivor or remaindermen mentioned in the deed bestowing life estate.

**Liner:** Any barrier in the form of a layer, membrane or blanket, naturally existing, constructed or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters of the United States.

**Liquid Manure:** That type of livestock waste that is in a liquefied state, collected in manure pits or lagoons in order to be sprayed/applied on the surface or injected beneath the surface.

**Liquid Manure Storage Pits:** Earthen, concrete or lined pits located wholly or partially beneath a semi or totally housed (ECH) livestock animal feeding operation or at some removed location used to collect waste production.

**Liquid Waste Management System:** A system where the majority of the animal waste in the lots, pens and/or buildings of a LFO is removed by flushing out such waste with water.

**Livestock:** Cattle, buffalo, horses, sheep, goats, swine, poultry, and other animals or fowl, which are being produced primarily for use as food or food products for human consumption.

**Livestock Lagoon:** (see "Waste Handling System")





Example of a Livestock Sales Yard

**Livestock Pasturing Operation:** Any livestock operation using pasture, as defined under this regulation, as the primary source of feed for the animals.

**Livestock Sales Yard:** An enclosure or structure designed or used for holding livestock for purposes of sale or transfer by auction, consignment, or other means.

**Livestock Siting Matrix:** A tool authorized in 2015 by the Nebraska Legislature via LB 106. The matrix is a tool for county officials to use to help determine whether to approve a conditional use permit or special exception application.

**Livestock Wastes:** Animal and poultry manure including associated feed losses, bedding, spillage, or overflow from watering systems, wash and flushing waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto a livestock operation, and other materials polluted by livestock or their direct product.

**Livestock Waste Control Facilities or Facility or Facilities:** (see "Waste Handling System")

**Living Floor Area:** The square foot area of a dwelling unit, excluding the garage, attics and areas within a full basement that do not have ground level access to the outside, as measured between the face of the interior walls.

**Loading Space:** An off-street space or berth on the same lot with a main building, or contiguous to a group of buildings, for the temporary parking of commercial vehicles while loading or unloading, and which abuts a street, alley, or other appropriate means of ingress and egress.

**Local Street or Local Highway:** A street or road primarily for service to abutting property.

**Long-Term Care Facility:** A facility as defined in Title 15, Chapter 3 Nebraska Department of Health and Human Services and R.R.S Section 71-2017.01. These facilities include:

1. Nursing Facilities.
2. Boarding Home.
3. Adult Care Home.
4. Assisted Living Facility.
5. Center for the Developmentally Disabled.
6. Group Residence.
7. Swing Bed; and
8. Adult Day Care.

**Lot:** A parcel or tract of land which is or may be occupied by a use herein permitted, together with yards, and other open spaces herein required, that has frontage upon a street, and is a part of a recorded subdivision plat or has been recorded prior to the adoption of this Regulation, or a parcel of real property delineated on an approved record of survey, lot-split or sub-parceling map as filed in the office of the County Register of Deeds and abutting at least one public street or right-of-way, two thoroughfare easements, or one private road.

**Lot, Corner:** A lot located at the intersection of two or more streets at an angle of not more than 135 degrees. If the angle is greater than 135 degrees, the lot shall be considered an "Interior Lot".

**Lot, Curve:** A lot fronting on the outside curve of the right-of-way of a curved street, which street has a centerline radius of 300 feet or less.

**Lot, Double Frontage or Through Lot:** A lot having a frontage on two non-intersecting streets as distinguished from a corner lot.

**Lot, Flag:** A lot with frontage and access provided to the bulk of the lot by means of a narrow corridor.

**Lot, Frontage:** A side of a lot abutting on a legally accessible street right-of-way other than an alley or an improved county road. For the purposes of this definition, on corner lots, all sides of a lot adjacent to streets or roads shall be considered frontage.

**Lot, Interior:** A lot other than a corner lot, having a single frontage on a street.

**Lot, Minimum Size:** The minimum area required in a designated zoning district. The minimum lot size shall apply only to ground not covered by a waterway at the time of the application.

**Lot, Nonconforming:** A lot having less area or dimension than required in the district it is located and lawfully created prior to the zoning thereof and whereby the larger area or dimension requirements were established, or any lot, other than one shown on a plat recorded in the office of the County Register of Deeds, which does not abut a public road or public road right-of-way, and which was lawfully created prior to the effective date of these regulations.

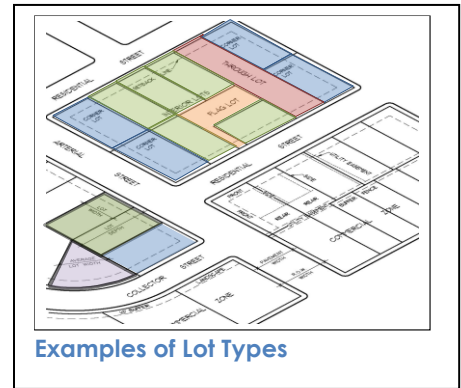
**Lot Area:** The total area, on a horizontal plane, within the lot lines of a lot.

**Lot Coverage:** The portion of a lot or building site which is occupied by any building or structure, excepting paved areas, walks and swimming pools, regardless of whether said structure is intended for human occupancy or not.

**Lot Depth:** The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and in the rear of the lot.

**Lot Improvement:** Any building, structure, or other object or improvement of the land on which they are situated constituting a physical betterment of real property.

**Lot Line, Front:** A street right-of-way line forming the boundary of a lot.





**Lot Line, Rear:** The lot line that is most distant from and is nearly parallel to the front lot line. If a rear lot line is less than 15 feet long, or if the lot comes to a point at the rear, the rear lot line shall be a line at least 15 feet long, lying wholly within the lot, parallel to the front lot line. If a lot has two or more front lot lines, the remaining yards will be rear yard or the remaining yards will be side yards and no rear lot line will exist.

**Lot, Reversed Frontage:** A lot on which the frontage is at right angles, or approximately right angles, with the interior angle being less than 135 degrees, to the general pattern in the area. A reversed frontage lot may also be a corner lot (see "A-D" in the diagram), an interior lot ("B-D") or a through lot ("C-D").

**Lot Line, Side:** A lot line which is neither a front or rear lot line.

**Lot of Record:** A lot, which is part of a subdivision, the plat of which has been recorded in the Office of the Register of Deeds or a parcel of land the deed to which was recorded prior to adoption of these Regulations.

**Lot Width:** The distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

## M

**Machine Shop:** A workshop, including tool and die shops, that turns, shapes, planes, laser metal cutting, mills or otherwise reduces or finishes metal by machine-operated tools.

**Maintenance Guarantee:** Any security, other than cash, that may be accepted by the County to insure that required improvements will be maintained. (Also, see Performance Guarantee.)

**Major Recreational Equipment:** Boats and boat trailers, travel trailers, pickup campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers and the like and recreational vehicles.

**Manufactured Home Park:** A parcel of land under single ownership that has been planned and improved for the placement of manufactured housing used or to be used for dwelling purposes and where manufactured home spaces are not offered for sale or sold. The term "manufactured home park" does not include sales lots on which new or used manufactured homes are parked for the purposes of storage, inspection, or sale.

**Manufactured Home Subdivision:** Any area, piece, parcel, tract or plot of ground subdivided and used or intended to be used for the purpose of selling lots for occupancy by manufactured homes.

**Manufacturing:** Uses primarily engaged in the mechanical or chemical transformation of materials or substances into new products. These uses are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment.

**Manure:** Fecal and urinary defecations of livestock and poultry; may include spilled feed, bedding, or soil.

**Map, Official Zoning District:** A map delineating the boundaries of zoning districts which, along with the zoning text, is officially adopted by the Cherry County Board of Commissioners for Cherry County, Nebraska.

**Massage Therapy:** The manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

**Medical or Dental Clinic:** Any building or portion thereof, other than a hospital, used or intended to be used as an office for the practice of any type of medicine, including chiropractic, dentistry, or optometry.

**Micro-distillery:** A distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces ten thousand or fewer gallons of liquor annually.

**Milking Parlor:** The area of a dairy where milking takes place.

**Milking Parlor wash water:** Water used to rinse the animals and equipment during the milking process to improve sanitation. The wash water typically includes manure, feed solids, hoof dirt along with detergents and disinfectants that are being used at the operation. The amount of wash water used each day depends upon the number of animals milked and the management practices followed.

**Mini-Storage or Mini-Warehouse:** (See "Self-service Storage Facility")

**Mining and Mineral Extraction:** The extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; gases, such as natural gas. Mining also includes quarrying; groundwater diversion; soil removal; milling, such as crushing, screening, washing, and floatation; and other preparation customarily done at the mine location or as part of a mining activity.

**Mobile Home:** (See "Dwelling, Mobile Home")

**Mobile Home Park:** (See "Manufactured Home Park")

**Mobile Home Subdivision:** (See "Manufactured Home Subdivision")

**Mobile Home Site:** A plot of ground designed for accommodation of a single mobile home dwelling.

**Monastery:** A building or group of buildings designed to provide group housing for persons under religious vows or orders.

**Motel:** (See "Hotel")



An Aerial of a Mining and Mineral Extraction Site and Quarry  
Source: Google Earth

**Motor Freight Terminal:** A facility for freight pick-up or distribution; may include intermodal distribution facilities for truck or rail transport.

**Motor Vehicle:** Every self-propelled land vehicle not operated upon rails, except mopeds and self-propelled invalid chairs.

## N

**Nature Center/Preserve:** Areas intended to remain in a predominately natural or undeveloped state, with or without animals and other wildlife, to provide resource protection and possible opportunities for passive recreation and environmental education for present and future generations.

**Nebraska Revised Reissued Statutes:** and the abbreviated term N.R.S. are one and the same.

**Net Acre:** Total area exclusive of street or roadway and alley easement.

**Nightclub:** A commercial establishment dispensing beverages for consumption on the premises and in which dancing is permitted or entertainment is provided.

**Non-Conforming Building:** A building or portion thereof which was lawful when established but which does not conform to subsequently established zoning or zoning regulations.

**Non-Conforming Use:** A use lawful when established but which does not conform to subsequently established zoning or zoning regulation.

**Non-Farm Buildings:** Are all buildings except those buildings utilized for agricultural purposes on a farmstead of 20 acres or more which produces one thousand dollars or more of farm products each year.

**Non-Farm Dwelling:** Any dwelling that is not a part of a farm regardless of lot size.

**Nonpoint Source:** Diffuse pollution source (i.e. without a single point of origin or not introduced into a receiving stream from a specific outlet). The pollutants are generally carried off the land by storm water. Common non-point sources are agriculture, forestry, urban, mining, construction, dams, channels, land disposal, saltwater intrusion, and streets.

**No Till Farming:** The soil is left undisturbed from harvest to planting except for nutrient and seed injection. Weed control is accomplished primarily with herbicides.

**Normal Growing Season:** The time period, usually measured in days, between the last freeze in the spring and the first frost in the fall. Growing seasons vary depending on local climate and geography. It can also vary by crop as different plants have different freezing thresholds.

**Nuisance:** A substantial invasion of or interference with another's interest in the private use and enjoyment of their property/land.

**Nursery:** The use of a premises for the propagation, cultivation, and growth of trees, shrubs, plants, vines, and the like from seed or stock, and the sale thereof, and including the sale of trees, shrubs, plants, vines, and the like purchased elsewhere and transplanted into the soil of the premises. In connection with the sale of plants, such fungicides, insecticides, chemicals, peat moss, humus, mulches, and fertilizers as are intended to be used in preserving the life and health of the plants may be sold.

**Nursery School:** (see "Preschool")

**Nursing Home:** A facility used or occupied by persons recovering from illness or suffering from infirmities of old age required skilled nursing care and related medical services and licensed by the appropriate state or federal agency or agencies.

**Nutrient Application Levels:** The levels of nutrients applied to the waste utilization area.

## O

**Occupied Dwelling:** Any residence, church, school and/or business, which has been in use at any time during the 12-month period immediately prior to the date upon which an application for a conditional use permit to construct an LFO or expand or modify a LFO.

**Off-road Vehicle:** Any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, swampland, or other natural terrain, except that such terms exclude (a) registered motorboats, (b) military, fire, emergency, and law enforcement vehicles when used for emergency purposes.

**Official Map:** (See Map, Official Zoning District.)

**Off-Street Parking Area or Vehicular Use:** To all off street areas and spaces designed, used, required, or intended to be used for parking, including driveways or access ways in and to such areas.

**Open Lots:** Pens or similar concentrated areas, including small shed-type areas or open-front buildings, with dirt, or concrete (or paved or hard) surfaces, wherein animals or poultry are substantially or entirely exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed-type areas.

**Open Space:** A parcel or parcels of land, together with the improvements thereon, primarily set aside for recreational use and enjoyment, exclusive of land areas used for streets, alleys, roads, driveways, parking areas, structures, and buildings.

**Operating Permit:** An operating permit as required for a LFO by the NDEE.



Example of Open Lots



**Other System Besides Liquid Manure Handling:** An operation using confinement buildings with a mesh or slatted floor over a concrete pit, where the manure is scraped into a waste storage facility, or an operation using dry bedding on a solid floor. In this case the manure and bedding are not combined with water for flushing to a storage structure.

**Outdoor Advertising:** See the definitions of "Advertising Structure" and "Sign".

**Outdoor Storage:** The storage of any material for a period greater than 24 hours, including items for sale, lease, processing, and repair (including vehicles) not in an enclosed building.

**Overlay District:** A district in which additional requirements will act in conjunction with the underlying zoning district. The original zoning district designation does not change.

**Owner:** One or more persons, including corporations, who have title to the property, structure in question.

## P

**Paintball Course:** An area of land typically designed around hillsides, trees, waterways, rocks, etc. for the purpose of allowing organized combat-like games using paintballs and the different mechanized equipment to fire the paintballs as ammunition. These facilities shall also include any buildings or structures for providing shelter to the participants.

**Parcel:** A lot or a contiguous group of lots in single ownership or under single control that may be considered as a unit for purposes of development.

**Park:** Any public or private land available for recreational, educational, cultural, or aesthetic use. For the purposes of establishing a setback for a Livestock Feeding Operation, a Wildlife Management Area (WMA) is not considered a park.

**Parking Space, Automobile:** An area, other than a street or alley, reserved for the parking of an automobile, such space having a dimension not less than eight and one-half feet by 20 feet, plus such additional area as is necessary to afford adequate ingress and egress.

**Parkway:** An arterial highway with full or partial control of access and located within a park or ribbon of park like development.

**Pasture:** An area where crops, vegetative forage growth, post-harvest residues are sustained for the purpose of grazing animals in that area.

**Paunch Manure:** Partially digested material taken from an animal at the time of slaughter.

**Performance Guarantee:** A financial guarantee to ensure that all improvements, facilities, or work required by these Regulations will be completed in compliance with these regulations as well as with approved plans and specifications of a development (Also, see "Maintenance Guarantee")

**Permanent Foundation:** A base constructed from either poured concrete or laid masonry rock or brick and placed on a footing located below ground level to a point below the frost line upon which a structure is permanently attached.

**Permanently Attached:** Connected to real estate in such a way as to require dismantling, cutting away, or unbolting in order to remove, relocate, or replace.

**Permit:** A document issued by Cherry County, including a Conditional Use Permit, authorizing the applicant to undertake certain activities.

**Permitted Use:** Any land use allowed without condition within a zoning district.

**Person:** An individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, syndicate, City, County, special district or any other group or combination acting as an entity, except that it shall not include Cherry County, Nebraska.

**Petroleum Distribution Pipeline:** Transportation facilities for the conveyance of: crude petroleum, refined petroleum products such as gasoline and fuel; natural gas; mixed, manufactured, or liquified petroleum gas; or the pipeline transmission of other commodities. Also includes pipeline surface and terminal facilities, including pumping stations, bulk storage, surge and storage tanks.

**Prevailing Winds:** Prevailing winds in Cherry County are from the north, and northwest in winter months and south in summer months. Prevailing wind directions, using magnetic north as determined through use of a common compass, are defined as:

- North - from forty-five degrees west of north to forty-five degrees east of north
- South - from forty-five degrees west of south to forty-five degrees east of south
- East - from forty-five degrees east of north to forty-five degrees east of south
- West - from forty-five degrees west of north to forty-five degrees west of south

**Pipeline:** A pipe used to transport, transmit, convey, or store liquid or gas for hire in Nebraska interstate commerce other than a major oil pipeline, a gathering pipeline, distribution pipeline, or service line.

**Pipeline, Major Oil:** A pipeline which is larger than six inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products or wastes, including crude oil or any fraction of crude oil, within, though, or across Cherry County.

**Pit System:** This system has a concrete floor and masonry or concrete side walls, is constructed 2 - 6 feet below the ground. The animal cages, if used, are typically built eight feet or more above the pit floor. Care must be taken to ensure the surface and groundwater are not contaminated. Foundation drains and external grading to direct surface water away help to keep manure dry, so that natural composting might occur.

**Pit (Shallow):** The most frequently used pit system. The concrete pit is 4–8 inches deep and is located 3-6 feet below the main floor. The manure and other waste are mechanically scraped or flushed out with water to a storage area, or directly loaded into a spreader for direct field application.

**Planned Unit Development:** A zoning district providing flexible land development when planned and designed under the provisions of these regulations as a unit containing one or more land uses.

**Planning Commission:** The Cherry County Planning Commission as established in accordance with Section §23-114 and with the powers and authority therein granted.

**Plat:** A map showing the location, boundaries, and legal description of individual properties.

**Point Source:** Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fixture, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged.

**Policy:** A statement or document of the county, such as the comprehensive plan, that forms the basis for enacting legislation or making decisions.

**Pollutant:** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

**Portable Temporary Classroom:** A temporary building, either stick-built or pre-manufactured (built off-site), installed on the grounds of a state approved school to provide additional classroom space where there is a shortage of capacity.

**Portland Cement Concrete:** An aggregate with cement binder, characterized by gray\white color. Relatively smooth, uniform concrete surface having few exposed aggregates. Each country has its own standard for Portland cement. The United States, including Cherry County, uses the specification prepared by the American Society for Testing and Materials – ASTM C-150 Standard Specification for Portland cement.

**Poultry, Commercial Feeding:** A poultry commercial feed lot, whether the confined feeding operations are enclosed or outdoors.

**Preliminary Plat:** The preliminary drawings and information which indicate the proposed layout of a subdivision, as described and defined in the subdivision regulations.

**Premises:** A tract of land, consisting of one lot or irregular tract, or more than one lot or irregular tract, provided such lots or tracts are under common ownership, contiguous, and used as a single tract. A building or land within a prescribed area.

**Preschool:** An early childhood program which provides primarily educational services, where children do not nap and where children are not served a meal.

**Private Club:** A non-profit association of persons who are bona fide members paying dues, which owns, hires or leases a building or premises, or portion thereof, the use of such building or premises being restricted to members and their guests.

**Private Well:** A well that provides water supply to less than 15 service connections and regularly serves less than 25 individuals.

**Prohibited Use:** Any use of land, other than nonconforming, which is not listed as a permitted use or conditional use within a zoning district.

**Professional Office:** Any building or part thereof used by one or more persons engaged in the practice of law, medicine, accounting, architecture, engineering or other occupation customarily considered as a profession.

**Promotional Device:** Any sign intended to be displayed either with or without a frame, with or without characters, letters, illustrations, or other material, on a fabric of any kind. National flags, flags of political subdivisions, or symbolic flags of any institutions or business shall be considered a promotional device for the purpose of this definition. Banners, pennants, inflatable characters, streamers, or fringe-type ribbons or piping, shall be considered as a promotional device.

**Public Conservation Lands:** Land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this Regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations, Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

**Public Improvement:** Any drainage facility, roadway, street, sidewalk, sewer or water facility or other improvement for which the government body may ultimately assume the responsibility of maintenance and operation.

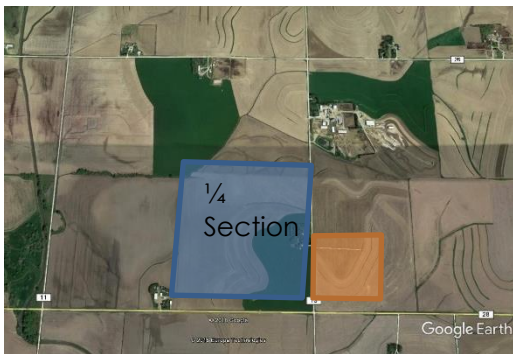
**Public Use Area:** That portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, lodges, shelter houses, playground equipment, lakes, and swimming beaches.

**Public and Private Utility:** Any governmental entity or business which furnishes to the general public telephone service, electricity, natural gas, water, sewer and other services so affecting the general public interest as to be subject to the supervision or regulation of a State agency.

**Public Water Supply:** A water supply system designed to provide public piped water fit for human consumption, if such system has at least 15 service connections or regularly serves at least twenty-five individuals. This definition shall include: (1) Any collection, treatment, storage, or distribution facilities under the control of the operator of such system and used primarily in connection with such system; and (2) Any collection or pretreatment storage facilities not under such control which are used primarily in the connection with such system.

**Pullet:** Young female chicken between 10 and 32 weeks of age, usually this term denotes egg type birds.

## Q



**Quarry:** See Mining and Mineral Extraction Site

**Quarter Section:** That portion of land approximately equal to  $\frac{1}{4}$  of a section of land (160 acres)

**Quarter-Quarter Section:** That portion of land approximately equal to  $\frac{1}{16}$  of a section of land (40 acres)

## R

**Railroad:** The land use including the right-of-way (R.O.W.) abutting railroad properties occupied by uses pertinent to the railroad operation and maintenance, but not including properties owned by the railroad and leased for use by others.

**Railroad Right-of-Way:** A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses or car yards.

**Rangeland:** An open region over which livestock may roam and feed. The plant cover is principally native grasses, grass like plants, and shrubs. It includes natural grasslands, savannahs, certain shrubs and grass like lands, most deserts, tundra, alpine communities, coastal marshlands, and wet meadows. It also includes lands that are re-vegetated naturally or artificially and are managed like native vegetation.

**Raw Materials Storage Area:** Includes but is not limited to feed silos, silage bunkers, and bedding materials.

**Recharge Areas:** The places where rain and snow melt percolate into the ground, refilling the groundwater aquifers.

**Recharge Rate:** The time that is required to add to or replenish water in an aquifer or water table.

**Recreation, Active:** Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites or fields.

**Recreation Equipment:** Play apparatus such as swing sets and slides, sandboxes, poles for nets, picnic tables, lawn chairs, barbecue stands, and similar equipment or structures including tree houses, swimming pools, playhouses, or sheds utilized for storage of equipment. Also see ("Major Recreational Equipment")

**Recreation, Passive:** Leisure-time activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, chess, checkers and similar table games. This includes open space for nature, and areas for nature walks and observation.

**Recreational Facility:** Facilities for the use by the public for passive and active recreation including tennis, handball, racquetball, basketball, track and field, jogging, baseball, soccer, skating, swimming, or golf. This shall include country clubs and athletic clubs, but not facilities accessory to a private residence used only by the owner and guests, nor arenas or stadiums used primarily for spectators to watch athletic events. In addition, recreational facilities shall mean museums, amphitheaters, racetracks (including all motor-powered vehicles) and wildlife conservation areas (used for public viewing), and theme parks.

**Recreational Vehicle (RV):** A vehicular unit primarily designed as a temporary living quarter for recreational camping or travel use having either its own power or designed to be mounted on or drawn by a motor vehicle. Recreational vehicle includes motor home, truck camper, travel trailer, camping trailer, and fifth wheel.

**Recreational Vehicle And Boat Repair Facility:** A business/facility solely for the repair and servicing of Recreational Vehicles and Boats, to include the sale of related parts and supplies.

**Recreational Vehicle (RV) Park Complex:** A tract of land under single ownership developed for recreational use. The complex shall accommodate a minimum of seventy-five or more recreational vehicle sites established and maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes. Complex may include the following services; restaurant, liquor sales, marina, RV and boat repair, fuel sales and convenience store.

**Recycling Facility:** A facility other than a junkyard in which recoverable resources such as paper, glass, metal cans, and plastics, are collected, bundled, stored, flattened, crushed, or reduced in some manner within a completely enclosed building, in preparation for shipment to others for reuse.

**Recycling Collection Point:** A drop-off point for temporary storage of recoverable resources such as paper, glass, cans, and plastics, and where no processing of such items takes place.



**Recycling Plant:** A facility other than a junkyard where recoverable resources such as paper products, glass, metal cans and other products are recycled, reprocessed, and treated to return the products to a condition in which they may be reused for production.

**Remodeling:** Any change in a structure (other than incidental repairs and normal maintenance) which may prolong its useful life; or the construction of any addition to, or enlargement of, a structure; or the removal of any portion of a structure.

**Research Laboratory or Center:** A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, and not including manufacture or sale of products, except as incidental to the main purpose of the laboratory.

**Residence:** See Dwelling Unit.

**Restaurant:** A public eating establishment at which the primary function is the preparation and serving of food primarily to persons seated within the building.

**Retail Trade:** Uses primarily engaged in selling merchandise for personal or household consumption and rendering services incidental to the sale of goods. Uses engaged in retail trade sell merchandise to the general public or to households for personal consumption.

**Reverse Spot Zoning:** An arbitrary zoning or rezoning of a small tract of land that is not consistent with the comprehensive land use plan and that uniquely burdens an individual owner largely to secure some public benefit. Reverse spot zoning usually results from downzoning a tract of land to a less intensive use classification than that imposed on nearby properties.

**Rezoning:** An amendment to or change in the zoning regulations either to the text or map or both.

**Rezoning, Piecemeal:** The zoning reclassification of individual lots resulting in uncertainty in the future compatible development of the area.

**Right-of-Way:** A strip of land occupied or intended to be occupied by a street, road, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for other similar use.

**Riparian Buffer:** A strip of vegetation planted along the bank of a body of water which slows the rate of flow of runoff from adjoining uplands, causing sediment and other materials to fall out onto the land before the runoff enters and pollutes the body of water.

**Road, Improved:** A street, county road, and/or State/Federal Highway that are graded, surfaced and maintained on a regular basis with an approved granular material or hard-surfacing material.

**Road, Private:** A way, other than driveways, open to vehicular ingress and egress established for the benefit of certain, adjacent properties. (Also, see Right-of-Way and Street.)

**Road, Public:** All public right-of-way reserved or dedicated for street or road traffic. (Also, see Right-of-Way and Street.)

**Road, Unimproved:** An officially declared minimum maintenance road as well as any road that is not generally graded, crowned or contain a surfacing material of either a granular or hard-surfaced nature.

**Roadside Stand:** A temporary structure or vehicle used primarily for the sale of farm products produced on the premises or adjoining premises including other basic crafts and drinks sold by the same vendor.

**Rodeo Grounds:** A tract of land used for the public performance featuring ordinary rodeo contests. These grounds are often used for other public benefits and performances when sponsored by clubs and organizations of the community.

**Room:** An un-subdivided portion of the interior of a dwelling unit, excluding bathroom, kitchen, closets, hallways, and service porches.

**Rooming House:** Any dwelling in which more than three persons, either individually or as families, are housed or lodged for hire, with or without meals.

**Runoff:** Precipitation, snow melt, or irrigation water that runs off the land into streams or other surface-water. It can carry pollutants from the air and land into receiving waters.

## S

**Sand or Gravel Pit:** Land used for the extraction of sand and/or gravel for public and/or commercial use.

**Sanitary Landfill:** A type of operation in which garbage and refuse, or garbage, or refuse is deposited by a plan on a specified portion of land, and is compacted by force applied by mechanical equipment, and then is covered by compacted suitable covering material to a depth of at least six to twelve inches over individual cells of garbage and/or refuse, which are closed at the end of each day, and to a depth of at least twenty-four inches over the finished land fill.

**Satellite Dish Antenna:** An antenna consisting of a radiation element intended for transmitting or receiving television, radio, microwave, or radiation signals and supported by a structure with or without a reflective component to the radiating dish, usually circular in shape.



Aerial of a Sand and Gravel Operation



Aerial view of a Sanitary Landfill

**Scenic Easement:** An easement for the purpose of limiting land development in order to preserve a view or scenic area.

**School, Day, Pre-, or Nursery:** A school or center for children under school age, whether licensed as a day care center or not, shall be approved by the Nebraska State Fire Marshall as being in safety conformance with the National Fire Protection Association, Pamphlet 101, known as the Life Safety Code and shall be approved by the Nebraska Department of Health and Welfare as meeting their health and welfare standards.

**School, Elementary, Junior High, or High:** Public and other non-profit institutions conducting regular academic instruction at kindergarten, elementary, and secondary levels. Such institutions shall offer general academic instruction equivalent to the standards prescribed by the State Board of Education.

**School, Private:** An institution conducting regular academic instruction at kindergarten, elementary or secondary levels operated by a non-governmental organization in conformance with the Nebraska Statutes.

**School, Trade:** An institution offering extensive instruction in the technical, commercial, or trade skills and operated by a non-governmental organization.

**Screening:** A method by which a view of one site from another adjacent site is shielded, concealed, or hidden during all seasons of the year and may include fences, walls, hedges, beams, or other features. (Also, see Buffer.)

**Sediment:** Solid material that is in suspension, is being transported, or has been moved from its original location by air, water, gravity or ice.

**Sedimentation:** The addition of soils to lakes, a part of the natural aging process, making lakes shallower. The process can be greatly accelerated by human activities.

**Self-Service Station:** An establishment where motor fuels are stored and dispensed into the fuel tanks of motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products.

**Self-Service Storage Facility:** A building or group of buildings containing individual, compartmentalized, and controlled access stalls or lockers for storage.

**Semi-solid Manure:** Contains little bedding and usually no extra water added. In most cases, little drying occurs before handling. During wet weather the manure scraped from open lots can also be semi-solid in nature.

**Separate Ownership:** Ownership of a parcel of land by a person who does not own any of the land abutting such parcel.

**Service Stations:** Buildings and premises where the primary use is the supply and dispensing at retail of motor fuels, lubricants, batteries, tires, and motor vehicle accessories and where light maintenance activities such as engine tune-ups, lubrications, and washing may be conducted, but not including heavy maintenance and repair such as engine overhauls, painting, and body repair.

**Setback Line, Front Yard:** The line which defines the depth of the required front yard. Said setback line shall be parallel with the right-of-way line or highway setback line when one has been established. (See illustration under "Yards".)

**Setback Line, Rear Yard or Side Yard:** The line which defines the width or depth of the required rear or side yard. Said setback line shall be parallel with the property line, removed therefrom by the perpendicular distance prescribed for the yard in the district. (See illustration under "Yards".)

**Shooting Range, Outdoor:** The use of land for archery and/or the discharging of firearms for the purposes of target practice, skeet and trap shooting, mock war games, or temporary competitions, such as turkey shoots. Excluded from this use type shall be general hunting and unstructured and nonrecurring discharging of firearms on private property with the property owner's permission.

**Sight Triangle:** An area at a street or road intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision of traffic at an intersection as established within these regulations.

**Silo:** A structure or storage area to confine livestock feed.

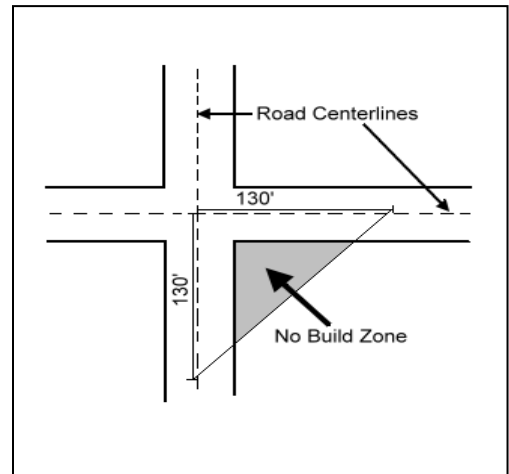
**Similar Use:** The use of land, buildings, or structures of like kind or general nature with other uses within a zoning district as related to bulk, intensity of use, traffic generation and congestion, function, public services requirements, aesthetics or other similarities.

**Site Plan:** A plan, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses, drives, parking, drainage, landscape features, and other principal site development improvements for a specific parcel of land.

**Site, Septic:** The area bounded by the dimensions required for the proper location of the septic tank system.

**Sketch Plat:** A sketch preparatory to preparation of the preliminary plat to enable a subdivider to reach general agreement with the Planning Commission at the earliest possible time.

**Sludge:** Solids removed from sewage during wastewater treatment and then disposed of by incineration, dumping, burial, or land application.



**Soil Excavation, Commercial:** The process of altering the natural (grade) elevation by cutting or filling the earth, or any activity by which soil or rock is cut, dug, quarried, uncovered, removed, displaced, or relocated to be used on a private project for a fee.

**Soil Excavation, Public:** The process of altering the natural (grade) elevation by cutting or filling the earth, or any activity by which soil or rock is cut, dug, quarried, uncovered, removed, displaced, or relocated by a governmental unit for a governmental purpose.

**Solar Units:** A device designed and used for the purpose of collecting solar energy and utilizing the energy to heat space or water, or for some other use, within a structure.

**Solid Manure:** Combination of urine, bedding, and feces with little or no extra water added. It is usually found in loafing barns, calving pens, and open lots with good drainage.

**Solid Waste:** Waste materials consisting of garbage, trash, refuse, rubble, sewage, offal, dead animals, or paunch manure.

**Spot Zoning:** An arbitrary zoning or rezoning of a small tract of land that is not consistent with the comprehensive land use plan and primarily promotes the private interest of the owner rather than the general welfare. Spot zoning usually results from an up-zoning to a more intensive use classification.

**Stable, Private:** A detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale.

**Stable, Riding:** A structure in which horses or ponies, used exclusively for pleasure riding or driving, are housed, boarded, or kept for remuneration, hire, or sale.

**State:** The State of Nebraska.

**Stockpiling:** The accumulation of manure in mounds, piles, or other exposed and non-engineered site locations for the storage or holding for a period of not more than one year.

**Storage:** The keeping, in a roofed or unroofed area, of any goods, junk, material, merchandise, or vehicles on the same tract or premises for more than 30 days.

**Storage Containers:** A standardized, reusable vessel that is or appears to be: (1) originally, specifically or formerly designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities, or (2) designed for or capable of being mounted or moved on a rail car, or (3) designed for or capable of being mounted on a chassis or bogie for movement by truck trailer or loaded on a ship.

**Story:** A space in a building between the surface of any floor and the surface of the floor above, or if there is not floor above, then the space between such floor and the ceiling or roof above.

**Story, One-Half:** The same as "Half-Story".

**Street:** A public thoroughfare or right-of-way dedicated, deeded, or condemned for use as such, other than an alley, which affords the principal means of access to abutting property including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except as excluded in these regulations.

**Street Arterial:** A street designed with the primary function of efficient movement of through traffic between and around areas of a city, village, or county with controlled access to abutting property.

**Street Collection:** A street or highway that is intended to carry traffic from minor street to major streets. Collector streets are usually the principal entrance streets to residential developments and the streets for circulation within the development.

**Street, Curvilinear:** Local streets that deviate from straight alignment and change direction without sharp corners or bends.

**Street, Frontage Access:** A street parallel and adjacent to a major street, major inter-regional highway, or major collection road and primarily for service to the abutting properties and being separated from the major street by a dividing strip.

**Street, Local:** A street designed for local traffic that provides direct access to abutting residential, commercial, or industrial properties.

**Street, Looped:** A continuous local street without intersecting streets and having its two outlets connected to the same street.

**Street, Major:** A street or highway used primarily for fast or high-volume traffic, including expressways, freeways, boulevards, and arterial streets.

**Streets, Private:** An open, unoccupied space, other than a street or alley dedicated to the public, but permanently established as the principal means of vehicular access to abutting properties. The term "private street" includes the term "place."

**Street, Side:** Street bounding a corner or reversed corner lot, and which extends in the same general direction as the line determining the depth of the lot.

**Street Centerline:** The centerline of a street right-of-way as established by official surveys.

**Street Line:** A dividing line between a lot, tract, or parcel of land and the contiguous street.

**Structure:** Anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires location on the ground or is attached to something having a location on the ground, including swimming and wading pools and covered patios, outdoor areas such as paved areas, walks, tennis courts, and similar recreation areas.

**Structure, Advertising:** (see "Advertising Structure")



**Structure, Temporary:** A structure without any foundation or footing and removed when the designated time period for which the temporary structure was erected has ceased.

**Structural, Alteration:** Any change in the support members of a building, such as in a bearing wall, column, beam or girder, floor or ceiling joists, roof rafters, roof diaphragms, foundations, piles, or retaining walls or similar components.

**Subdivision:** The division of land, lot, tract, or parcel into two or more lots, parcels, plats, or sites, or other divisions of land for the purpose of sale, lease, offer, or development, whether immediate or future. The term shall also include the division of residential, commercial, industrial, agricultural, or other land whether by deed, metes, and bounds description, lease, map, plat, or another instrument.

**Subdivision Regulations:** The official Subdivision Regulations of the County, together with all amendments thereto, adopted pursuant to Nebraska State Statutes.

**Substantial Improvement:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either,

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any alteration to comply with existing state or local health, sanitary, building or life safety codes or regulations.

**Substations:** Any electrical facility to convert electricity to a voltage greater than 35,000 (35,000 KV) for interconnection with high voltage transmission lines.

**Surface Water Class A -- Primary Contact Recreation:** Surface waters which are used, or have a high potential to be used, for primary contact recreational activities. Primary contact recreation includes activities where the body may come into prolonged or intimate contact with the water, such that water may be accidentally ingested and sensitive body organs (e.g. eyes, ears, nose, etc.) may be exposed. Although the water may be accidentally ingested, it is not intended as a potable water supply unless acceptable treatment is supplied. These waters may be used for swimming, water skiing, canoeing, and similar activities.

**Surface Waters:** Waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, springs, canal systems, drainage systems, and all other bodies or accumulations of water, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

# T

**Tavern:** (See “Bar”)

**Taxidermy Service:** The business of preparing, stuffing, and mounting the skins of animals.

**Temporary Use:** A use intended for limited duration to be located in a zoning district permitting such use.

**Tower, Communication:** A structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communications. (Also, see “Antenna”)

**Tract:** A plot or parcel of land shown by survey, other than a lot in a subdivision which is recorded in the Office of the Register of Deeds.

**Trailer:** A vehicle standing on wheels or on rigid supports which is used for transporting boats, cargo or property.

**Transfer Station:** A fixed facility where solid waste from collection vehicles is consolidated and temporarily stored for subsequent transport to a permanent disposal site. This does not include an infectious waste incineration facility.

**Transient:** A person who is receiving accommodations for a price, with or without meals, for a period of not more than 180 continuous days in any one year.

**Transitional Housing:** A project that is designed to provide housing and appropriate supportive services to homeless persons to facilitate movement to independent living. The housing is short-term, typically less than 24 months. In addition to providing safe housing for those in need, other services are available to help participants become self-sufficient.

**Transitional Use:** A permitted use or structure that, by nature or level and scale or activity, acts as a transition or buffer between two or more incompatible uses.

**Transmission Line:** The electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**Transmissivity:** The ability of an aquifer to yield a certain output of groundwater over a set period of time.

**Tree Cover:** The area directly beneath the crown and within the dripline of a tree.

**Truck Repair:** The repair, including major mechanical and body work, straightening of body parts, painting, welding or other work that may include noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in gasoline service stations, of trucks having a hauling capacity of over one ton and buses but excluding pickups and other vehicles designed for the transport of under eight passengers.

**Truck Terminal:** A building or an area in which freight brought by truck is assembled and/or stored for routing or reshipment, or in which semitrailers, including tractor and/or trailer units and other trucks, are parked or stored for a short time period.

## U

**Upzoning:** A change in zoning classification of land to a more intensive or more restrictive district such as from residential district to commercial district or from a single-family residential district to a multiple family residential district.

**Usable Open Space:** That part of the ground area of a lot or development devoted to outdoor recreational space, but excluding private or public roadways, accessory off-street parking and loading and other uses and structures.

**Use:** Any purpose for which a structure or tract of land may be designed, arranged, intended, maintained or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in a structure or on a tract of land.

**Use, Best:** The recommended use or uses of land confined in an adopted comprehensive plan. Such use represents the best use of public facilities, and promotes public health, safety and general welfare.

**Use, Highest:** An appraisal or real estate market concept that identifies the use of a specific tract of land that is most likely to produce the greatest net return on investment.

**Use, Principal:** The main use of land or structure, as distinguished from an accessory use. (Also, see "Building, Principal")

**Use Regulations:** Regulations identifying permitted and exceptional uses, accessory uses, use limitations and use conditions.

**Used Materials Yard:** Any lot or a portion of any lot used for the storage of used materials. This shall not include "Junk Yard" or "Automobile Wrecking Yards".

**Utility Easement:** (see "Easement")

## V

**Variance:** A relaxation of the literal terms of the zoning regulations where applicable to avoid undue hardship to a property owner and where the public interest will be served.

**Vehicle:** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved solely by human power or used exclusively upon stationary rails or tracks.

**Vehicle, Motor:** (See "Motor Vehicle")

**Visual Obstruction:** Any fence, hedge, tree, shrub, wall or structure exceeding two feet in height, measured from the crown of intersecting or intercepting streets, alleys or driveways, which limit the visibility of persons in motor vehicles on said streets, alleys, or driveways. This does not include trees kept trimmed of branches below a minimum height of eight feet.

## W

**Warehouse:** A building used primarily for the storage of goods and materials.

**Warehouse and Distribution:** A use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment.

**Waste Handling System:** Any and all systems, public or private, or combination of said structures intended to treat human or livestock excrement and shall include the following types of systems.

1. **Holding pond** shall mean an impoundment made by constructing an excavated pit, dam, embankment or combination of these for temporary storage of liquid livestock wastes, generally receiving runoff from open lots and contributing drainage area.
2. **Lagoon** shall mean an impoundment made by constructing an excavated pit, dam, embankment or combination of these for treatment of liquid livestock waste by anaerobic, aerobic or facultative digestion. Such impoundment predominantly receives waste from a confined livestock operation.
3. **Liquid manure storage pits** shall mean earthen or lined pits located wholly or partially beneath a semi or totally housed livestock operation or at some removed location used to collect waste production.
4. **Sediment** shall mean a pond constructed for the sole purpose of collecting and containing sediment.
5. **Human disposal systems** shall comply with the requirements of Title 124 at the Nebraska Department of Environment and Energy or subsequent agencies.

**Waste, Industrial:** Any material resulting from a production or manufacturing operation having no net economic value to the source producing it.

**Wastewater Lagoon:** (See Lagoon.)

**Waste Utilization Area:** Land used or reserved for the application of animal waste from a AFO.

**Water Enjoyment Use:** A recreational land use facilitating access to the water of a lake or river and is dependent on the persons utilizing the waters or a lake or river, but the locations of buildings and structures other than walkways leading to the lake or river is not dependent on direct contact with the shorelines of a lake or river.

**Watershed:** The surrounding land area that drains into a lake, river or river system.



An example of the Waters of the State

**Waters of the State:** The waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water surface or underground, material or artificial, public or private, situated wholly within or bordering upon the state.

**Water System, Regional:** A water system which has been constructed for the expressed purpose of supplying potable water to densely populated areas. A regional system shall be an extension of an existing municipal system and shall not be dependent upon individual wellfields or other water source other than those serving the municipality.

**Water Table:** The upper limit of the portion of the soil that is completely saturated with water. The seasonal high-water table is the highest level to which the soil is saturated.

**Wellfield:** A tract of land that contains a number of wells supplying water.

**Wetland:** An area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soils conditions, commonly known as hydrophytic vegetation.

**Wholesale Establishment:** An establishment for the on-premises sales of goods primarily to customers engaged in the business of reselling the goods.

**Wholesale Trade:** A use primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. The chief functions of uses in wholesale trade are selling goods to trading establishments, or to industrial, commercial, institutional, farm and professional; and bringing buyer and seller together.

## X



Example of Xeriscaping  
Source: Google Images

**Xeriscaping:** Landscaping characterized by the use of vegetation that is drought-tolerant or a low water use in character.

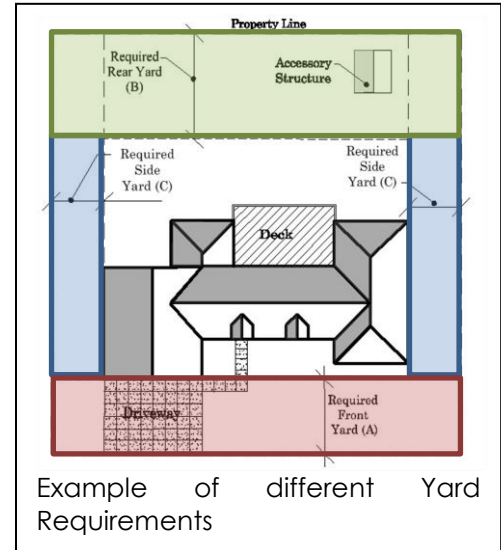
# Y

**Yard:** Open space on a lot which is unoccupied and unobstructed from the ground to the sky, except for permitted obstructions.

**Yard, Front:** A yard extending along the full length of the front lot line from said line to a line drawn parallel to it equal to the depth of the required front yard. On corner lots, the Zoning Administrator shall determine the front yard requirement subject to the limitation that at least one front yard shall have the required front yard depth and the other shall have no less than one-half of the required front yard depth.

**Yard, Rear:** A yard extending from the rear lot line to a line drawn parallel to the rear lot line at a distance therefrom equal to the depth of the required rear yard. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards.

**Yard, Side:** A yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard, but excluding any area encompassed within a front yard or rear yard.



# Z

**Zoning Administrator:** Person or persons authorized and empowered by the county to administer and enforce the requirements of these Regulations.

**Zoning District:** The same as "District".

**Zoning District, Change of:** The legislative act of removing one or more parcels of land from one zoning district and placing them in another zoning district on the zone map of the County.

**Zoning Board of Adjustment:** The Board established in accordance with sections 23-168.01 through 23-168.04 R.R.S. Neb. (1943).

**Zoning Regulations:** The official Regulations as approved and adopted in the Zoning Regulations of the county of Cherry, Nebraska, together with all amendments thereto, adopted pursuant to sections 23-114 through 23-114.05.



## ARTICLE 3: GENERAL REGULATIONS

### Section 3.01 General

The zoning regulations set forth by this Resolution within each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

In addition to all other requirements set forth in these regulations, all structures, including residences and conditional use projects must comply with all existing federal, state and Cherry County Floodplain Regulations. A valid floodplain application must be completed by the applicant and approved by the County's Floodplain administrator prior to the issuance of any zoning permit.

### Section 3.02 Zoning Affects Every Building and Use

With the exception of the provisions of Sections 3.07 through 3.11 of this Resolution regarding non-conforming uses and structures, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, enlarged, moved or structurally altered except in conformity with the regulations herein specified for the zoning district in which it is located. Further, no building or structure shall hereafter be erected or altered to exceed the height or bulk, to occupy a greater percentage of lot area, to have a narrower or smaller front, side or rear setback than is herein required, or be in any other manner contrary to the provisions of this Resolution.

### Section 3.03 Disclaimer of Building and Other Codes and County Liability

This Resolution is a zoning regulation only and regulates only land usage. This Resolution does not in any manner whatsoever include, imply or otherwise create any type or form of building, plumbing, electrical or other code which would regulate the design and construction of any building or structure within the jurisdiction of this Resolution. Any permits or certificates issued in accordance with the requirements of this Resolution are solely for purpose of assuring compliance with the land usage regulations set forth in this Resolution for the purposes described in Section 1.02 of this Resolution. Cherry County assumes no liability and shall not in any manner be held liable for any design or construction problem or defect in any building or structure for which a zoning permit, certificate of compliance or other form of land usage approval may have been issued nor shall Cherry County assume any liability for any noncompliance with any Federal, State or other code, regulation or requirement.

### Section 3.04 Principal Uses

The principal uses of land or building as hereinafter listed in each Zoning District shall be permitted in the Districts indicated under the provisions of this Regulation. No land or buildings shall be devoted to any use other than the use permitted hereinafter in the Zoning District in which the land or building shall be located with the following exceptions:

1. Use lawfully established on the effective date of this Regulation and rendered non-conforming by the provisions thereof shall be subject to the provisions hereinafter set forth.
2. Conditional uses allowed in accordance with procedures or provisions set forth herein.

### Section 3.05 Conditional Uses

The development of this provision is based upon the Zoning Districts, within which Districts, the use of land and buildings in relation to the land are substantially uniform. It is recognized; however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular Zoning District, without consideration, in each case, of the impact or influence of those uses upon neighboring land. Such conditional uses fall into two categories:

1. Uses publicly operated or traditionally affected with a public interest.
2. Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their influence or impact on neighboring property.

### Section 3.06 Accessory Uses

Unless otherwise prohibited or restricted, a permitted use also allows uses, buildings, and structures incidental thereto if located on the same site or building plot.

### Section 3.07 Nonconforming, General Intent

It is the intent of this resolution to permit lawful non-conformities to continue until they are removed, but not encourage their survival. Such uses are declared by this resolution to be incompatible with permitted uses

in the districts involved. It is further the intent of this resolution that non-conformities shall not be enlarged upon, expanded or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district except as may be authorized in this title.

### **Section 3.08 Nonconforming Lots of Record**

1. In any district where buildings and structures are permitted, notwithstanding limitations imposed by other provisions of this Resolution, use and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Resolution. This provision shall apply even though such lot fails to meet the requirements for area or width, or both that are generally applicable in the district; provided:
  - A. The yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
  - B. Such lot has been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would have been lawful; and
  - C. Has remained in separate and individual ownership from adjoining lots or tracts of land continuously during the entire period in which this or previous Resolution would have prohibited creation of such lot.
2. Variance of width and yard requirements shall be obtained only through action of the Board of Adjustment.

### **Section 3.09 Nonconforming Structures**

1. *Authority to continue:* Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions of this section.
2. *Enlargement, Repair, Alterations:* Any such structure described in Section 3.09 (1) may be enlarged, maintained, repaired or remodeled, provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be in conformance with this section, unless otherwise permitted by conditional use permit unless otherwise approved or as specified in the Residential District.
3. *Damage or Destruction:* In the event that any structure described in Section 3.09 (1) is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural value:
  - A. Such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located, unless otherwise provided herein; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 3.09, shall not have a side yard of less than five feet. When a structure is damaged to the extent of less than 50 percent of its structural value, no repairs or restoration shall be made unless a zoning permit is obtained, and restoration is actually begun within six months after the date of such partial destruction and is diligently pursued to completion.
  - B. When a building, the use of which does not conform to the provisions of the Cherry County Zoning Regulation but is allowed to continue under said regulations per Section 3.09 (1), is damaged by fire, explosion, act of God, or the public enemy said building may be rebuilt within 24 months to its previous size, animal units and footprint. Said destruction shall not be an intentional act by the property owner or resident. Said building may be rebuilt within 500 feet of its previous area as long as it does not cause a violation to the Cherry County Zoning Regulations that the original building was not in violation of. Notwithstanding, an extension to the 12 months may be granted by the Planning Commission not to exceed an additional 12 months.
4. *Moving:* No structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

**Section 3.10 Nonconforming Uses**

1. *Nonconforming Uses of Land:* Where at the effective date of adoption or amendment of this resolution, lawful use of land exists that is made no longer permissible under the terms of this resolution as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this resolution.
  - B. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this resolution; and
  - C. If any such nonconforming use of land ceases for any reason for a period of more than 12 months, any subsequent use of such land shall conform to the regulations specified by this resolution for the district in which such land is located.
2. *Nonconforming Uses of Structures:* If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of this resolution, that would not be allowed in the district under the terms of this resolution, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:
  - A. No existing structure devoted to a use not permitted by this resolution in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to use permitted in the district in which it is located.
  - B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this resolution, but no such use shall be extended to occupy any land outside such building.
  - C. If no structural alterations are made, any nonconforming use of a structure or structures and premises may be changed to another nonconforming use provided that the Planning Commission through the conditional use process either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguard in accord with the provisions of this resolution.
  - D. Any structure, or structure and land in combination, in any or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed.
  - E. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for 12 months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located; and
  - F. Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

**Section 3.11 Repairs and Maintenance**

1. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic area of the building as it existed at the time of passage of amendment of this Resolution shall not be increased.
2. Nothing in this resolution shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**Section 3.12 Uses Under Conditional Use Permit Not Nonconforming Uses**

Any use for which a Conditional Use Permit has been issued as provided in this Resolution shall not be deemed a nonconforming use but shall without further action be deemed a conforming use in such district.

**Section 3.13 Interpretation**

In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, moral, prosperity, and general welfare. It is not intended by these regulations to interfere with or abrogate or annul any easements,

covenants or other agreements between the parties, except that if these regulations impose a greater restriction, these regulations shall control.

### Section 3.14 Scope of Regulations

No building, structure, or land within the jurisdiction of Cherry County shall hereafter be used or occupied and no structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered, except in conformity with the provisions of this Resolution herein specified for the district in which it is located and except after receiving a zoning permit from the Cherry County Zoning Administrator and:

1. Every building hereafter erected shall be located on a lot of record.
2. Only one principal building will be permitted on one lot of record, unless otherwise allowed in this regulation.
3. In a Planned Unit Development, before a zoning permit can be granted, an application for a Zoning Compliance Certificate shall be submitted for approval.
4. After a county road has been classified as a **minimum maintenance** road or is an unimproved road (**Title 428: Board of Public Roads Classification and Standards Chapter 001.08 Minimum Maintenance**), no zoning permits for livestock facilities, residential dwellings, mobile home, or manufactured home shall be issued on any property adjoining such classified road, unless an agreement is made between the applicant/county board/township board.

### Section 3.15 Zoning Standards

No nonconforming building, structure, or part thereof shall hereafter be erected or altered if it does not meet the requirements described in section 3.07 through 3.11, unless a variance is granted:

1. To reduce any required yard setbacks
2. To exceed the height or bulk
3. To occupy a greater percentage of lot area
4. To erect or place any building, or structure, or part thereof into any zoning district to be used or occupied
5. To relocate or transport any building, structure, or part thereof into any zoning district to be used or occupied
6. To accommodate or house a greater number of families

No part of a yard or other open space required in connection with any building, occupancy, or use for the purpose of complying with these regulations shall be included in the calculations to determine the size of area necessary to accommodate the off-street parking and loading space requirements.

### Section 3.16 District Regulations, Restrictions, Boundary Creation

No such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be given by publication thereof in a paper of general circulation in the County at least one time 10 days prior to such hearing.

### Section 3.17 Right-of-Way Splits and Minimum Lot Requirements

In circumstances where a parcel of ground owned by one individual or party was split into two or more parcels by action taken by the NDOT, the township or Cherry County and one or more of the resulting lots has been made a non-conforming tract(s) for development, the required minimum lot size may be less than required and may be approved administratively. However, in all circumstances, the minimum setback requirements shall be observed. In addition, said tract(s) was conforming prior to said action.

### Section 3.18 Lot

1. Every building hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot or lot of record and in no case, shall there be more than one principal building on a lot unless otherwise provided.
2. On lots sized less than 3 acres, a septic site evaluation must be submitted by a professional who is certified with the NDEE. One copy of the plot plan shall be retained by the Zoning Administrator as a public record, and the other shall be returned to the applicant.
3. More than one principal building of a single permitted use may be located upon a lot or tract in the following instances provided a Zoning Permit is approved.

- A. Institutional buildings,
- B. Multiple residences attached to a farming or ranching operation.
- C. Public or semi-public buildings,
- D. Multiple-family dwellings,
- E. Commercial or industrial buildings,
- F. Agricultural complex/compound,
- G. Housing for the Elderly, or
- H. Agricultural buildings.

### **Section 3.19 Yard Requirements**

Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.

1. All accessory buildings that are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.
2. On Double Frontage Lots, the required front yard shall be provided on each street

### **Section 3.20 Caretaker's Quarters**

Caretaker's quarters are permitted in all districts, providing the use is incidental to the principal use.

### **Section 3.21 Accessory Buildings and Uses**

1. No accessory building shall be constructed upon a lot for more than 18 months prior to beginning construction of the principal building. No accessory building shall be used for more than 12 months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
2. No detached accessory building or structure shall exceed the maximum permitted height of the principal building or structure.
3. No accessory building shall be erected in or encroach upon the required side yard on a corner lot or the front yard of a double frontage lot.
4. Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than 10 feet.
5. Garages and outbuildings in Residential Districts and Subdivisions, used for storage, and other structures customary and appurtenant to the permitted uses. The sidewalls of said building shall not exceed 18 feet in height.
6. Accessory buildings, including portable buildings are exempt from these regulations provided they are less than 100 square feet and have a hard roof made of wood, metal or other hard surface. Canvas or plastic tarps do not constitute a hard surface unless used as a temporary water-proof cover.
7. Regulation of accessory uses shall be as follows:
  - A. Except as herein provided, no accessory building shall project beyond a required yard line along any street.
  - B. Service station pumps and pump islands may occupy the required yards, provided, however, that they are not less than 15 feet from street lines.
  - C. Agricultural building shall not be considered an accessory building if a dwelling is not present on a farm as defined in Article II of these regulations.

### **Section 3.22 Reductions in Lot Area Prohibited**

No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of these Regulations are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose as discussed in Section 3.17.

### **Section 3.23 Yard Requirements**

1. Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with these regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.

2. All accessory buildings that are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.

### **Section 3.24 Drainage**

No building, structure, or use shall be erected on any land, and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Anyone desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the County or their designated agent that such changes will not be a detriment to the neighboring lands.

### **Section 3.25 Permitted Obstructions in Required Yards**

The following shall not be considered obstructions when located in the required yards:

1. All Yards:
  - A. Steps and accessibility ramps used for wheelchairs and other assisting devices which are four feet or less above grade which are necessary for access to a permitted building or for access to a lot from a street or alley.
  - B. Chimneys projecting 24 inches or less into the yard.
  - C. Recreational and laundry-drying equipment.
  - D. Approved freestanding signs.
  - E. Arbors and trellises.
  - F. Flag poles.
  - G. Window unit air conditioners projecting not more than 18 inches into the required yard.
  - H. Fences or walls subject to applicable height restrictions are permitted in all yards; and
  - I. Egress windows and bulkhead enclosure.
2. Front Yards:
  - A. Bay windows projecting three feet or less into the yard are permitted.
  - B. Open or screened porches, platforms or terraces not over three feet above the average level of the adjoining ground, including a permanently roofed-over terrace or porch provided they do not extend or project into the yard more than six feet and has no more than 48 square feet of area: and
  - C. Awnings and canopies provided they do not extend or project into the yard more than six feet and has no more than 48 square feet of area.
3. Rear and Side Yards:
  - A. Open off-street parking spaces.
  - B. Balconies or outside elements of central air conditioning systems; and
  - C. Open or screened porches, platforms or terraces not over three feet above the average level of the adjoining ground, including a permanently roofed-over terrace or porch.
4. Double Frontage Lots:
  - A. The required front yard shall be provided on each street.
5. Building Groupings:
  - A. For the purpose of the side yard regulation a group of business or industrial buildings separated by a common party wall shall be considered as one building occupying one lot.

### **Section 3.26 Occupancy of Basements and Cellars**

No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed.

### **Section 3.27 Well Fields**

No development of any kind shall be located closer than 1,000 feet to any wellhead location as defined by the NHHS.

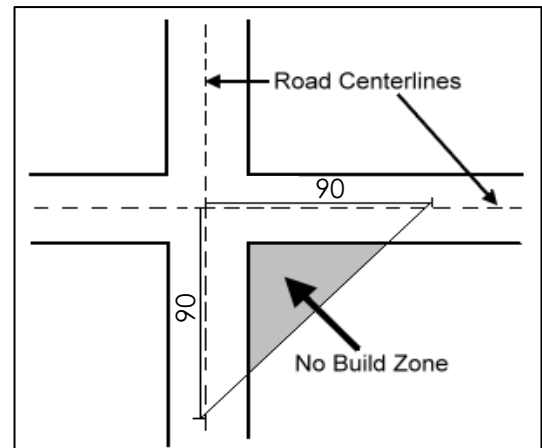


**Section 3.28 Permitted Modifications of Height Regulations**

1. The height limitations of this Regulation shall not apply to:
  - Air-Pollution Prevention Devices
  - Barns, silos and other Ag. structures
  - Belfries
  - Chimneys
  - Church Spires
  - Conveyors
  - Cooling Towers and Ventilators
  - Cupolas
  - Derricks
  - Domes
  - Elevator Bulkheads
  - Commercial Elevator Penthouses
  - Fire Towers
  - Flag Poles
  - Grain Elevators
  - Masts and Aerials
  - Non-commercial wind turbines
  - Ornamental Towers and Spires
  - Observation Towers
  - Public Monuments
  - Radio/Television Towers less than 125 feet tall
  - Smokestacks
  - Solar Panels
  - Stage Towers or Scenery Lots
  - Tanks
  - Water Towers and Standpipes
  - Wind Energy Conversion System-Commercial / Utility grade
2. Any necessary mechanical apparatus usually required to be placed above the roof level and not intended for human occupancy may be erected to any safe height not in conflict with any other existing federal, state or local regulations, or any other County regulations. These structures shall require permits as required by the County.

**Section 3.29 Corner Lots or County Road Intersections**

On a corner lot or the intersection of two county roads or a county road and a Federal or State Highway in any district, nothing shall be erected, planted or allowed to grow in such a manner as to materially impede vision between a height of three feet and 10 feet above the grades of the centerline of the intersecting street or road, from the point of intersection 90 feet in each direction measured along the centerline of the streets or roads. This provision shall not apply to Irrigation Accessory Equipment. This does not apply to annually grown crops such as corn and soybeans.

**Section 3.30 Recreation Equipment, Storage**

1. For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.
2. No major recreational equipment shall be parked or stored on any lot in a residential district except in a carport or enclosed building or behind the nearest portion of a building to a street, provided however, that such equipment may be parked anywhere on residential premises not to exceed 24 hours during loading or unloading. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

**Section 3.31 Storage of Goods and Equipment**

Goods, equipment, supply materials, machinery and parts thereof, shall not be stored on any residentially zoned property except as provided under Section 3.28 other than in completely enclosed buildings or in spaces screened by fencing and/or evergreen shrubbery.

**Section 3.32 Building Setback**

1. The building setback lines shall be determined by measuring the horizontal distance from the property line to the furthest exterior wall of the existing or proposed structure, or
2. Where the centerline of a road is identified, said setback shall be from the centerline of the road to a point horizontally located at the required minimum distance.

3. All new non-farm residences shall locate no less than the corresponding distances provided in Section 8.09 from an Existing Agricultural Operation or AFO with more than 301 animal units located in any affected adjacent Zoning District.
4. Any building, drain field, and drinking water well shall be located according to NDEE and NHHS requirements.

### **Section 3.33 Temporary Structures**

Temporary structures incidental to construction work, but only for the period of such work, are permitted in all districts. This does not include campers.

The following temporary uses of land are permitted subject to the specific regulations and time limits which follow, and to the other applicable regulations of the district in which the use is permitted:

1. Contractor's office and equipment sheds (containing no sleeping or cooking accommodations) accessory to a construction project, and to continue only during the duration of such project.
  - A. Such use shall continue only during the duration of the project and additionally that the contractor's office and equipment sheds are removed within 30 days after the project is complete.
3. Real estate offices (containing no sleeping or cooking accommodations) incidental to a new housing development to continue only until the sale or lease of all dwelling units in the development.
  - A. Such use shall continue only during the duration of the project and additionally that the real estate offices are removed within 30 days after the project is complete.
4. Seasonal sale of farm produce (including Christmas trees) grown on the premises on districts where permitted, to continue for not more than four months per year; structures incidental to such sale need not comply with the applicable front yard requirements if the structures are removed or moved back of the required front yard setback line at the end of the season during which they are used.
5. Temporary occupancy of a mobile home for residential purposes may be allowed during the actual construction or reconstruction of a dwelling.

### **Section 3.34 Screening**

1. Junkyards (salvage or wrecking yards) shall be screened with an eight-foot-high opaque, solid fence, brick wall, or earth berm so as to provide visual and aural separation between such use and adjacent areas.
2. All extractive industries shall be screened by means of plant materials, earth mounding, or solid fencing at least six feet in height to provide visual and aural separation between such use and adjacent areas.
3. All holding, or incineration areas of dead livestock shall be screened by means of plant materials, earth mounding, or solid fencing at least six feet in height to provide visual and aural separation between such use and adjacent areas. No storage or incineration of dead livestock shall be located in road right-of-way or on any other land not owned or leased by the livestock operation.

### **Section 3.35 Fences, Walls, Hedges and Trees**

1. Fences and walls up to six feet in height shall be permitted in any required yard, or along the edge of any yard, provided that within any required front yard in Residential Districts, no fence, wall or hedge shall be over four feet in height nor closer than 25 feet to any public right-of-way. The only exception to the foregoing shall be in Industrial Districts where height may exceed six feet, however such fences, walls and hedges shall be no closer than 25 feet to a county road right-of-way. No such hedges shall be permitted to encroach onto public rights-of-way or across property lines.
2. Trees or hedges reaching over six feet in height shall be permitted in any required yard or along the edge of any yard, provided such trees or hedges are planted at least 25 feet from a county road right-of-way. No such trees and hedges shall be permitted to encroach onto public rights-of-way or across property lines. No such trees shall be planted under overhead utility lines.
3. No new trees shall be planted in the designated sight triangle.
4. No fence may be placed in any right-of-way of any Cherry County Road in any zoning district.

### **Section 3.36 Public Utility Facilities Lot Size Requirements**

Notwithstanding any other provision of these regulations, none of the following public utility or public service uses shall be required to comply with the lot size requirements and bulk regulations of the zoning district in which they are located:

1. Electric and telephone substations and distribution systems, including transformer stations.
2. Gas regulator stations.

3. Poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the transmission of electricity, gas, or water.
4. Broadcasting and microwave transmitting or relay stations and towers, except as may be required to meet setback requirements.
5. Water tower or standpipes.
6. Pumping stations.

**Section 3.37 Irrigation Equipment Setbacks Requirements**

The setback for irrigation wells, affixed irrigation accessory equipment, irrigation re-use pits and livestock pollution control facilities (the road dam structure being excluded) shall be exempt from any setback requirements.

**Section 3.38 Secondary Dwellings on an Agricultural Operation**

More than one dwelling may be permitted on an agricultural operation provided the residence is an accessory use to an agricultural operation and under the same ownership as the existing dwelling(s) or unless it is part of an agricultural complex/compound.

**Section 3.39 Prohibited Uses**

All uses not specifically listed within a particular zoning district are deemed to be prohibited until some point where this Resolution is amended to include a given use.

**Section 3.40 Fees**

The payment of any and all fees for any zoning or subdivision related action or permit request shall be required prior to the issuance or investigation of any said action or permit request. Such fees shall be adopted by the County Board of Commissioners by separate Resolution.

## ARTICLE 4: ZONING DISTRICTS

### Section 4.01 Establishment of Districts

1. Purpose: For the purpose of these Regulations, the jurisdictional area defined in Section 1.03 is hereby divided into the following districts, the respective symbol for each district being set forth opposite its title:

CCAG	Cattle Country Agricultural District
NRCAG	Niobrara River Corridor Agricultural District
AH	Airport Hazard Area Overlay District
2. Designation: Each such district may be designated on the Zoning Map, in the Use and Bulk Tables and elsewhere in the text of these Regulations by symbol only.

### Section 4.02 Provision for Official Zoning Map

1. The county is hereby divided into districts, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Resolution. The Official Zoning Map shall be identified by the signature of the Chair, attested by the County Clerk, and bearing the seal of the County under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 4.02 of Resolution No. \*\*\*\*\* of "The County of Cherry, Nebraska", together with the date of the adoption of this Resolution. If, in accordance with the provisions of this Resolution, changes are made in the district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the County Board of Commissioners".
2. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the County Board of Commissioners may by resolution adopt a new Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Chair, attested by the County Clerk and bearing the seal of the County under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted \*\*\*\*\*, Resolution No. \*\*\*\*\* (1) of "The County of Cherry, Nebraska." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

### Section 4.03 Zoning Map

1. General: The areas and boundaries of such districts are hereby established as shown on the Official Zoning Map, and said Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of these Regulations. The Official Zoning Map shall be identified by the signature of the Chairman of the Board of County Commissioners, attested by the County Clerk and bear the seal of the County. The Official Zoning Map shall be the final authority as to the current zoning status of land, water areas, buildings and structures.
2. Zoning Map Changes. If, in accordance with the provisions of the Regulations changes are made in the district boundaries or on other matter portrayed on the Official Zoning Map, such changes shall be entered promptly after the amendment has been approved by the legislative body with an entry showing the nature of the change, the date, the signature of the Chairman of the County Board of Commissioners and the attestation by the County Clerk. No such change shall become effective until entry is made on the Map.

### Section 4.04 Rules for Interpretation of District Boundaries on the Official Zoning Map

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following City limits or the extraterritorial jurisdiction shall be construed as following such City limits or the extraterritorial jurisdiction.

4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
5. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline.
6. Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines.
7. Boundaries indicated as parallel to, or extensions of features indicated in subsections (1) to (6) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (1) to (7) above, the Board of Adjustment shall interpret the district boundaries.
9. Where a district boundary line divides a lot which was in single ownership at the time of passage of this Resolution, The Board of Adjustment may permit the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.
10. When a district boundary line splits a lot, tract, or parcel that is in sole ownership, the zoning district with the most restrictive requirements may be extended over the entire property without amending the zoning map through the public hearing process.
11. When a lot, tract, or parcel is bisected by the extraterritorial jurisdiction boundary line, the jurisdiction with the greatest portion of the property shall have controlling interest.

#### **Section 4.05 Land Use Categories Table Explanation**

The Table found in Section 4.07 of this Resolution is a listing of uses that may be allowed within the variety of Zoning Districts.

1. The different uses are grouped into specific "Land Use Categories".
2. The "Land Use Categories" are listed in each of the Zoning Districts in lieu of specific uses. It is important to note, if a "Land Use Category" is listed within a specific Zoning District, it DOES NOT indicate every use in the "Land Use Category" is allowed within the specific District.

The different uses within Section 4.07 are Exempt from Permit (E), Permitted (P), Conditional Use Permit (C), Temporary (T) or not permitted (-).

In order to determine if a specific use is allowed in a Zoning District, the following steps need to be followed:

1. Find the Use Type matching your application.
2. Look across the table and determine which Zoning District the use is allowed.
3. Determine any special criteria for the use(s) by referring to the specific District.
4. Determine where the specific Zoning Districts are by reviewing the Official Zoning Map.
5. Determine the necessary procedures to receive required permits after the land or property is in the control of the applicant.
6. When doubt, please confer with Planning staff.

The Table in Section 4.07 also lists Accessory Uses which may be allowed or not allowed in any specific Zoning District. The Accessory Use listing can be found at the end of the Table.

#### **Section 4.06 - Annexation Rule**

Annexation of land to any incorporated municipality within or adjoining the County of Cherry, Nebraska shall remove such land from the jurisdiction of this Resolution and any legal extension of any zoning jurisdictional area boundary by any such municipality shall remove such land from the jurisdiction of this Resolution.

## Section 4.07 Land Use Categories/Matrix

Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "-" = Not Permitted	CCAG	NRCAG		Additional Requirements
Agriculture and Horticulture Uses	Agricultural buildings general agricultural or storage uses	E	P		
	Agricultural operations	E	E		
	Application of livestock manure/wastes products	P	-		
	Application of waste products from municipalities/industrial plants	C	-		
	Class I	P	-		See Section 8.09
	Class IIA	C	-		See Section 8.09
	Class IIB	C	-		See Section 8.09
	Class IIIA	C	-		See Section 8.09
	Class IIIB	C	-		
	Class IV	C	-		
	Community Gardens	P	-		
	Composting of dead livestock from operations WHEN part of an approved waste management plan	E	-		See Section 8.09 and 8.22
	Composting of dead livestock from operations within the County NOT part of an approved waste management plan	C	-		See Section 8.09 and 8.22
	Composting of sludge or other by-products from municipalities and/or industrial operations	C	-		See Section 8.09 and 8.22
	Cover crops not including industrial hemp	E	E		
	Crop Production including industrial hemp	E	E		
	Commercial Greenhouse	P	-		
	Livestock sales	P	-		
	Stockpiling of dead livestock from operations within the County, WHEN part of an approved waste management plan	P	-		See Section 8.09 and 8.22
	Stockpiling of sludge or other by-products from municipalities and/or industrial operations	C	-		See Section 8.09 and 8.22
	Truck farming	P	P		
	Horses and other non-commercial livestock on residential lot	P	P		
	Equestrian centers/stables	P	P		
	Wineries	P	-		
	Distillation of grains for human consumption	C	-		
	Forestry, tree farms, plant nurseries and timber harvesting and management accomplished in accordance with a plan prepared by a professional forester.	E	E		
Agricultural Sales and Service	Agricultural chemicals, fertilizer, anhydrous ammonia-storage & distribution for commercial use.	C	-		
	Agricultural implement & vehicle sales and service	P	-		
	Agricultural Cooperative Production/Distribution Facility	C	-		
	Agricultural research farm	E	E		
	Agricultural processing	C	-		
	Agriculture feed mixing and blending, seed sales and grain handling operations	E	-		
	Grain storage/Grain Storage System – personal	E	E		
	Grain storage/Grain Storage System – commercial	C	-		



Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "-" = Not Permitted	CCAG	NRCAG		Additional Requirements
Residential Living	Live-work unit	P	-		Article 3
	Multi-family dwelling	P	-		Article 3
	Mobile Home Dwelling	P	-		Article 3
	Mobile Home Dwelling - workers quarters	P	-		Article 3
	Seasonal dwelling or cabins	P	C		Article 3
	Single-family attached dwelling	C	C		
	Specialty dwelling, i.e., earthen, Quonset, Tiny Homes, Yurts, Grain Bin Homes, etc.	P	C		
	Single-Family dwelling	P	C		Article 3
	Two-family/Duplex	-	-		
	Dormitory style housing	P	-		
Residential/ Commercial Institutions	Adult care homes	P	-		
	Assisted Living Facilities	C	-		
	Bed and Breakfast	P	P		See Section 8.15
	Convents	P	C		
	Emergency Residential Shelters	P	P		
	Group Care Home	P	-		
	Group Home	P	P		
	Hospice	P	P		
	Life Care Facility	P	-		
	Monasteries	P	C		
	Nursing Homes	P	-		
	Retirement Homes	P	-		
	Transitional housing	P	P		
Community Services/ Civic Uses	Cemetery	P	P		
	Churches, synagogues, temples, etc.	P	P		
	Publicly owned and operated buildings	P	P		
	Privately owned and operated community centers & buildings	P	C		
	Fraternal Organization	C	-		
	Hospitals	P	-		
	Philanthropic Organizations	C	C		
	Museums	C	C		
	Planetariums	C	C		
	Senior citizen centers	P	-		
Treatment, Rehabilitation and Incarceration Facilities	Community correction centers	P	-		
	Drug/alcohol rehabilitation ctr.	C	-		
	Halfway houses	P	P		
	Adult Detention Center	C	-		
	Juvenile Detention Center	C	-		
		C	-		
Day-Care, Public and Private Schools	Adult day-care home	P	P		
	Child Care Center	C	C		
	Child Care Home	P	P		
	Colleges and Universities	C	-		
	Day care centers	C	-		
	Family Child Care Home I	P	P		
	Family Child Care Home II	C	C		
	Preschools	C	-		
	Public & private schools (K-12)	P	-		
	Trade, career & technical schools	P	-		

**ARTICLE 4: ZONING DISTRICTS**

Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "-" = Not Permitted	CCAG	NRCAG		Additional Requirements
Public Parks and Open Space	Arboretums	P	C		
	Athletic fields	C	-		
	Campground	C	C		
	Nature centers	P	C		
	Parks, trails, picnic areas, & playgrounds	P	C		
	State parks	E	E		
	Public pools and/or water parks	P	C		
	Dog Parks (not racing)	P	C		
Public/Private Utilities and Communication Services	Natural gas exploration & pumping	C	-		
	Natural gas depots	C	-		
	Wind Energy Conversion Systems – Commercial/Utility Grade	C	-		See Section 8.08
	Public works facilities	P	-		
	Wireless telecommunication, facilities & equipment, new tower	C	-		See Section 8.03
	Wireless telecommunication facilities & equipment, collocated or maintenance	P	-		See Section 8.03
	Solar Farms	C	-		See Section 8.23
Animal Care	Commercial kennel boarding or training, including shelters	P	-		
	Pet cemetery	C	-		
	Pet crematorium	C	-		
	Pet grooming	C	-		
	Animal hospital	P	-		
Business and Household Services	Building maintenance & cleaning services	C	-		
	Copying, printing, mailing, & packaging services	C	-		
	Lawn, garden & yard maintenance services	C	-		
	Locksmiths and key duplication	C	-		
	Pest control services	C	-		
	Small appliances & household equipment repair	C	-		
	Well drilling/septic tank cleaning	C	-		
Financial Services	Banks	C	-		
	Automatic Teller Machine (ATM)	C	-		
	Brokerages	C	-		
	Credit Unions	C	-		
	Insurance offices	C	-		
	Financial advisory services	C	-		
	Specialty loan services	C	-		
Food and Beverage Services	Banquet/reception facility	C	-		
	Brew-on Premises Store	C	-		
	Brewery	C	-		
	Craft Brewery (Commercial)	C	-		
	Catering service	C	-		
	Donut and pastry shops	C	-		
	Mobile Food Units	T	-		
	Roadside produce stands	T	-		
	Distilleries	C	-		
	Tavern or bar	C	-		
	Drinking establishments	C	-		
	Coffee houses, coffee shops	C	-		
	Brew pub	C	-		
	Micro-brewery (Commercial)	C	-		

Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "-" = Not Permitted	CCAG	NRCAG		Additional Requirements
General Commercial	Antiques and collectables shop	C	-		
	Art galleries	C	-		
	Artisan production shop	C	-		
	Artist Studio	C	-		
	Arts & crafts stores	C	-		
	Bicycle sales & service	C	-		
	Business support services	C	-		
	Camping equipment sales	C	-		
	Computer hardware/software sales	C	-		
	Dance studios & schools	C	-		
	Farmer's Market	P	-		
	Firearms and ammunition sales	C	-		
	Florists	C	-		
	Food store (specialty) incl. bakeries, meat lockers, butchers, delicatessen, not a full-service grocery	C	-		
	Funeral homes, mortuaries, incl. crematoriums	C	-		
	Garden center	C	-		
	Pottery store	C	-		
	Tanning Studio	C	-		
	Taxidermy Services	C	-		
	Tobacco store	-	-		
Special Commercial	Adult Entertainment	P	P		See Section 8.11
	Commercial greenhouses	C	-		
	Convenience store	C	-		
	Drive-in theater	C	-		
	Equipment rental and leasing	C	-		
	Fencing dealers	C	-		
	Fireworks stands	C	-		
	Gasoline filling stations, incl. Self-Service	C	-		
	Monument sales	C	-		
	Motels and hotels	C	-		
	Nurseries, retail sales	C	C		
	Short-term rentals	P	P		
Medical Uses, not including Home Occupations	Acupuncture offices	C	-		
	Chiropractor offices	C	-		
	Dental offices incl. orthodontics	C	-		
	Massage therapy	C	-		
	Medical offices	C	-		
	Optical sales & services	C	-		
	Rehabilitation facilities incl. out-patient services	C	-		
Office Uses, not including Home Occupations	Accounting services counseling	C	-		
	Attorney offices	C	-		
	Business offices	C	-		
	Consultant offices	C	-		
	Investment counseling	C	-		
	Photographic studios	C	-		
	Real Estate offices	C	-		
	Utility/telephone company offices	C	C		

**ARTICLE 4: ZONING DISTRICTS**

Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "-" = Not Permitted	CCAG	NRCAG		Additional Requirements
Recreational Commercial	Commercial stables	C	C		
	Golf courses, public & private	C	-		
	Golf driving ranges	C	-		
	Gun clubs	C	-		
	Health clubs/spas	C	-		
	Miniature golf courses	C	-		
	Paintball Course	C	-		
	Racetrack	C	-		
	Recreational facility, Indoor	C	-		
	Recreational facility, outdoor	C	C		
	Recreational vehicle (RV) Park	C	C		See Section 8.04
	Riding Academies	P	C		
	Roller- and ice-skating rink	C	C		
	Skate Park	C	-		
	Special Event	C	C		
Auto Services/ Commercial, not including Home Occupations	Auto body repair	C	-		
	Automotive/machinery repair shop	C	-		
	Automobile/truck sales, rental & leasing	C	-		
	Automobile/truck washes, self-services or automatic	C	-		
	Motor home dealers	C	-		
	Motorcycle dealers, incl. moped and scooters	C	-		
	Recreational vehicle sales/rentals	C	-		
	Transmission repair shops	C	-		
	Travel trailer dealers	C	-		
	Vehicle Storage	C	-		
	Vehicle Storage, Long-term	C	-		
	Trailer, RV, & boat storage	C	-		
Warehousing and Storage	Fireworks storage	C	-		
	Mini warehouse/self-storage	C	-		See Section 8.18
	Outdoor Storage	C	-		
	Outdoor Storage Containers	C	-		
	Storage facilities similar to Portable On-demand storage facilities	T	-		
	Storage/warehousing of non-hazardous materials (fully enclosed)	C	-		
	Warehouse and distribution	C	-		
	Warehousing (enclosed)	C	-		
	Warehousing (Open)	C	-		
	Wholesale business and storage	C	-		
Contractors, Contractor Yards, Storage and Supply	Building materials sales/storage yards (excl. asphalt/concrete mixing)	C	-		
	Bulk materials or machinery storage (fully enclosed)	C	-		
	Carpenters	C	-		
	Construction batch plants	C	-		
	Construction yards incl. offices & equipment storage yards excl. heavy machinery	C	-		
	Electricians	C	-		
	Heating & ventilating contractors	C	-		
	Masons & bricklayers	C	-		
	Plumbers	C	-		
	Trade shops (incl. cabinet makers)	C	-		

Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "-" = Not Permitted	CCAG	NRCAG		Additional Requirements
Large Contracting/ Materials Manufacturing	Asphalt contractors	C	-		
	Concrete block manufacturing	C	-		
	Concrete contractors	C	-		
	Concrete products	C	-		
	Excavating contractors	C	-		
	Heavy construction companies	C	-		
	Highway/street construction co.	C	-		
	Manufactured housing fabrication	C	-		
	Prefabricated buildings & components manufacturing	C	-		
	Wrecking & demolition contractors	C	-		
Food Processing and Manufacturing	Bakery Products Manufacturing	C	-		
	Creamery and Dairy Operations	C	-		
	Dairy Products Manufacturing	C	-		
	Distillation of grains for human consumption	C	-		
	Egg Processing Plants	C	-		
	Flour, Feed and Grain Grinding and Milling	C	-		
	Fruit and Vegetable processing, Canning, preserving, Drying and freezing	C	-		
	Ice Manufacturing (Incl. Dry Ice)	C	-		
	Meat Processing	C	-		
Mining and Excavation	Brick, firebrick and clay products manufacturing	C	-		
	Monument & architectural stone manufacturing	C	-		
	Soil excavation/mining for commercial purposes	C	-		See Section 8.06
	Soil excavation/mining for a public entity/project	C	-		See Section 8.06
	Quarry	C	-		See Section 8.06
Metal Processing, Stamping	Culvert manufacturing	C	-		
	Fabricated metal products	C	-		
	Welding	C	-		
	Wire Rope and Cable Mfg.	C	-		
Waste Handling	Landfill, Construction Material	C	-		
	Landfill, Solid Waste	C	-		
	Recycling Center	C	-		
	Recycling Processing	C	-		
	Sanitary Transfer Station	C	-		
Products Manufacturing	Basket & hamper (wood, reed, rattan, etc.) manufacturing	C	-		
	Millwork manufacturing	C	-		
	Printing and publishing plants	C	-		
	Tool, die, gauge and machine shops	C	-		
	Wind turbine manufacturing	-	-		
General Manufacturing (High Hazard)	Automobile Wrecking Yard	C	-		See Section 8.16
	Bio-Fuels Manufacturing, including Ethanol production	C	-		See Section 8.17
	Grain Elevator and Storage Facilities	C	-		
	Salvage Operations	C	-		See Section 8.16
	Scrap or Salvage Yards	C	-		See Section 8.16
	Waste Recovery Facilities – Commercial, Industrial & Residential	C	-		
	Wood Preserving Treatment	C	C		

**ARTICLE 4: ZONING DISTRICTS**

Use Category					
	E = Exempt from a Permit P = Permitted Uses/Permit Required C = Conditional Use Permit T = Temporary Uses "- " = Not Permitted	CCAG	NRCAG		Additional Requirements
Accessory Uses	Animals and Livestock on Residential Acreages	P	P		
	Barns	P	P		
	Bins, grain storage	P	P		
	Carports	P	P		
	Decks, gazebos, patios (elevated or on-grade)	P	P		
	Fences	P	P		See section 3.35
	Freestanding canopy	P	P		
	Fuel storage, does not apply to convenient stores and gas stations	P	P		
	Fuel tanks and dispensing, does not apply to convenient stores and gas stations equipment	P	P		
	Garages, Private	P	P		
	Garage, Storage	P	P		
	Grain Storage Systems	P	P		
	Greenhouses, Non-commercial	P	P		
	Guest Houses	P	P		
	Heliports	C	C		
	Home Occupations	P	P		See Sections 8.01 and 8.02
	Home based Businesses	P	P		See Section 8.01 and 8.02
	Outdoor Wood Furnaces	P	P		
	Portable building	P	P		
	Portable on-demand storage containers	T	T		
	Porch, unenclosed	P	P		
	Private Airstrip	C	C		
	Private Wells	P	P		
	Secondary Dwellings	C	C		See Section 3.38
	Shortwave and Ham towers and transmitters	P	C		
	Silos	P	P		
	Solar panels	P	P		See Section 8.23
	Storage sheds	P	P		
	Storage building using multiple storage containers	C	C		
	Swimming pools	P	P		
	Tennis courts	P	P		
	Wind Energy Conversion System	C	C		See Section 8.07



**Section 4.08 CCAG – Cattle Country Agricultural District****4.08.01 Intent:**

The intent of this district is to implement the policies and objectives of the Cherry County, Nebraska Comprehensive Plan by maintaining agricultural crop and livestock production which is in balance with the natural environment and promote other and new forms of agricultural production which is compatible with existing ranch and farm uses and the environment. The intent is also to encourage soil and water conservation, preserve water quality, prevent contamination of the natural environment within the County and to preserve and protect ranch and farm operations from conflict with non-agricultural uses which, if allowed to develop, would be or could become incompatible with the agricultural character of the County and the occasional generation of dust, noise, odors, and other similar events produced by the agricultural uses and livestock production uses permitted within this district, or which could have adverse property tax impacts, or which is not compatible with the limited public facilities and services available in the rural areas of the County.

**4.08.02 Permitted Uses**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District. Refer to Section 4.07 to determine specific uses allowed as Permitted Uses.

**4.08.03 Conditional Uses**

Conditional uses are subject to any conditions listed in this Resolution and are subject to other conditions relating to the placement of said use on a specific tract of ground in the CCAG District as reviewed by the Planning Commission and approved by the County Board. Refer to Section 4.07 to determine specific uses allowed under a Conditional Use.

**4.08.04 Temporary Uses**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 3.33.

**4.08.05 Accessory Uses**

Refer to the definitions of Accessory Uses and Structures, as well as Table 4.07 and Sections within Article 3 for more detail.

**4.08.06 Height and Lot Requirements:**

The height and minimum lot requirements shall be as follows:

Use	Lot Area (acres)	Lot Width (feet)	Lot Frontage (feet)	Front Yard (feet) (1)	Rear Yard (feet) (1)	Side Yard (feet) (1)	Max. Height (feet)
Single-family dwelling	2.5*	200	100	58	43	43	35
Other Permitted Uses	2.5*	200	100	58	43	43	35
Grain Bins and other Agricultural structures (not on the same property as a farmstead)	-	-	-	58	43	43	90
Conditional Uses	2.5*	200	100	58	43	43	35
Seasonal dwellings	2.5*	200	100	58	43	43	35
Accessory structures	-	-	-	58	43	43	35

(1) Single, Double, and Triple frontage lots shall have a setback of 58 feet from the centerline of any unplatted Road.

(2) Front Yard setbacks shall be 25 feet, Rear Yard setbacks shall be 10 feet, and Side Yard setbacks shall be 10 feet from the property line when abutting any other platted street, road or highway.

\* Larger lot areas may be required by the standards and regulations of NDEE based upon proper sizing and location of septic tank and tile field or lagoon sewage disposal systems.

Note:

At county road intersections, no permanent structures, including grain bins shall be allowed to be constructed in the "No Build Zone", see Section 3.25. This shall also apply to trees being placed within the space.

**4.08.07 Residential Development Regulations**

Cherry County supports agricultural practices in the CCAG District and therefore, all persons seeking to construct a new dwelling unit in the CCAG District shall do so only after:

1. Making Application for a Zoning Permit for a dwelling unit in CCAG with the Zoning Administrator.
2. Within such Application, Applicant shall acknowledge and accept as reasonable and normal the effects on rural living of normal, usual, customary, or generally accepted farming practices or farming operations, and all matters in any way related to or incidental thereto, as the same now exist, or as the same may be hereafter developed in Cherry County including but not limited to:
  - A. noise from tractors or other farm equipment and aerial spraying at all hours and noise from livestock at all hours.
  - B. dust from animal pens, field work, harvesting, and gravel roads.
  - C. increased flies, mosquitoes, or other insects that are attracted to crops, livestock, or manure.
  - D. odor from livestock operations and animal confinement operations, and order from silage, manure, and manure application procedures including liquid manure being distributed on farm ground via pivot or other method, stockpiling of manure away from the livestock feeding operation for later distribution, or distributing manure on farm ground as fertilizer.
  - E. smoke from burning ditches or other approved burning.
  - F. the use and application practices for all livestock waste, herbicides, pesticides, fertilizer and other chemicals, including drift by aerial spraying or other application of such products.
  - G. all field preparation, harvest practices, and all livestock animal husbandry practices.
  - H. the movement of livestock, farm products, manure, machinery and equipment on public roads; and
  - I. all other similar or related farming practices or farming operations, and all matter in any way related or incidental thereto.
3. Any proposed subdivisions within this district shall be required to meet the Subdivision Regulations and the minimum standards:
  - A. When outside of four miles of a municipality with a local fire department and water supply the subdivision shall make provisions for fire suppression within the development.
  - B. Shall provide local fire departments with any passcodes for entering the development.

**Section 4.09 NRCAG – Niobrara River Corridor Agricultural District****4.09.01 Intent:**

The intent of this district is to implement the Comprehensive Development Plan by maintaining the pastoral landscape and scenic beauty that led to the designation of the Niobrara River as a National Scenic River through preservation of agricultural uses as the predominant land use and through maintaining the visual qualities of the river corridor and the local economic activity that the scenic river generates.

**4.09.02 Permitted Uses**

Permitted Uses are allowed outright provided the uses and/or structure meet the minimum bulk requirements of the District. Refer to Section 4.07 to determine specific uses allowed as Permitted Uses.

**4.09.03 Conditional Uses**

Conditional uses are subject to any conditions listed in this Resolution and are subject to other conditions relating to the placement of said use on a specific tract of ground in the NRCAG District as reviewed by the Planning Commission and approved by the County Board. Refer to Section 4.07 to determine specific uses allowed under a Conditional Use.

**4.09.04 Temporary Uses**

Temporary uses may be permitted provided a Temporary Use Permit is obtained and said temporary use is eliminated at the expiration of the permit. See Section 3.33.

**4.09.05 Accessory Uses**

Refer to the definitions of Accessory Uses and Structures, as well as Table 4.07 and Sections within Article 3 for more detail.

**4.09.06 Height and Lot Requirements:**

The height and minimum lot requirements shall be as follows:

Use	Lot Area (acres)	Lot Width (feet)	Lot Frontage (feet)	Front Yard (feet) (1)	Rear Yard (feet) (1)	Side Yard (feet) (1)	Max. Height (feet)
Single-family dwelling	2.5*	200	100	113	43	43	35
Other Permitted Uses	2.5*	200	100	113	43	43	35
Grain Bins and other Agricultural structures (not on the same property as a farmstead)	-	-	-	113	43	43	90
Conditional Uses	2.5*	200	100	113	43	43	35
Seasonal dwellings	2.5*	200	100	113	43	43	35
Accessory structures	-	-	-	113	43	43	35

- (1) Single, Double, and Triple frontage lots shall have a setback of 113 feet from the centerline of any unplatted Road.
  - (2) Front Yard setbacks shall be 80 feet, Rear Yard setbacks shall be 10 feet, and Side Yard setbacks shall be 10 feet from the property line when abutting any other platted street, road or highway.
- \* Larger lot areas may be required by the standards and regulations of NDEE based upon proper sizing and location of septic tank and tile field or lagoon sewage disposal systems.

**Note:**

At county road intersections, no permanent structures, including grain bins shall be allowed to be constructed in the "No Build Zone", see Section 3.29. This shall also apply to trees being placed within the space.

**4.09.07 Residential Development Regulations**

Cherry County supports agricultural practices in the NRCAG District and therefore, all persons seeking to construct a new dwelling unit in the NRCAG District shall do so only after:

1. Making Application for a Zoning Permit for a dwelling unit in NRCAG with the Zoning Administrator.
2. Within such Application, Applicant shall acknowledge and accept as reasonable and normal the effects on rural living of normal, usual, customary, or generally accepted farming practices or farming operations, and all matters in any way related to or incidental thereto, as the same now exist, or as the same may be hereafter developed in Cherry County including but not limited to:
  - A. noise from tractors or other farm equipment and aerial spraying at all hours and noise from livestock at all hours.
  - B. dust from animal pens, field work, harvesting, and gravel roads.
  - C. increased flies, mosquitoes, or other insects that are attracted to crops, livestock, or manure.
  - D. odor from livestock operations and animal confinement operations, and order from silage, manure, and manure application procedures including liquid manure being distributed on farm ground via pivot or other method, stockpiling of manure away from the livestock feeding operation for later distribution, or distributing manure on farm ground as fertilizer.
  - E. smoke from burning ditches or other approved burning.
  - F. the use and application practices for all livestock waste, herbicides, pesticides, fertilizer and other chemicals, including drift by aerial spraying or other application of such products.
  - G. all field preparation, harvest practices, and all livestock animal husbandry practices.
  - H. the movement of livestock, farm products, manure, machinery and equipment on public roads; and
  - I. all other similar or related farming practices or farming operations, and all matter in any way related or incidental thereto.
3. Any proposed subdivisions within this district shall be required to meet the Subdivision Regulations and the minimum standards:
  - A. When outside of four miles of a municipality with a local fire department and water supply the subdivision shall make provisions for fire suppression within the development.
  - B. Shall provide local fire departments with any passcodes for entering the development.

**4.09.08 Performance Standards and Development Requirements**

The owners of real property within the Niobrara Scenic River Corridor have a right to enjoy the scenic quality and view of the river, the river valley and related scenic vistas whether along the river or roadways in the corridor. In order to protect these rights and to preserve the scenic quality of the river, in a manner consistent with the National Park Service Niobrara National Scenic River Final General Management Plan/Environmental Impact Statement (GMP), development of buildings and structures associated with uses authorized in this district, when developed within sight from any location within the corridor, shall comply with the following standards and limitations:

1. All buildings, structures and uses which require a zoning permit shall be subject to such permit application or certificate request being forwarded to the Niobrara Council for review and comment with regard to compliance of the proposed development with the GMP.
  - A. The Zoning Administrator shall not issue any zoning permit in this District until a response from the Niobrara Council has been received, provided such response is received within 90 days from the date the Zoning Administrator sends the application for a zoning permit to the Niobrara Council.
  - B. If no response is received from the Niobrara Council within such time period, the application shall be deemed to be consistent with the GMP.
  - C. In the event the Niobrara Council shall determine the proposed development is not consistent with the GMP it shall recommend modifications in the proposed development which would allow the development to become consistent with the GMP.
  - D. Upon receipt of such findings and recommendations, the Zoning Administrator shall notify the applicant of such inconsistency and recommendations and request modifications in the application so that the development becomes consistent with the GMP.
2. Upon receipt of a revised application which is consistent with the recommendations of the Niobrara Council, such permit or certificate may then be issued.
3. Application for authorization of any use listed as a conditional use in this district shall be referred to the Niobrara Council for review and comment in the same manner as above. The findings and recommendations of the Niobrara Council shall be forwarded to the Planning Commission and Board of Commissioners to be considered during the conditional use review process.

4. Application for a variance from the requirements of this District shall be referred to the Niobrara Council for review and comment in the same manner and for the same purpose as in Paragraph 1 above. The findings and recommendations of the Niobrara Council shall be forwarded to the Board of Adjustment so such findings and recommendations may be considered during the deliberations of the Board of Adjustment on a variance application.
5. Residential Uses:
  - A. In all instances where residential dwellings and accessory buildings may be viewable from any vantage point at river elevation or prominent scenic vista such dwelling or accessory buildings shall be:
    - 1) limited to 35 feet in height and may be sited in a manner optimizing the scenic views from such buildings,
    - 2) Said buildings will not be generally visible from any vantage point at river elevation or prominent scenic vista at the time of completion of construction and occupancy of the dwelling and thereafter.
    - 3) Not generally visible shall mean a building or structure not visible during summer months when deciduous trees have leaves, except for occasional visibility caused by wind generated motion in the screening material and during nighttime hours when lighting within or associated with such buildings or structures filters through the screening material.
  - B. In order for such buildings to not be generally visible:
    - 1) Said buildings shall be sited in a manner where the resulting location is not being generally visible from the upstream surface of the Niobrara River or prominent scenic vistas during months when deciduous trees have foliage and being only 50% visible during the remainder of the year and the following shall be considered:
      - a. the natural topography,
      - b. existing or installed living landscape material,
      - c. berming or
      - d. installation of native or adapted landscape screening materials
      - e. shall
    - 2) Visibility of such buildings from a lateral or downstream surface of the Niobrara River shall be limited to 50%.
  - C. If dwellings or accessory buildings are constructed of exterior materials which are or simulate natural wood and natural wood colors and roofing material is or simulates wood shingles or other non-reflective material of natural wood or summer green tones:
    - 1) Such buildings may be 50% visible from the upstream surface of the River.
    - 2) Visibility of such buildings from a lateral or downstream surface of the Niobrara River shall be limited to 50%.
    - 3) In all cases the percentage of visibility shall be achieved at the time of completion of construction and occupancy.
  - D. In all instances where trees and/or vegetation are used to limit visibility from the vantage point at the river elevation or prominent scenic vista and such trees and/or vegetation are:
    - 1) damaged by fire, disease or other reason, such trees and/or vegetation shall be immediately re-established by the owner of such buildings.
    - 2) Materials shall be similar and having a sufficient size when planted, as well as having a growth rate so the required screening is re-established within five years of planting.

## Section 4.10 AH Airport Hazard Area District

### 4.10.01 Intent

The intent of this district is be appended and to overlay any of the primary zoning districts as described in this Resolution to protect the safe use of public airports and their Airport Hazard Area, in Cherry County, by limiting the location and height of structures within the operation, approach, transition and turning zones around airports which are registered with the Nebraska Department of Aeronautics, as designated on the Official Zoning Map of Cherry County, Nebraska.

### Designated Public Airport

The designated public airport for which these regulations have been prepared for Miller Filed in Valentine located more or less in Section 6 Township 33N Range 27W and Section 7 Township 33N Range 27W.

### Airport Hazard Area Description

In accordance with Neb. Rev. Stat. §3-303, every political subdivision that has adopted a comprehensive plan and zoning regulations and has an airport hazard area within the area of its zoning jurisdiction, must adopt, administer, and enforce the regulations in this section for such airport hazard area.

### 4.10.02 Definitions

**Airport** shall mean an area of land or water designed and set aside that is used or intended to be used for the landing and taking off takeoff of aircraft and utilized or to be utilized in the interest of the public for such purposes; includes any related buildings and facilities. Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans.

**Airport hazard** shall mean any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft; that penetrates any approach, operation, transition, or turning zone.

**Airport hazard area** shall mean any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of three miles from the adjacent boundary of an airport; the limits provided for approach, operation, transition, and turning zones.

**Airport layout plan** shall mean a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines.

**Approach zone** shall mean a zone that extends from the end of each operation zone and is centered along the extended runway centerlines.

**Electric facility** shall mean an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01 of the Revised Nebraska State Statutes, for the transmission or distribution of electrical power to the electric supplier's customers.

**Existing runway** shall mean an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction.

**Instrument runway** shall mean an existing runway with precision or non-precision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or non-precision instrument approaches reflected on the airport layout plan. After the effective date of this act, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation.

**Operation zone** shall mean a zone that is longitudinally centered on each existing or proposed runway.



**Person** shall mean any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

**Political subdivision** shall mean any municipality, city, village, or county.

**Proposed runway** shall mean an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration.

**Runway** shall mean a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

**Structure** means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines.

**Transition zone** shall mean a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway.

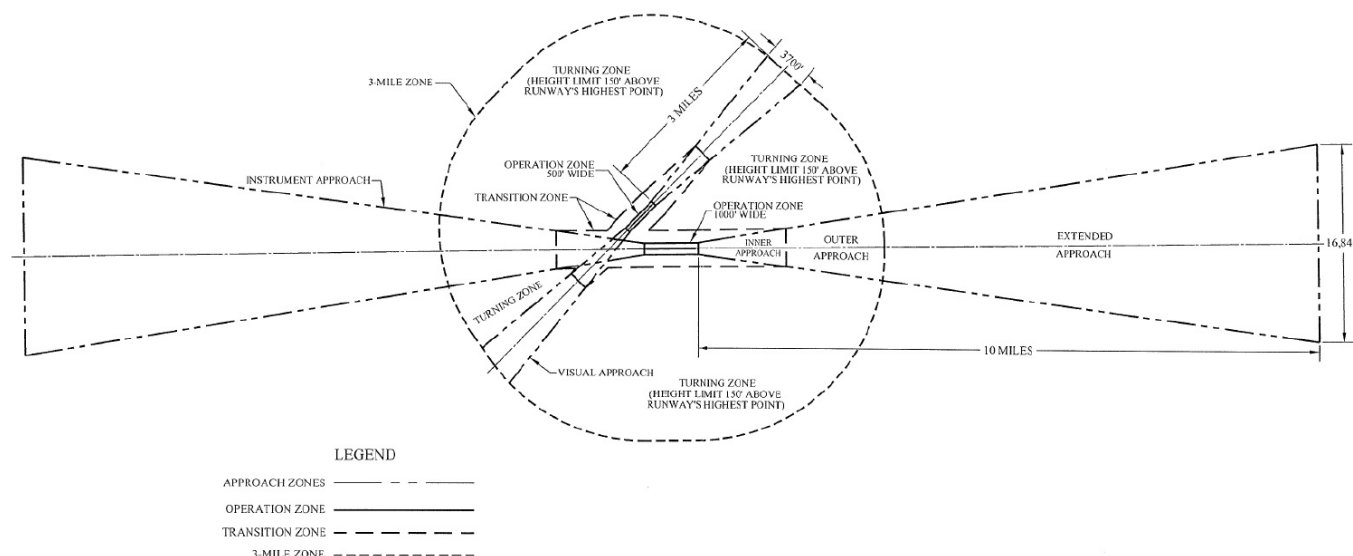
**Tree** shall mean any object of natural growth.

**Turning zone's outer limit** shall mean the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway.

**Visual runway** shall mean a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

#### 4.10.03 Airport Zones

The following are intended for use with this specific overlay zoning district.



**Airport Hazard Area** consists of Operation Zones, Approach Zones, Turning Zones, and Transition Zones.

**Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. The zones' dimensions are:

1. Instrument Runways:
  - A. Length and Width: The approach zones extend from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zones are 1,000 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline 10 miles from the operation zone where it is 16,840 feet wide.
  - B. Height Limit: The height limit of the approach zones begins at the elevation of the operation zone and rises one foot vertically for every 50 feet horizontally (50:1) up to a maximum of 150 feet above the nearest existing or proposed runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every 50 feet horizontally and continues to the 10-mile limit.
2. Visual Runways:
  - A. Length and Width: The approach zones extend from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zones are 500 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is 3,700 feet wide.
  - B. Height: The height limit of the approach zones begins at the elevation of the operation zone and rises one foot vertically for every 40 feet horizontally (40:1) up to a maximum of 150 feet above the nearest existing or proposed runway end.

**Operation Zones** are longitudinally centered on each existing or proposed runway:

1. Length:
  - A. For existing and proposed paved runways, the operation zones begin and end 200 feet beyond the end of each runway.
  - B. For existing and proposed turf runways, the operation zones begin and end at the runway ends.
  - C. For existing and proposed instrument runways, the operation zone is 1,000 feet wide, with 500 hundred feet on either side of the runway centerline.
  - D. For all other existing and proposed runways, the operation zone is 500 feet wide, with 250 feet on either side of the runway centerline;
2. Height: The height limit of the operation zones is the same as the nearest point on an existing or proposed runway or the surface of the ground, whichever is higher.

**Transition Zones** extend outward at right angles to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally (7:1). The height limit of these zones begins at the height limit of the adjacent operation zones or approach zones. The transition zones end at a height of 150 feet above the nearest existing or proposed runway end.

**Turning Zones** extend three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zones is 150 feet above the nearest existing or proposed runway end.

#### **4.10.04 Height Restrictions**

No building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character shall hereafter be erected, constructed, repaired, or established, nor shall any tree or other object of natural growth be allowed to grow, above the heights described in subsection 4.10.03 above.

#### **4.10.05 Airport Zoning Map and Location**

The boundaries, operation zones, approach zones, transition zones, and turning zones of the airport are indicated on the Airport Zoning Map, which is attached hereto and made a part hereof by reference. A copy of the Airport Zoning Regulations and Airport Zoning Map shall at all times be on file in the office of the Zoning Administrator and County Clerk.

#### **4.10.06 Permit Requirements, Exceptions, Application Forms, And Fees**

1. Anyone wishing to erect, construct, reconstruct, repair, or establish any building, transmission line, communication line, pole, tower, smokestack, chimney, wires, or other structure or appurtenance thereto of any kind or character; or to plant or replant any tree or other object of natural growth which, when mature,

would not violate the requirements of Section 4.10.03 above, within the Airport Hazard Area must first obtain a permit from Zoning Administrator.

2. Exception:

Within the Turning Zones, no permit shall be required for any construction, reconstruction, repair, or planting of anything which, when completed, or, in the case of natural growth, when mature, does not exceed seventy-five 75 feet above the nearest existing or proposed runway end.

3. Application Form:

Application for a permit as required under these regulations shall be made on a form to be available in the office of the Zoning Administrator and shall indicate the approximate location, ground elevation with reference to the end of the nearest runway or landing strip and height of the proposed structure or planting. (Mean Sea Level Elevation)

4. Permit Fee:

The fee for each permit issued shall be established by the County Board as a separate Resolution to the Zoning Resolution, and all fees so paid shall be deposited into the county's general fund.

#### **4.10.07 Non-Conforming Structures**

1. Within the Airport Hazard Area, no non-conforming building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character or object of natural growth; and no such structures or objects of natural growth have been torn down, destroyed, have deteriorated or decayed to an extent of 50% or more of their original condition, or abandoned for a period of 12 months or more; shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted, or allowed to grow, as the case may be, to a height above the heights permitted by these regulations. Transmission lines and other communication lines shall be interpreted as all poles, wires, guys and all other equipment necessary for the operation and maintenance of same within the regulated zone.
2. Except as provided in subsection (3) of this section for certain electric facilities, all such airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.
3. An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

#### **4.10.08 Marking Of Non-Conforming Structures**

Whenever the Zoning Administrator determines that a specific structure or object in the Airport Hazard Area exceeds the height restrictions and existed prior to the promulgation of these regulations, the owner(s) and/or the lessor(s) of the premises on which the structure or object is located shall be notified in writing by the Zoning Administrator. The owner(s) and lessor(s) shall, within a reasonable time, permit the marking and lighting of the structure or object. The Zoning Administrator shall specify the required marking and lighting, consistent with these regulations entitled "Marking and Lighting of Structures". The cost of marking or lighting shall not be assessed against the owner or lessor of said premises.

**4.10.09 Administrative Agency; Enforcement**

The Zoning Administrator shall administer and enforce these regulations and shall be the administrative agency provided for in Neb. Rev. Stat. § 3-319 and shall have all the powers and perform all the duties of the administrative agency as provided in the Airport Zoning Act.

**4.10.10 Variance from Regulations**

1. Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under this regulation may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in Neb. Rev. Stat. §23-168.03, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this regulation.
2. In granting any permit under or variance from any airport zoning regulation adopted under this regulation, the administrative agency or board of adjustment may, if it deems such action is advisable to effectuate the purposes of the regulation and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

**4.10.11 Zoning Board of Adjustment**

The Cherry County Board of Adjustment shall be the board of adjustment with respect to these regulations. Said board shall have and exercise the powers conferred by Neb. Rev. Stat. §3-320 *et. seq.* and such other powers and duties as are conferred and imposed by law.

**4.10.12 Permitted Principal Uses and Structures**

Any use or structure that is permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 4.10.03 above.

**4.10.13 Conditional Uses**

Any conditional use that is permitted in the primary zoning district where this district is overlain where such conditional use has been duly authorized by the County Board in accordance with the requirements and procedures specified in this Resolution, provided all buildings, structures and other obstacles comply with the height restrictions set forth in Section 4.10.03 above.

**4.10.14 Accessory Structures**

Any accessory use or structure that is permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 4.10.03 above.

**4.10.15 Conflicting Regulations**

In the event of any conflict between any airport zoning regulations adopted under this regulation and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern.

---

**ARTICLE 5: CONDITIONAL USES****Section 5.01 Purpose and Intent**

The conditional use permit procedure provides for extensive public review and discretionary Commission and Board review and approval of uses and projects which have unusual site development or operating characteristics; potentially negative effects on surrounding property; or substantial impact on the County's development objectives or realization of its Comprehensive Plan. This Section is designed to incorporate complete review of such projects and to specify conditions by which such projects may be compatibly and soundly developed.

**Section 5.02 Procedure**

After receiving an application and fee, the amount to be established by the governing body, a public hearing shall be held by the Planning Commission and the Planning Commission shall make a recommendation to the County Board of Commissioners. The County Board of Commissioners after receiving a recommendation from the Planning Commission and holding a public hearing may authorize a conditional use permitted in a zoning district, provided it is found that the location and characteristics of the use will not be injurious to the health, safety, morals and general welfare of the area. An application for a conditional use permit shall include a site plan which shall denote the location of any hazardous materials. Notice for such hearings shall be given in the manner provided by these regulations.

1. Public Hearing on a Conditional Use. A proposed conditional use shall be considered by the Planning Commission at a public hearing held within 45 days after filing of the application. The Zoning Administrator shall give notice of the hearing as prescribed in this Article.
2. Recess of the Hearing by Planning Commission. The Planning Commission may recess a hearing on a request for a conditional use in order to obtain additional information or to serve further notices upon other property owners or persons whom it decides may be interested in the proposed conditional use. Upon recessing for this purpose, the Planning Commission shall announce the time and date when the hearing will be resumed.
3. Action on a Conditional Use. The Planning Commission may recommend approval, approval with specified conditions or disapproval of a conditional use to the County Board of Commissioners. The County Board of Commissioners may then act upon the Conditional Use after considering the Planning Commission's recommendation. A file of all recommendations and actions pertaining to Conditional Uses will be maintained in a manner prescribed by the County Board of Commissioners.
4. Notification of Action. The County Clerk shall notify the applicant for a conditional use in writing of the County Board of Commissioners action within seven days after the decision has been rendered.

**Section 5.03 Authority to Initiate**

A request for a conditional use permit, or modification of a conditional use permit, may be initiated by a property owner, the owners authorized agent, a lessee with the authorization of the landowner, the Planning Commission or the Board of Commissioners.

**Section 5.04 Application**

Conditional use permit application forms shall be obtained from the Zoning Administrator. An application shall be accompanied by such site plans or drawings as are necessary for staff, Commission and Board to make a determination on the request. Applications shall be filed with the Zoning Administrator. Application deadlines are as established by the Planning Department.

**Section 5.05 Legal Publication and Notice Requirements for all Bodies**

Upon receipt of a completed initial application, and payment of fees as specified by this Regulation, the CUP request shall be advertised. Notice of the time and place of the public hearing before the Commission shall be given by publication thereof in the County's legal newspaper at least 10 days prior to the hearing.

In addition, the county shall notify all parties within 1,000 feet of the exterior boundaries, by mail not less than 10 days prior to the date of hearing. All parties shall consist of all residents and title holders. These parties shall be determined by name and address as shown upon the records of the County Assessor. Applicant shall present the Zoning Administrator with a property list certified to by a registered abstractor of the record title holders within said 1,000 feet. The notification area of property owners may be increased based upon the application of use and the required distances in each district or otherwise specified in these Regulations. The Zoning Administrator reserves the right to give notice to any other person(s) or

agency as deemed necessary. Failure to receive such notice shall not invalidate any proceedings in connection with the application for a conditional use.

#### **Section 5.06 Coordination with Other Entities**

When applicable, the Planning Department shall transmit information regarding a proposed CUP to the County Highway Department, Office of the Superintendent of the applicable school district, State Department of Environment and Energy, State Health Department, cities, villages and other public entities that may have an interest. The Commission and Board may consider the comments from these entities.

#### **Section 5.07 Planning Commission Public Hearing**

Upon receipt of a completed initial application, and payment of fees as specified by this Regulation, the Commission will hold a hearing after the publication requirements found in 5.05 have been met. The Commission recommendation, along with the Planning Department's, shall be transmitted to the Board. Such recommendation on the CUP shall be in the form of approval, disapproval, approval with conditions, or continuance.

#### **Section 5.08 Board of Commissioners Public Hearing**

The Board shall hold a public hearing on the CUP, after the publication requirements found in 5.05 have been met, to act upon the Commission's recommendation. The Board shall consider the Commission's recommendation and shall approve the CUP without conditions, approve with conditions, refer to the Commission for further consideration of specified matters, continue the request, or deny the application. If the Commission fails to submit their recommendation within 90 days from the date of application, the Board may hold a public hearing and act on the CUP without the Commission's report.

#### **Section 5.09 Conditions of Approval**

The Commission and Board may require specific conditions for approval of a CUP. Such conditions may be more restrictive than the base Zoning District regulations and may include, but not be limited to, specified time frame; provision of buffer yards; landscaping and screening; installation of erosion control measures; requirements for street improvements and dedications; improvement to access and circulation systems; rearrangement of structures and uses on the site; design character and standards for buildings and structures; location and character of signs; limitations or restrictions upon operations; and other conditions the Commission and Board consider necessary to insure compatibility with the surrounding environment and protect the public health, safety and welfare.

#### **Section 5.10 Standards for Review**

In reviewing requests for CUP's, the following may be considered by the Commission and Board:

1. That the establishment, maintenance, or operation of the CUP will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare of the public.
2. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
3. That the establishment of the conditional use will not impede the normal and orderly development in improvement of the surrounding property for uses permitted in the district.
4. Those adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The use shall not include any activity involving the use or storage of flammable, or explosive material unless protected by adequate fire-fighting suppression equipment and by such safety devices as are normally used in the hauling of any such material.
7. The use shall not include noise that is a public nuisance due to volume, frequency, or beat unless muffled or otherwise controlled.
8. The use shall not include vibration which is discernible without instruments on any adjoining lot or property.
9. The use shall not involve any pollution of the air by fly ash, dust, vapors or other substances which are harmful to health, animals, vegetation or other property or which can cause soiling, discomfort or irritation.
10. The use shall not involve any malodorous gas or matter that is discernible on any adjoining lot or property.

11. The use shall not involve any direct or reflected glare that is visible from any adjoining property or from any public street, road or highway.
12. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
13. The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

**Section 5.11 Issuance of Permits**

1. Zoning permits shall be issued consistent with the terms of the conditional use permit and other applicable Resolutions, regulations and resolutions.
2. The Commission may, after publication and public hearing, make a recommendation to the Board to revoke a conditional use permit if it determines the use and/or structure is in violation of the terms and conditions of the conditional use permit or other applicable Resolutions, regulations and resolutions.
3. The Board may, after publication and public hearing, revoke a CUP if it determines the use and/or structure is in violation of the terms and conditions of the CUP or other applicable Resolutions, regulations and resolutions.
4. The decision to revoke a CUP shall be effective immediately.

**Section 5.12 Modification of Conditional Use Permit Requirements**

1. The Planning Administrator may approve minor modifications in a CUP if it is determined the modification does not affect the findings related to the conditions for approval as contained in this Section.
2. Other than minor modifications, a CUP must be amended through the normal process followed for initial approval.

**Section 5.13 Scope of Approval**

A CUP granted pursuant to this Section applies to a specific parcel of land.

**Section 5.14 Effective Date**

Approval of a CUP by the Board shall be effective immediately after Board action.

**Section 5.15 Conditional Use Permits Approved Under Previous Regulations \ Resolutions**

Any CUP approved under regulations/resolutions in effect before the effective date of this Regulation shall be considered to have a valid CUP, subject to any requirements imposed at the time of approval. A pre-existing CUP shall be subject to the provisions of this Section regarding revocation of the permit. Any modifications of a pre-existing CUP may be made only by the Board and only after review and submittal of recommendation from the staff and Commission.

**Section 5.16 Conditional Use Permit Reviews**

1. Any required review schedule shall be set forth within the original approved Conditional Use Permit.
2. Review times of CUP's shall be as established by the Board, upon recommendation of the Commission and Planning Department.
3. CUP review application forms shall be obtained from the Zoning Administrator.
4. Reviews of CUP's shall be performed administratively by the Zoning Administrator through the completion of a CUP application form.
5. Advertising of CUP reviews in the County's legal newspaper, or notification of adjacent landowners, is not required.
6. However, should any County imposed conditions be violated, the specific CUP shall be placed on the next Commission agenda for action.
7. Publication shall be as per initial application.
8. Notification of adjacent property owners shall be through regular mail by the Zoning Administrator at least 10 days prior to such hearing, not including the date mailed or the date of the Commission's public hearing.
9. The Zoning Administrator will provide a monthly CUP review report to the Commission.
10. The County shall only modify (add or delete) conditions to the original CUP if the CUP is assign for complete renewal and following the entire process as if it were a new CUP application.



---

**ARTICLE 6: OFF-STREET PARKING AND LOADING REQUIREMENTS****Section 6.01 Applicability**

In any zoning district, all structures built, and all uses established hereafter shall provide accessory off-street parking and loading spaces as indicated in the requirements set forth in this section. Where an existing structure or use is expanded, accessory off-street parking and loading spaces shall be provided in accordance with the requirements for the area, capacity or additional employees in such expanded area.

**Section 6.02 Off-Street Automobile Storage**

1. Off-street automobile storage or standing space shall be provided on any lot on which any of the following uses are hereafter established; such space shall be provided with vehicular access to a street or an alley. For purposes of computing the number of parking spaces available in a given area, the ratio of 250 square feet per parking space shall be used.
2. In all districts except residential districts, if vehicle storage space or standing space required in section 6.02 cannot be reasonably provided on the same lot on which the principal use is conducted in the opinion of the Planning Commission and County Board, the Planning Commission and County Board may permit such space to be provided on other off-street property, provided such property lies within the same zoning district and lies within 400 feet of an entrance to such principal use. Such vehicle standing space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner. In residential districts, required off-street parking for residential use shall be provided on the lot on which is located the use to which the parking pertains.
3. Where off-street parking is located on a lot other than the lot occupied by the use, which requires it, site plan approval for both lots is required.
4. Where calculations in accordance with the foregoing list results in requiring a fractional space, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall require one space.
5. Some uses may require two different use types to be calculated together in order to determine the total parking requirement (Example: Primary schools may require tabulation for classrooms and assembly areas).
6. Requirements for types of buildings and uses not specifically listed herein shall be determined by the County Board, after receiving a report and recommendation from the Planning Commission, based upon comparable uses listed.

**Section 6.03 Schedule of Minimum Off-Street Parking and Loading Requirements**

Uses	Parking Requirements	Loading Requirements
<b>Commercial and Office including but not limited to:</b>		
Agricultural Sales/Service	1 space/500 s.f. of gross floor area	1 space/establishment
Auditoriums/Stadiums/arenas	1 space/4 seats in main assembly area	None required
Automotive Rental/Sales	1 space/500 s.f. of gross floor area	1 space/establishment
Automotive Servicing	4 spaces/repair stall	None required
Boarding Houses/Bed and Breakfasts	1 space/rental units	None required
Body Repair	5 spaces/repair stall	None required
Bowling Alleys	4 spaces/alley plus 1 space per 2 employees	1 space/establishment
Campground	1 space/camping unit	None required
Child Care Centers	1 space/employee + 1 space or loading stall/each 5 persons of licensed capacity	None required
Churches, Synagogues, and Temples	1 space/4 seats in main worship area	None required
Clubs, including fraternal organizations	1 space/500 s.f. of gross floor area	None required
Commercial Recreation	1 space/2 persons of licensed capacity	1 space/establishment
Communication Services	1 space/500 s.f. of gross floor area	1 space/establishment
Construction Sales/Service	1 space/500 s.f. of gross floor area	1 space/establishment
Dance Hall, skating rink	1 space/100 square feet of floor area + 1 space/2 employees	None required
Educational Uses, Primary facilities	2 spaces/classroom	2 spaces/structure
Educational Uses, Secondary facilities	8 spaces/classroom + 1 space/employee on largest shift	2 spaces/structure
Equipment Rental/Sales	1 space/500 s.f. of gross floor area	1 space/establishment
Food sales (limited)	1 space/300 s.f. of gross floor area	1 space/establishment
Food sales (general)	1 space/200 s.f. of gross floor area	2 spaces/establishment
Funeral homes, Mortuaries and Chapels	8 spaces/reposing room	2 spaces/establishment
General retail sales establishments	1 space/200 s.f. of gross floor area	1 space/establishment
Guidance Services	1 space/300 s.f. of gross floor area	None required
Hospitals	1 space/2 licensed beds	3 spaces/structure
Hotels and Motels	1 space/rental unit + 1 space/each 200 s.f. of public meeting area	1 space/establishment
Laundry Services	1 space/200 s.f. of gross floor area	None required
Libraries	1 space/400 s.f. of gross floor area + 1 space/ 2 employees	1 space/structure
Medical Clinics	5 spaces/staff doctor, dentist, chiropractor	None required
Offices and Office Buildings	1 space/300 s.f. of gross floor area + 1 space/2 employees	None required
Restaurants w/ drive-thru	Greater of the two: 1 space/40 s.f. of dining area, or 1 space/150 s.f. of gross floor area	1 space/establishment
Restaurants (General)	Parking equal to 30% of licensed capacity	2 spaces/establishment
Roadside stands	4 spaces/establishment	None required
Service Oriented Establishments	1 space/200 s.f. of gross floor area	1 space/establishment
Theaters, Auditoriums, & Places of Assembly	1 space/4 persons of licensed capacity	1 space/establishment
Veterinary Establishments	1 spaces/500 square feet/staff doctor	None required
<b>Residential/Housing including but not limited to:</b>		
Assisted-living facilities	.5 space/dwelling unit	1 space/structure
Convalescent & Nursing Home Services	1 space/4 beds + 1/employee on the largest shift	2 space/structure
Duplex	2 spaces per dwelling unit	None required
Group Care Facility	1 space/4 persons of licensed capacity	2 space/structure
Group Home	1 space/4 persons of licensed capacity	2 space/structure
Multi-family / Apartments	1 space/sleeping unit – spaces to be sited in the general proximity of where the sleeping units are located	None required
Mobile Home Park	2/dwelling unit	None required
Residential (Single-family, attached and detached)	2 spaces/dwelling unit (1 may be enclosed or semi-enclosed)	None required
<b>Industrial Uses including but not limited to:</b>		
Adult entertainment establishments	1 space/2 persons of licensed capacity	None required
General Manufacturing	.75 times the maximum number of employees during the largest shift	2 spaces/establishment
Wholesaling / Distribution Operations	1 space/2 employees on the largest shift	2 spaces/establishment

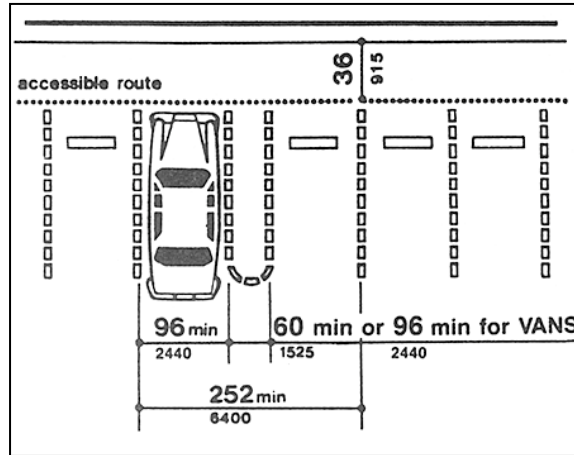
**Section 6.04 Off-Street Parking: Shared Parking Requirements**

Notwithstanding the provisions of Section 6.03, in cases where parking and building patterns are such that overlapping uses of a majority of the total number of parking spaces in a common parking lot is likely to occur, compliance with the standard parking ratios may be decreased by the Planning Commission and County Board.

**Section 6.05 Off-Street Parking: Parking for Individuals with Disabilities**

1. In conformance with the Americans with Disabilities Act (ADA) and the Nebraska Accessibility Guidelines, if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided in each parking area in conformance with the table in this section. Spaces required by the table need not be provided in the particular lot. They may be provided in a different, if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience, is ensured.

Total Parking Spaces	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2 percent of the total
1,001 and over	20 plus 1 for each 100 over 1,000



Source:  
<http://www.ada.gov/adastd94.pdf>

2. Access aisles adjacent to accessible spaces shall be 60 inches wide at a minimum.
  - A. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 inches wide minimum and shall be designated "van accessible" as required by Section 6.05 (4) of this Regulation. The vertical clearance at such spaces shall comply with 6.05 (5) of this Regulation. All such spaces may be grouped on one level of a parking structure.
  - B. Parking access aisles shall be part of an accessible route to the building or facility entrance. Two accessible parking spaces may share a common access aisle.
  - C. Parked vehicle overhangs shall not reduce the clear width of an accessible route.
  - D. Parking spaces and access aisles shall be level with slopes not exceeding two percent in all directions.
  - E. If passenger-loading zones are provided, then at least one passenger loading zone shall comply with 6.05 (6) of this Regulation.
  - F. At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 6.05 of this Regulation shall be provided in accordance with 6.05 (1) of this Regulation; except as follows:
    - 1) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility.
    - 2) Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.
  - G. Valet parking: valet parking facilities shall provide a passenger loading zone complying with 6.05 (6) of this Regulation located on an accessible route to the entrance of the facility
3. Location of accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance.
  - A. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility.
  - B. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.
4. Signage of accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. Spaces complying with Section 6.05. (2) (A) shall have an additional sign stating the

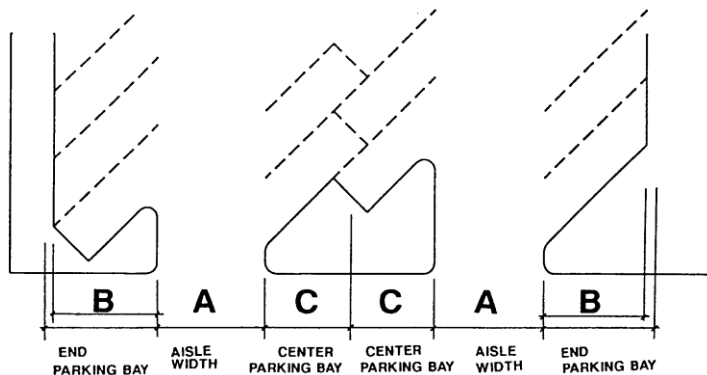
stall is "Van Accessible" mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

5. Minimum vertical clearance of 114 inches at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 6.05 (2) (A), provide minimum vertical clearance of 98 inches at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).
6. Passenger Loading Zones shall provide an access aisle at least 60 inches wide and 240 inches long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with accessibility standards shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding two percent in all directions.

### Section 6.06 Off-Street Parking Design Criteria

1. Standard parking stall dimensions shall not be less than nine feet by 18 feet, plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two feet. Such overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

Parking Configuration	90-degree	60-degree	45-degree
<b>Aisle Width (A)</b>			
One-way traffic	-----	18 feet	14 feet
Two-way traffic	24 feet	20 feet	20 feet
<b>End Parking Bay Width (B)</b>			
Without overhang	18 feet	20 feet	19 feet
With overhang	16 feet	18 feet	17 feet
<b>Center Parking Bay Width (C)</b>	18 feet	18 feet	16 feet



2. Minimum dimensions for a parallel parking space shall be 10 feet by 23 feet.
3. Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the Planning Commission and County Board.

**ARTICLE 7: SIGN REGULATIONS****Section 7.01 Applicability**

No accessory sign, advertising display or structure, poster or device shall be erected, moved, enlarged, maintained or reconstructed except as expressly permitted by this section without first obtaining a sign permit where required in Table 7.13.1; provided, however, that such state and County signs and traffic signs as are installed for public purposes are exempt from these requirements. All signs shall be constructed in such a manner and of such material that they shall be safe and legible. Scale drawings of the sign shall be furnished to the Zoning Administrator in application for a sign permit for all signs. Sign permits shall be renewed every five years. Sign permits given in conjunction with NDOT Sign Permits will expire simultaneously.

**Section 7.02 On and Off-Site Signs on Interstate or Federal Aid Primary Highways**

The erection or maintenance of any advertising sign, display or device which is visible to the traveled way of the National System of Interstate and Defense Highways, and the system of federal-aid primary roads of the State of Nebraska as defined by the NDOT, is hereby prohibited unless in compliance with the regulations set forth in Rules and Regulations Relating to the Control of Advertising in Areas Adjacent to the Interstate and Federal-Aid Primary Highways, as amended, adopted and published by the NDOT and incorporated herein by reference.

**Section 7.03 Prohibited Signs**

Flashing signs (does not include message signs), signs which project over a public street and any artificial light or reflected device connected or used with a sign or otherwise located or displayed in such a way that it interferes with, competes for attention or may be mistaken for a traffic signal are hereby prohibited.

**Section 7.04 Obstructing Visibility at Corners**

No freestanding sign shall be erected or maintained on any corner lot within 20 feet of the property line corner which may interfere with traffic visibility across the corner; nor shall any sign be permitted within 20 feet of any railroad crossing.

**Section 7.05 Exemptions**

1. The following signs shall be exempt from the requirements of this article:
  - A. Flags, signs or emblems of a government or of a political, civic, philanthropic, educational or religious organization, displayed on private property.
  - B. Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal notices, warnings at railroad crossings, and other instructional or regulatory signs having to do with health, hazards, parking, dumping, etc.
  - C. Memorial signs and tablets displayed on private property.
  - D. Address numerals and other signs required to be maintained by law or governmental order, rule or regulation, provided that the content and size of the signs do not exceed the requirements of such law, order, rule or regulation.
  - E. Small signs, not exceeding five square feet in area, displayed on private property for the convenience of the public including signs to identify entrance and exit drives, parking area, one-way drives, restrooms, freight entrances, and the like.
  - F. Scoreboards in athletic stadiums.
  - G. Political campaign signs not exceeding 32 square feet in area.
  - H. Temporary agricultural signs not exceeding 20 square feet in area and not displayed for more than 120 days during the appropriate season.
2. The following signs are exempt from the sign permit section of this Article, but shall comply with all of the other regulations imposed by this Article:
  - A. Bulletin board signs not exceeding 40 square feet in gross area accessory to a subdivision, church, school or public or non-profit institution.
  - B. Business signs for Home Occupations not exceeding six square feet in area.
  - C. Construction signs not exceeding 32 square feet in area.
  - D. Identification signs not exceeding 32 square feet in area.
  - E. Name Plate signs not exceeding two square feet in gross area accessory to a single-family or two-family dwelling.
  - F. Real Estate signs: Non-illuminated, six square feet per lot and small directional signs near subdivision entrances in LAR not exceeding five square feet. All real estate signs shall be placed off the right-of-way.

**Section 7.06 Gross Area of Sign**

The gross area of a sign is calculated using the entire area within a single continuous perimeter enclosing the extreme limits of the sign, exclusive of the base on which it is mounted or from which it is suspended. If more than one side of a sign is utilized as a sign, then it shall also be computed and shall be counted as a portion of the gross area. For computing the gross area of any wall sign which consist of letters mounted or painted on a wall, the area shall be deemed to be the area of the smallest rectangular figure which can encompass all of the letters.

**Section 7.07 Sign Height**

Sign height shall be measured from the ground elevation at the base of the sign to the highest element of the sign. Maximum height of signs shall be 30 feet. Any sign over 15 feet in height needs a seal or stamp of a structural engineer to be submitted to the Zoning Administrator along with the permit.

**Section 7.08 Illuminated Signs**

A sign designed to give forth artificial light or designed to reflect light derived from any source. Illuminated signs shall be designed as to reflect or direct light away from any residential dwelling district and any illuminated sign located on a lot adjacent to, in front of, or across the street from any residential district, which sign is visible from such residential district, shall not be illuminated between the hours of 11 p.m. and 7 a.m.

**Section 7.09 Flashing or Moving Signs**

Any illuminated sign on which the artificial light is not constant in intensity and color at all times. For the purpose of this regulation, any revolving, rotating, moving, animated, signs with moving lights or signs which create the illusion of movement shall be considered as a flashing sign and shall not be permitted except as used as a message sign.

**Section 7.10 Required Setback and Distance Between Signs**

A sign may be at the edge of road right-of-way provided the sign does not infringe at all onto said right-of-way. Each sign shall be no less than 100 feet from any other sign erected on the same side of a street.

**Section 7.11 Nonconforming Signs**

No nonconforming sign which exists at the effective date of the amendment of this Resolution shall be allowed to continue longer than a reasonable amortization period of the nonconforming sign. For the purpose of this section, a reasonable amortization period shall be defined as a period of five years from the date of adoption of this amendment. Only the sign's message may be changed. The support structure of the sign may not be improved or altered in any way.

**Section 7.12 Classification of Signs****7.12.01 Functional Sign Types**

**Advertising Sign:** A sign which directs attention to a business, commodity, service or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located, or to which it is affixed.

**Bulletin Board Sign:** A sign that indicates the name of an institution or organization on whose premises it is located, and which contains the name of the institution or organization, the name or names of persons connected with it, and announcements of persons, events or activities occurring at the institution. Such signs may also present a greeting or similar message.

**Business Sign:** A sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or an entertainment offered, on the premises where the sign is located or to which it is affixed.

**Construction Sign:** A temporary sign indicating the names of architects, engineers, landscape architects, contractors, and similar artisans involved in the design and construction of a structure or project only during the construction period and only on the premises on which the construction is taking place.

**Identification Sign:** A sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

**Nameplate Sign:** A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, a professional status.

**Temporary Sign:** A sign in relation to anything advertised for a specific period of time and then removed.

### 7.12.02 Structural Types.

**Awnings, Canopy and Marquee Sign:** A sign that is mounted or painted on, or attached to, an awning, canopy or marquee that is otherwise permitted by this Resolution. No such sign shall project above, below, or beyond the physical dimensions of the awning, canopy or marquee, and a minimum of eight feet of clearance shall be provided above grade.

**Ground Sign:** Any sign placed upon, or supported by, the ground independently of the principal building or structure on the property. Signs on accessory structures shall be considered ground signs.

**Pole Sign:** A sign that is mounted on a free-standing pole, the bottom edge of which sign is six feet or more above ground level.

**Projecting Sign:** A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.

**Roof Sign:** A sign erected, constructed, and maintained wholly upon or over the roof of a building and having the roof as the principal means of support.

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

## Section 7.13 District Regulations Sign Schedule

**Table 7.13.01**

### Sign Type & Maximum Size Allowed

Functional Type	AGP	AGT	RPC	LAR	RAR	RR	VAD	CC
Advertising-200 sq. ft.	-/0	-/0	-/0	-/0	-/0	-/0	-/0	-/0
Advertising-80 sq. ft.	P/1	P/1	P/1	-/0	-/0	-/0	P/1	P/1
Bulletin Board-32 sq. ft.	+/1	+/1	+/1	+/1	+/1	+/1	P/1	+/1
Business-200 sq. ft.	P/1	P/1	P/1	-/0	-/0	-/0	P/1	-/0
Business-80 sq. ft.	-/0	-/0	-/0	-/0	-/0	-/0	P/0	P/1
Business-home occupations – 6 sq. ft.	+/1	+/1	+/1	+/1	+/1	+/1	+/1	+/1
Construction-32 sq. ft.	+/1	+/1	+/1	+/3	+/3	+/3	+/1	+/1
Identification-32 sq. ft.	+/1	+/1	+/1	+/1	+/1	+/1	+/1	+/1
Nameplate-2 sq. ft.	+/1	+/1	+/1	+/1	+/1	+/1	+/1	+/1
Temporary- 6 sq. ft.	+/1	+/1	+/1	+/1	+/1	+/1	+/1	+/1
Other Regulations								
Setback from lot line	0'	0'	0'	0'	0'	0'	0'	0'
Max. height-see 6.1-7	30'	30'	30'	30'	30'	30'	30'	30'
Structural Types Allowed	A, B, C, D, E, F	A, B, C, D, E, F	A, B, C, D, E, F	B, C, E	B, C, E	B, C, E	A, B, C, D, E, F	A, B, C, D, E, F
Illumination	+	+	+	-*	-*	-*	+	+

Permitted/# Allowed (-) Not Allowed (+) Allowed outright (P) Permit required (NL)= No limit

\* Bulletin Board, Real Estate, and construction signs may be indirectly illuminated with incandescent or fluorescent light.

Structural Types:

A. Awnings, Canopy, and Marquee

B. Ground Sign

C. Pole Sign

D. Projecting Sign

E. Wall Sign

F. Roof Sign



## ARTICLE 8: SUPPLEMENTAL REGULATIONS

### Section 8.01 Home Occupations and Home-Based Businesses within the Agricultural Districts

#### 8.01.01 Intent

A home occupation or home-based business shall be allowed when said occupation or business is conducted on agriculturally used and/or zoned property and is considered customary, traditional, and incidental to the primary use of the premises as a residence and shall not be construed as a business.

#### 8.01.02 Procedure

Home Occupations and Home-based Businesses: An application for a home occupation or home-based occupation, within agriculturally zoned areas shall not be required.

#### 8.01.03 Allowable home occupations and businesses

Listed below are allowed home occupations.

1. Workrooms for dressmaking, millinery, sewing, weaving, tailoring, ironing, washing, jewelry making, custom home furnishings work, carpentry work, and furniture repair.
2. Offices for professionals such as, but not limited to, attorneys, architects, engineers, planners, real estate agents, insurance, notary public, manufacturer's representative, clergy, journalists, painters, photographers, dentists, doctors, draftspeople, insurance agents, accountants, editors, publishers, psychologists, contract management, graphic design, construction contractor services, landscape design, surveyors, cleaning services, salespeople, and travel agents.
3. Child Nurseries or Child Care.
4. Personal services, including Barber and Beauty Shops (limited to one station), manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
5. Instructional services, including music, dance, art and craft classes and tutoring.
6. Repair services, including watch and clock, small appliances, computers, electronic devices, lawnmowers including engines, and motor vehicles (limited to no more than two at one time).
7. Offices and shops in association to one another, including motorized and non-motorized racing vehicles, construction services with equipment storage and maintenance, monument sales and engraving, freight hauling with equipment storage and maintenance (not including warehousing of freight), aerial spraying with equipment storage and maintenance, welding, and excavating services with equipment storage and maintenance.
8. Warehousing and storage of products associated with agri-businesses, including seed sales, fertilizer sales (as allowed by state and federal regulations), and herbicide and pesticide sales (as allowed by state and federal regulations).
9. Kennels and Veterinarian Services
10. Distribution and sales of products such as cosmetics, home/health care products, mail order, and other similar uses.
11. Offices for services provided outside the home such as lawn care, snow removal, and other similar uses.

#### 8.01.04 Prohibited home occupations and businesses

Listed below are prohibited home occupations.

1. Medical clinics and hospitals.
2. Restaurants, clubs, drinking establishments.
3. Undertaking and funeral parlors.
4. Adult Entertainment Uses

### Section 8.02 Radio, Television and Wireless Communication Towers

#### 8.02.01 Intent

Based upon the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and the Spectrum Act of 2012 (the Act) grants the Federal Communications Commission (FCC) exclusive jurisdiction over certain aspects of telecommunication services. This section is intended to regulate towers, telecommunications facilities and antennas in the County in conformance with the Act without prohibiting or tending to prohibit any person from providing wireless telecommunication service. Telecommunication facilities, towers and antennas in the County, to protect residential areas and land uses from potential adverse impact of installation of towers and antennas through careful design, siting, and camouflaging, to promote and encourage shared use / collocation of towers and other antenna

support structures rather than the construction of additional single use towers, to avoid potential damage to property caused by towers, telecommunications facilities and antennas by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, repaired and removed when no longer used or are determined to be structurally unsound and to ensure that towers and antennas are compatible with surrounding land uses.

#### **8.02.02 Definitions**

All terms in this Section which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996, the Spectrum Act of 2012 and the Rules and Regulations of the Federal Communications Commission (FCC). As used in this Section, the following terms shall have the following meanings:

**Base Station** shall mean a structure that supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station at the time of the application is filed.

**Broadcasting Tower** shall mean a structure for the transmission or broadcast of radio, television, radar, microwaves or other electromagnetic frequencies which exceeds the maximum height permitted in the district in which it is located; provided, however, that noncommercial towers not exceeding 50 feet in height shall not be considered broadcast towers.

**Collocation** shall mean the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

**Conforming commercial earth station** shall mean a satellite dish which is two meters or less in diameter and is located in an area where commercial or industrial uses are generally permitted under this regulation.

**Eligible facilities request** is defined as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.

**In Writing** refers to the means in which an applicant for a telecommunications tower is notified. The "in writing" clause has been defined to include the minutes of the governing body's proceedings including findings of fact.

**Owner** shall mean any person with a fee simple title or a leasehold exceeding ten years in duration to any tract of land within the zoning jurisdiction of the County who desires to develop, construct, modify, or operate a tower upon such tract of land.

**Replacement** shall mean the removal and upgrade of transmission equipment and not the structure on which it is located.

**Specific and absolute timeframe:** this refers to the timeframe allowed for processing a telecommunication application under Section 6409 (a) of the Spectrum Act of 2012.

**Stealth:** Any telecommunications facility, tower, or antenna which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than a tower, such as light poles, power poles and trees.

**Telecommunications Facilities** shall mean any cables, wires, lines, wave guides, antennas, or any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include a. Any Conforming Commercial Earth Station antenna two meters or less in diameter. b. Any earth station antenna or satellite dish antenna of one meter or less in diameter.

**Tower** shall mean any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities.

**Tower owner** shall mean any person with an ownership interest of any nature in a proposed or existing tower.

**Transmission Equipment:** any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

#### 8.02.03 Tower Construction Standards

Listed below are tower construction standards.

1. Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this regulation.
2. No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the County prior to approval of its application for a Conditional Use Permit by the County Board and issuance of the permit by the County.
3. All towers, telecommunications facilities and antennas on which construction has commenced within the zoning jurisdiction of the County after the effective date of this regulation shall conform to the Building Codes and all other construction standards set forth by the County, federal, and state law and applicable American National Standards Institute (ANSI). Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all of the aforementioned applicable regulatory standards shall be filed with the Zoning Administrator.

#### 8.02.04 Application to develop a Tower

1. Prior to commencement of development or construction of a tower, an application shall be submitted to the Zoning Administrator for a Conditional Use Permit and shall include the following:
  - A. Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.
  - B. The legal description and address of the tract of land on which the tower is to be located.
  - C. The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one-mile radius of the proposed tower, including publicly and privately-owned towers and structures.
  - D. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicants' telecommunications facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicants' telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.
  - E. Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other applicable construction standards set forth by the County Board and federal and state and ANSI standards.
  - F. Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residentially used and / or zoned property and nearest roadway, street, or highway.
  - G. Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturers literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.
  - H. The application, based upon the specific and absolute timeframe established by the FCC, shall be processed, and decided within 60 days of the application becoming completed. However, the 60-day application processing period may be extended only:
    - 1) By mutual agreement between the Cherry County and the applicant, or
    - 2) By Cherry County's determination that the application is incomplete.

- a. If Cherry County deems the application to be incomplete, the County shall notify the applicant of the incompleteness within 30 days of the initial filing.
  - b. The County shall clearly and specifically delineate writing the missing information.
  - c. The clock shall resume when the information is provided but may be tolled again if Cherry County notifies the applicant within 10 days that the application remains incomplete.
  - d. The County shall not request new information beyond what is already required.
- 3) If the application is not acted upon within 60 days, the application shall be deemed to be approved by the governing body.

#### **8.02.05 Setbacks and Separation or Buffer Requirements**

Listed below are setbacks and separation requirements for towers and exception to height restrictions of towers.

1. All towers up to 50 feet in height shall be setback on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of 50 feet in height shall be set back one additional foot for each foot of tower height in excess of 50 feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.
2. Freestanding and guyed towers shall be located so that the distance from the base of the tower to any adjoining property line or the supporting structure of a separate neighboring tower is a minimum of 100 percent of the tower height. The Planning Commission and County Board of Commissioners may reduce the setback with a conditional use permit if it determines that such reduction does not constitute a hazard to safety or property on adjacent properties or rights-of-way.
3. Towers exceeding 100 feet in height may not be located in any residentially zoned district and must be separated from all residentially zoned districts and occupied structures other than those utilized by the tower owner, by a minimum of 200 feet or 100 percent of the height of the proposed tower, whichever is greater.
4. Towers of 100 feet or less in height may be located in residentially zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of the tower.
5. Towers must meet the following minimum separation requirements from other towers:
  - A. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
  - B. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.
6. Towers shall be held to all height requirements as prescribed in the Airport Hazard Area District.
7. As part of its conditional use approval process, the Planning Commission and County Board of Commissioners may, after public notice and hearing, permit the tower to exceed the height restrictions otherwise allowable in the district.

#### **8.02.06 Structural Standards for Towers Adopted**

The Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, 1991 Edition (ANSI/EIA/TIA 222-E-1991) is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by regulation and set forth in this Article of the Zoning Regulation.

#### **8.02.07 Illumination and Security Fences**

1. Towers shall not be artificially lighted except as required by the FAA. Any tower subject to this Section that is required to be lit under FAA requirements and using a strobe light shall be equipped with dual mode lighting. In no case shall said tower be allowed to operate a strobe lighting system after sunset and before dawn.
2. All self-supporting lattice or guyed towers shall be enclosed within a security fence or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

**8.02.08 Exterior Finish**

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the Planning Commission and County Board as part of the application approval process. All towers that must be approved as a conditional use shall be stealth design unless stealth features are impractical, or the cost of such features represents an undue burden on the applicant.

**8.02.09 Landscaping**

All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the County.

**8.02.10 Prohibitions**

According to the FCC, "[A] state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

**8.02.11 Substantial Change**

Cherry County may only require an amended conditional use permit for changes/modifications on a telecommunication tower/system that are defined by the FCC as substantial.

1. **Substantial Change** shall mean any of the following:

- A. Towers outside the public right-of-way, a "substantial change"
  - increases the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, or
  - Protrudes from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
- B. Towers in the right-of-way, and all base stations, a "substantial change"
  - increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater, or
  - protrudes from the edge of the structure more than 6 feet
- C. All Towers and base stations, a substantial change:
  - involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.
  - entails any excavation or deployment outside the current site of the tower or base station.
  - defeats the existing concealment elements of the tower or base station; or
  - does not comply with conditions associated with the prior approval of construction or modification of the tower or base station unless the non-compliance is due to any of the "substantial change" thresholds identified above.

2. **Changes in Height**

- A. Changes in height are to be measured from the original support structure in cases where the deployments are or will be separated horizontally.
- B. In other circumstances, changes in height are to be measured from the dimensions of the original tower or base station and all originally approved appurtenances, and any modifications approved prior to the passage of the Spectrum Act.
- C. Note, the changes are measured cumulatively; otherwise, a series of small changes could add up to a cumulative change that exceeds the "substantial change" threshold.

**8.02.12 Inspections**

The County reserves the right to conduct inspection of towers, antenna support structures, telecommunications facilities and antenna upon reasonable notice to the tower owner or operator to determine compliance with this Section and to prevent structural and equipment failures and accidents which may cause damage, injuries or nuisances to the public. Inspections may be made to determine compliance with the County's Zoning Codes and any other construction standards set forth by the County, federal, and state law or applicable ANSI standards. Inspections shall be made by either an employee of Cherry County's Zoning Office, or a duly appointed independent representative of the County.

**8.02.13 Maintenance**

The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order and repair so that the same does not constitute a nuisance to or a danger to the life or property of any person or the public.

**8.02.14 Abandonment**

If any tower shall cease to be used for a period of one year, the Zoning Administrator shall notify the tower owner that the site will be subject to determination by the Zoning Administrator that the site has been abandoned. Upon issuance of written notice to show cause by the Zoning Administrator, the tower owner shall have 30 days to show preponderance of evidence that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Zoning Administrator shall issue a final determination of abandonment of the site and the tower owner shall have 75 days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Zoning Administrator, or his/her designee and a written request shall be directed to the County Attorney to proceed to abate said public nuisance pursuant to authority of the Revised Nebraska State Statutes and Cherry County codes, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate.

**8.02.15 Approval Denial Procedures for Tower Development Permit**

1. Any decision to deny an application to place, construct or modify a wireless facility must be "in writing" and supported by substantial evidence contained in a written record.
2. The regulation of placement, construction, and modification of personal wireless services facilities by Cherry County shall not unreasonably discriminate among providers of functionally equivalent services.
3. The regulation of the placement, construction, and modification of personal wireless service facilities by Cherry County shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
4. Cherry County shall not regulate the placement, construction, or modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such emissions comply with FCC regulations.

**Section 8.03 Recreational Vehicle Parks**

No Recreational Vehicle Park shall be constructed within the zoning jurisdiction of Cherry County unless a Conditional Use Permit is approved and issued by the County and is constructed in conformance with the following requirements:

1. The tract to be used as a recreational vehicle park or campground shall not be less than three acres in area. Under no circumstances shall a manufactured home be parked in a recreational vehicle park or campground.
2. The maximum number of recreational vehicles, trailers, or camp sites shall be 15 per acre.
3. Each recreational vehicle, trailer, camp site shall be plainly marked.
4. The minimum dimensions of a recreational vehicle, trailer or camp site shall be 30 feet wide by 60 feet long.
5. Each recreational vehicle, trailer, camp site shall be separated from other recreational vehicles, trailers, or camp sites by at least 15 feet.
6. All recreational vehicle, trailer, camp sites shall meet the required setbacks from roads and from the ordinary high-water mark and shall be located at least 50 feet from exterior lot lines.
  - A. The exterior lot line setback shall be maintained in open space, except that landscaping for the purpose of screening the Park from visual views from adjacent properties.
  - B. Screening at least six feet in height shall be provided between the recreational vehicle park or campground and any adjoining residential area.
7. The number and location of access drives shall be controlled for traffic safety and protection of surrounding properties; provided:
  - A. No one space shall be designed for direct access to a county road or highway outside the boundaries of the recreational vehicle park or campground.
  - B. All interior access drives shall be at least 20 feet in width; and
  - C. All interior access drives and parking areas shall be surfaced with gravel, asphalt, or other material to free the site of mud.

8. There shall be two off-street parking spaces per each individual recreational vehicle, trailer, camp site.
9. Each pad location shall be equipped with the following:
  - A. Electrical outlet.
  - B. A sanitary sewer connection per Nebraska DEE requirements.
  - C. A potable water connection per Nebraska HHS requirements.
  - D. If pad sites are not supplied with individual sanitary sewer and water connections, then a "Community Building" shall be constructed to the following requirements.
    - 1) Pads shall not be located more than 300 feet from the "Community Building".
    - 2) Separate toilet, lavatory, and shower facilities for each sex, in the following ratio: one flush-type toilet, one lavatory and one shower or bathtub for females and one flush-type toilet, one lavatory, and one shower or bathtub for males.
    - 3) The pervious toilet sanitary standards shall be for every 30 pad sites.
    - 4) Have an accessible, adequate, safe and potable supply of cold water.
    - 5) Comply with all Nebraska Building, Electrical and life safety codes.
    - 6) Be maintained in a clean, sanitary condition and kept free of any condition that is considered a health hazard.
10. Other criteria that shall be met include:
  - A. No more than one wheeled recreational vehicle or trailer shall be allowed on any individual pad site. In addition to these units, a tent may be erected to serve as an auxiliary shelter but shall not be erected for more than 14 consecutive days.
  - B. A Recreational Vehicle Park shall be separated from all existing AFO's by the same distances established for residential dwellings.
  - C. A Recreational Vehicle Park shall be separated from existing residential dwellings and subdivisions by a minimum of ½ mile.
  - D. These Parks are considered as a seasonal business and site and individual recreational vehicles or trailers are considered seasonal dwelling and shall not be occupied for more than four continuous months in a 12-month period. However, a recreational vehicle or trailer may remain on site for the remaining portion of the year in a stored state.
  - E. Wheels and tires shall remain in the in-transit position.
  - F. No porches, lean-tos, or additions shall be constructed onto any of these recreational dwellings. Canvas screen rooms or awnings shall be allowed.
  - G. A recreational dwelling may only be skirted with lattice, solid skirting may be installed immediately adjacent to the tires.
  - H. A shelter unit may be located on an individual pad site provided it is designed only to protect occupants from the elements and does not have a permanent water supply, a sewage system, electricity, or heating and cooking facilities.

One permanent dwelling unit may be constructed within the Recreational Vehicle Park and is to be used strictly by the Park owner and family or the resident superintendent.

---

#### **Section 8.04 Screening**

1. Junkyards (salvage or wrecking yards) shall be screened with an eight-foot-high opaque, solid fence or earth berm so as to provide visual and aural separation between such use and adjacent areas.
2. All extractive industries shall be screened by means of plant materials, earth mounding, or solid fencing at least six feet in height to provide visual and aural separation between such use and adjacent areas.
3. All holding or incineration areas of dead livestock shall be screened by means of plant materials, earth mounding, or solid fencing at least six feet in height to provide visual and aural separation between such use and adjacent areas. No storage or incineration of dead livestock shall be located in road right-of-way or on any other land not owned or leased by the livestock operation.

---

#### **Section 8.05 Sand and Gravel Mineral, Stone, Rock, and Soil Extraction and Quarries.**

A Conditional Use Permit may be granted for the extraction and storage of sand and gravel, mineral, stone, rock, soil extraction and quarries in the designated zoning district; provided the following special conditions shall be considered (among others determined appropriate/relevant by the County):



1. When any extraction material is sold, removed, and transported on Cherry County roads it shall be the responsibility of the property owner to meet the following conditions:
  - A. The application shall include a grading map showing contours, proposed extraction contours, and proposed final grade contours.
  - B. The applicant shall identify the effect of the extraction on the groundwater table of the adjoining properties.
  - C. Erosion controls, including retention and sediment basins shall be provided during extraction to prevent a change in the character of runoff onto adjacent land.
  - D. The application shall identify proposed vehicle and equipment storage areas.
  - E. The surface shall be maintained in such a manner that surface waters do not collect or pond, unless specifically approved. Underground drainage may be supplied if it connects to an existing facility.
  - F. Topsoil shall be collected and stored for redistribution on the site at termination of the operation.
  - G. Excavation/storage shall be conducted in such a way as not to constitute a hazard to any persons, nor to the adjoining property. All cuts shall be returned to a slope of less than 3:1 as set by the County. Safety screening shall be required at the outer boundary of the site; visual screening will also be required where said boundary is adjacent to residential or recreational land.
  - H. Within one year after completion of the excavation on any portion of the site, the topography and soils shall be stabilized, and the land shall be graded, seeded, and sodded so as to prevent erosion and siltation, and to protect the health, safety, and general welfare of the public.
  - I. Costs for any damage to the county roads or bridges used for access to the site which requires additional maintenance or repair for the normal county maintenance or repair as a result of additional traffic generated, shall be the responsibility of the owner of the property from which the soil is being removed. The determination of the costs and the method of repair and maintenance shall be prescribed by the Cherry County Highway Superintendent. The property owner may appeal the Superintendent's decision to the Cherry County Board of Commissioners within 30 days after receiving the Superintendent's decision.
  - J. The owner of the property shall obtain adequate insurance to cover any of the damages, which may occur as a result of this operation and shall assume all liability for any damages. A copy of such insurance or other proof of such insurance shall be submitted to the Zoning Administrator's office prior to issuing a Conditional Use Permit; and
  - K. To assure all of these conditions are met by the owner, a bond contingent on the size of the operation, removal, or extraction may be required to be posted with the County.

## **Section 8.06 Small Wind Energy Systems**

### **8.06.01 Purpose**

It is the purpose of this regulation to promote the safe, effective, and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.

### **8.06.02 Findings**

Cherry County finds that wind energy is an abundant, renewable, and non-polluting energy resource. The County, through this regulation, will permit small wind energy systems so that this clean, renewable energy resource can be utilized in a cost-effective and timely manner.

### **8.06.03 Definitions**

The following are defined for the specific use of this section.

**Rotor Diameter** shall mean the diameter of the circle described by the moving rotor blades.

**Small Wind Energy System** shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

**Structurally mounted System** shall mean a Small Wind Energy System that is designed to be mounted on a building including residential dwellings.

**Total Height** shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

**Tower Height** shall mean the height above grade of the first fixed portion of the tower, excluding the wind turbine itself.

#### 8.06.04 Requirements

Certain requirements as set forth below shall be met:

1. Tower Height
  - A. For property sizes between ½ acre and one acre the tower height shall be limited to 80 feet.
  - B. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. Setbacks
 

No part of the wind system structure, including guy-wire anchors, may extend closer than accessory building setbacks of the appropriate zoning district to the property lines of the installation site.
3. Noise
  - A. Small wind energy systems shall not exceed 50 dBA, as measured at the closest neighboring inhabited dwelling unit; however,
  - B. The noise level may be exceeded during short term events such as utility outages and/or severe windstorms.
4. Approved Wind Turbines
 

Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
5. Compliance with Building and Zoning Codes
  - A. Applications for small wind energy systems shall be accomplished by standard drawings of the wind turbine structure, including the tower base, and footings.
  - B. An engineering analysis of the tower showing compliance with official building code of the governing body and/or the State of Nebraska certified by a professional engineer licensed and certified in Nebraska shall also be submitted.
  - C. The manufacturer frequently supplies this analysis.
  - D. Wet stamps shall not be required.
6. Compliance with FAA and NDA Regulations
 

Small wind energy systems must comply with applicable FAA and NDA regulations, including any necessary approvals for installations close to airports.
7. Compliance with National Electrical Code
  - A. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - B. The manufacturer frequently supplies this analysis.
8. Utility Notification
  - A. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator,
  - B. Off-grid systems shall be exempt from this requirement.

	Wind Turbine – Non-Commercial	Meteorological Towers
Property Lines (other than right angle corners)	Diameter plus applicable building setback	1.1 times the total height
Right angle corner property lines	Diameter plus applicable building setback from both property lines	1.1 times the total height from both property lines
Dwelling *	Diameter plus applicable building setback for owner ½ mile for non-owner dwelling	1.1 times the total height plus applicable building setback
Road Rights-of-Way**	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Other Rights-of-Way	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Public Conservation Lands including Wildlife Management Areas and State Recreation Areas	Applicable building setback	1.1 times the total height plus applicable building setback
Wetlands, USFW Types III, IV, and V	NA	1.1 times the total height
Other structures not on the applicant's project site	NA	1.1 times the total height
Bluffs of over 15 feet	NA	NA

\* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.

\*\* The setback shall be measured from any future Rights-of-Way if a planned change or expanded right-of-way is known.

\*\*\* Participants or non-participants may waive or reduce the required setback by any amount.

## Section 8.07 Commercial/Utility Grade Wind Energy Systems

### 8.07.01 Purpose

It is the purpose of this regulation to promote the safe, effective, and efficient use of commercial/utility grade wind energy systems within Cherry County.

### 8.07.02 Findings

Cherry County finds that wind energy is an abundant, renewable, and non-polluting energy resource. The County, through this regulation, will permit Commercial/Utility Grade Wind Energy Systems so that this clean, renewable energy resource can be utilized in a cost-effective and timely manner.

### 8.07.03 Definitions

The following are defined for the specific use of this section.

**Aggregate Project:** Projects developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

**Commercial WECS:** A wind energy conversion system of equal to or greater than 100 kW in total name plate generating capacity.

**Fail Zone:** The area defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

**Meteorological Tower:** A tower which is erected primarily to measure wind speed and directions plus other data relevant to siting a Wind Energy Conversion System. Meteorological towers do not include towers and equipment used by airports, the NDOT, or other applications to monitor weather conditions.

**Participant:** One receiving an annual monetary compensation from the WECS owner/operator.

**Non-participant:** One not receiving an annual monetary compensation from the WECS owner/operator.

**Radar-Activated Obstruction Lighting System (ADS):** A radar-activated obstruction lighting system designed to turn blinking lights atop wind turbines and tall towers on or off, based on the presence or absence of aircraft in the vicinity. This technology allows "lights out" for up to 98% of the night which significantly reduces the towers' visual impacts on surrounding communities.

**Rotor Diameter:** The diameter of the circle described by the moving rotor blades.

**Total Height:** The highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

**Tower:** The vertical structures that support the electrical, rotor blades, or meteorological equipment.

**Tower Height:** The height above grade of the hub portion of the tower, excluding the wind turbine itself.

**Transmission Line:** The electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**Wind Energy Conservation System (WECS):** An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

**Wind Turbines:** Any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.



#### 8.07.04 Requirements

Commercial/Utility Grade wind energy systems shall be permitted as a Conditional Use within the CCAG District. Permanent Meteorological towers shall be considered part of the system. Temporary meteorological towers may be permitted in the AGP District by a Zoning (Building) Permit and limited to two years or less. When requesting a conditional use permit for a commercial/utility grade wind energy conversion system (also known as a WECS), and/or a zoning permit for a temporary meteorological tower; the following requirements and information shall be met and supplied:

1. The name(s) of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the feeder lines.
5. Site layout, including the location of property lines, wind turbines, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Engineer's certification.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other WECS not owned by the applicant, within 10 rotor distances of the proposed WECS.
10. Location of wetlands, scenic, and natural areas (including bluffs) within 1,320 feet of the proposed WECS.
11. An Acoustical Analysis that certifies that the noise requirements within this regulation can be met.
12. FAA and NDA review and permit
13. Location of all known Communication Towers within two miles of the proposed WECS.
14. Decommissioning Plan including the financial means to implement the plan.
15. Description of potential impacts on nearby WECS and wind resources on adjacent properties not owned by the applicant.
16. All landowners within one mile of a proposed wind turbine location shall be required to receive annual monetary compensation from the WECS owner/operator.
17. Documentation of all easement agreements for all transmission lines, feeder lines and substations required for the operation of the WECS. Easements for the crossing of any form of neighboring properties shall be required.

**8.07.05 Aggregated Projects**

The following concerns an aggregated project(s).

1. Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews and as appropriate approvals.
2. Individual towers within a WECS project shall require a zoning permit issued by the Zoning Administrator.
3. Joint projects will be assessed fees as one project.
4. Setbacks to property lines, not road rights-of way, may be less when adjoining property owners are within the same aggregate project.

**8.07.06 Setbacks**

All towers shall adhere to the setbacks as measured from the hub established in the following table:

	<b>WECS Wind Turbine – Commercial/Utility WECS</b>	<b>Meteorological Towers</b>
Property Lines (other than right angle corners)	Diameter plus applicable building setback	1.1 times the total height
Right angle corner property lines	Behind a line on the property lines drawn between two points 150' from the property line intersection. Generator blades must not exceed the building setback lines on the non-roadside, and shall not encroach on the right-of-way on the road side.	1.1 times the total height from both property lines
Dwelling *	1,000' feet for participant *** ½ mile for non-participant ***	1.1 times the total height plus applicable building setback
Road Rights-of-Way**	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Other Rights-of-Way	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Public Conservation Lands including Wildlife Management Areas and State Recreation Areas	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Wetlands, USFW Types III, IV, and V	600 feet	1.1 times the total height
Other structures not on the applicant's project site	Diameter	1.1 times the total height
Bluffs of over 15 feet	1,320 feet	

\* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.

\*\* The setback shall be measured from any future Rights-of-Way if a planned change or expanded right-of-way is known.

\*\*\* Participants or non-participants may waive or reduce the required setback by any amount.

**8.07.07 Special Safety and Design Standards and Additional Requirements**

Special safety and design standards for all towers and additional listed requirements are stated below, which shall be adhered to and are specifically written for this Section:

1. All projects shall be equipped with an FAA approved ADS system.
2. Clearance of rotor blades or airfoils must maintain a minimum of 25 feet of clearance between their lowest point and the ground.
3. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted at the entrance to the site with the 911 address and emergency contact information.
4. All wind turbines, which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
5. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.
6. Color and finish  
All wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing; Finishes shall be matte or non-reflective.
7. Lighting  
Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA and NDA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.
8. Other signage

All other signage shall comply with the sign regulations found in these regulations.

9. Feeder Lines

All communications and feeder lines installed as part of a WECS shall be buried, where feasible. Feeder lines installed as part of a WECS shall not be considered an essential service.

10. Waste Disposal

Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state, and federal rules and regulations.

11. Discontinuation and Decommissioning

A WECS shall be considered a discontinued use after one year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to four feet below ground level within 180 days of the discontinuation of use. This period may be extended by the Zoning Administrator following a written request by an agent of the owner of the WECS.

Each WECS project under this section shall have a Decommissioning Plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon being discontinued use. The cost estimates shall be made by a Professional Engineer. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities.

Financial assurance in an amount of 110% of the anticipated costs as part of the Decommission Plan and said costs shall be revisited every five years.

12. Noise

No Commercial/Utility WECS shall exceed 50 dBA at the nearest structure occupied by humans. Exception: a Commercial/Utility WECS may exceed 50 dBA during periods of severe weather as defined by the US Weather Service.

13. Interference

The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within five miles of the proposed WECS location upon application to the county for permits.

14. County Roads

In regard to roads applicants shall:

- A. Identify all county, municipal or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.
- B. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.
- C. Be responsible for restoring the road(s) and bridges to preconstruction conditions.

15. Drainage System

The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.

16. Permit Fees

The applicant shall remit an application fee set by the Board of Commissioners.

---

## Section 8.08 Livestock Regulations

This Section is written specifically for Livestock regulations and therefore the contents in this Section shall be strictly adhered to regarding livestock regulations:

1. The following setbacks and design standards are the minimum sanitation and odor practices for Cherry County. In addition, the Cherry County Board of Commissioners, when considering the health, safety, and general welfare of the public, may impose more restrictive requirements. These requirements should consider such things as:
  - property values,

- dust,
  - lighting,
  - waste disposal and
  - Dead livestock.
2. Agricultural Operations of 1,000 A.U. and under are considered a farm as defined in these Regulations and do not require a Conditional Use Permit.
  3. All existing AFO's having been granted a conditional use permit may expand within their designated level without applying for another conditional use permit; however, the 20,000 and above shall require a new Conditional Use Permit for each expansion beyond 20,000 A.U.'s, as outlined in Table 8.08.1.
  4. All new AFO's and those expanding to the next level shall require a Conditional Use Permit and shall be located no less than at a distance from non-farm residences or other residences, not including cabins and cabins, hunting and fishing, not on an owner's property in any affected Zoning District as hereafter described:
    - A. An AFO will be categorized either as Environmentally Controlled Housing (ECH) Operations or Open Lot Operations. AFOs having more than one type of feeding operation at one location shall be categorized according to the operation which constitutes the majority of the total operation. Each operation type shall be classified in one of four levels according to total number of A.U. in the operation at any one time. Levels will include:
      - Class I Facility = 301-1,000 animal units.
      - Class IIA Facility = 1,001 – 2,500 animal units.
      - Class IIB Facility = 2,501 – 5,000 animal units.
      - Class IIIA Facility = 5,001 – 10,000 animal units.
      - Class IIIB Facility = 10,001-20,000 animal units; and
      - Class IV Facility = 20,001 or more animal units.
  5. AFOs having more than one type feeding operation at one location shall be categorized according to the total number of animal units.

**TABLE 8.08.1: AFO SPACING AND DISTANCE**

Size of Proposed AFO in Animal Units.		Non-farm or Other Residence and Other AFOs (miles)
Class I 301-1000	ECH	½
	OPEN	½
Class IIA 1001-2,500	ECH	¾
	OPEN	¾
Class IIB 2,501 – 5,000	ECH	1
	OPEN	1
Class IIIA 5001-10,000	ECH	1 ½
	OPEN	1 ½
Class IIIB 10,001 – 20,000	ECH	2
	OPEN	2
Class IV 20,000+	ECH	4
	OPEN	4

Note: The setbacks under this section shall increase by one-fourth (1/4) mile for each 5000 AU (or fractional portion thereof) of authorized capacity above 20,000 AU not to exceed a setback of 2 miles. In no event shall any Class IV AFO be located less than two miles from any village, town, city or unincorporated village or less than two miles from any LAR District or RAR District.

ECH = Environmentally Controlled Housing

OPEN = Open Lot Operations

- A. AFOs having more than 300 animal units shall also locate at a distance as specified under the ECH or Open Lots, in Table 8.08.1 from a platted residential area, public park, recreational area, church, cemetery, religious area, school, historical site, and Residential District. This shall not include those uses defined as cabins and cabins, hunting and fishing.



- 1) The required separation distances as stated in Table 8.08.1 may be lessened provided an impact easement can be obtained from any and all impacted properties.
- 2) Any approved impact easement shall be attached to the deed of all impacted properties.
- B. All AFO's over 20,000 Animal Units shall be required to obtain a new Conditional Use Permit prior to any expansion unless it meets the standards of the exceptions in the Exceptions Section.
- C. The producer shall have a Pre-submission meeting with the Cherry County Planning Commission and Zoning Administrator to discuss tentative plans and layouts prior to formal submission of the Conditional Use Permit for the AFO.
- D. After completion of the Pre-submission meeting, the applicant may submit a Conditional Use Permit application. The application shall include the following:
  - 1) A proposed site plan and conditions or requirements of this regulation pending approval of application for a proposed operation and waste disposal plan from the NDEE or any other applicable State Agency.
  - 2) The applicant shall submit all pertinent materials and designs, as per the Conditional Use Permit Application for the AFO.
  - 3) All ground surfaces within outside livestock pens shall be maintained to insure proper drainage of animal waste and storm or surface runoff in such a manner as to minimize manure from being carried into any roadway ditch, drainage area or onto a neighbor's property.
  - 4) In no event shall any manure storage unit or system be constructed where the bottom of the unit or system is either in contact with or below the existing water table where the unit or system is to be constructed. Application of manure in flooded areas of standing water shall be prohibited.
  - 5) All runoff or waste generated by an AFO facility shall be contained within the associated farming operation, or, on the premises upon which the AFO is located. The applicant must verify that all runoff control ponds, lagoons, methods of manure disposal and dust control measures are designed to minimize odor and air pollution and avoid surface and groundwater contamination as regulated by the State of Nebraska.
- E. Providing approval of the of the Conditional Use Permit, the applicant, if not provided by NDEE, shall upon approval of the NDEE permit provide the County the following:
  - 1) A copy of the proposed Operation and Maintenance Plan and proposed Manure Management Plan. The approved plans shall be submitted after NDEE approval if different from the proposed. Said plans shall be filed with the Cherry County Planning Commission and Zoning Administrator.
  - 2) A copy of all approved NDEE plans and permits within 30 days after they are issued by the NDEE.
  - 3) An annual manure management plan shall follow "best possible management practices" as specified by NDEE in order to protect the environment, as well as the health, safety and general welfare of the public and their property values.
  - 4) If stockpiling of animal waste and/or composting of dead carcasses, as per State Statutes, are part of the manure management plan, the waste shall be maintained in an area as outlined in Table 8.09.1 of this Section. Said area shall also be located on the proposed site plan indicated in number (1) above.
- F. The setbacks from a new residence, new platted residential area, new Public Park, new recreational area, new church and/or cemetery, new religious area, new school, and new Residential District. are as follows in Table 8.08.2:

**TABLE 8.08.2: NEW RESIDENCE AND OTHER USE DISTANCE SPACING (miles)**

	SIZE OF EXISTING AGRICULTURAL OPERATION AND AFO IN A.U.					
	100-300	301-1,000	1,001-5,000	5,001-10,000	10,001 - 20,000+	20,000+
New Residence and Other Uses	¼	½	¾	1	1 ¼	1 ½

**8.08.03 Exceptions:**

1. Any Class I Animal Feeding Operation use in existence as of the effective date of this Resolution, and which is located within the minimum spacing distance in Table 8.08.1 to any church, school, public use, other AFO or single-family dwelling within the current class or to the next class, may expand in animal units and/or land area under a Conditional Use Permit, provided the proposed expansion complies with all of the following limitations:

- A. Such expansion will not decrease the distance from the AFO use to any church, school, public use, other AFO or single-family dwelling not of the same ownership and not on the same premises with said AFO which is less than the minimum prescribed spacing distance.
- B. Any physical expansion of the existing AFO shall be immediately contiguous with the facilities of the existing AFO.
- C. Such expansion may occur in phases over time, but in no event shall such expansion(s) result in a AFO that is more than 50% larger in animal units than the one-time capacity of the use which existed as of the effective date of this Resolution. Any expansion beyond this limitation is prohibited unless a Conditional Use Permit for expansion that meets all requirements is heard by the Planning Commission and authorized by the County Board of Commissioners.
- D. If such expansion results in such AFO being required to obtain a new construction permit from NDEE, introduction of additional animals shall be prohibited until said permit is issued by NDEE or other applicable or successor agency has been issued and such AFO shall be operated at all times in a manner consistent with the requirements of said permit and applicable regulations of this Resolution.

#### **8.08.04 Impact Easements**

- 1. The owner of a proposed dwelling unit or AFO requesting to build closer than allowed in Tables 8.08.01 or 8.08.02 shall be required to obtain an Impact Easement from any dwellings or operations within the required separation distance, and shall be held to the minimum conditions, as well as any others agreed upon by both parties.
  - A. Any Impact Easements shall require a title search by a title company to identify any and all owners assigned to the properties involved. All parties shall be required to sign the Impact Easement.
  - B. An owner or owners of an existing dwelling or AFO and associated facilities being encroached upon may be allowed to expand the operation and facilities in the future even though the expansion may encroach into their required separation distances unless otherwise provided for within the Impact Easement.
  - C. Such minimum distance shall be measured from the nearest point of the area used or approved under this Resolution for the animal feeding or waste handling use, to such dwelling.
  - D. Application of waste which in solid form to the surface of the land, the application of composted waste or the injection of liquid or slurry waste into the soil shall not be subject to the minimum spacing distance herein specified.

#### **8.08.05 Special Requirements**

- 1. No AFO shall be constructed within an established floodplain or floodway.
  - 2. Any AFO's within the Bazile Triangle shall be required to comply with all rules and regulations for this area as enforced by the Natural Resources District.
-

## Section 8.09 Adult Entertainment

### 8.09.01 Purpose; Findings and Rationale

#### 1. Purpose.

It is the purpose of this resolution to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the County. The provisions of this resolution have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this resolution to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this resolution to condone or legitimize the distribution of obscene material.

#### 2. Findings and Rationale.

Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

*Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Cherry, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Cherry County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361 (2003); *Village of Winslow v. Sheets*, 261 Neb.203 (2001),

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis," *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Cherry – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Adult establishments, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Adult establishments: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; and Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA), McLeary and Weinstein; Do "Off-Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory and Empirical Evidence, Law and Policy, Vol. 31, No. 2 (April 2009), Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998),

3. The Board of Commissioners finds:

- A. Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- B. Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.
- C. Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. Additionally, the County's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the County. The County finds that the cases and documentation relied on in this resolution are reasonably believed to be relevant to said secondary effects.

The Board hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects.

#### **8.09.02 Geography:**

These uses shall be permitted in the following zoning districts, provided they meet all setback requirements and the regulations stated in Section 8.09.04 of this Resolution:

1. The CCAG, provided the establishments are confined to within ¼ mile of any State or Federal Highway within Cherry County.

**8.09.03 Definitions**

**Adult Bookstore Or Adult Video Store** shall mean a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

1. At least 35% of the establishment's displayed merchandise consists of said items, or
2. At least 35% of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items, or
3. At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
4. The establishment maintains at least 35% of its floor area for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor area" maintained for the display, sale, or rental of said items); or
5. The establishment maintains at least 500 square feet of its floor area for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor area" maintained for the display, sale, or rental of said items); or
6. The establishment regularly offers for sale or rental at least 2,000 of said items; or
7. The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

**Adult Cabaret** shall mean a nightclub, bar, juice bar, restaurant, bottle club, lounge, or similar commercial establishment that regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

**Adult Establishment** shall mean an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," or an "adult paraphernalia store."

**Adult Motion Picture Theater** shall mean a commercial establishment to which the public is permitted or invited wherein an image-producing device is regularly maintained to show images to more than five persons at any one time, and where the images so displayed are characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas."

**Adult Paraphernalia Store** shall mean a commercial establishment that regularly offers 100 or more sexual devices for sale. This definition shall not be construed to include any establishment located within an enclosed regional shopping mall. For purposes of this definition, "sexual device" means any three-dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. "Sexual device" shall not be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

**Employee Of An Adult Establishment** shall mean any person who performs any service on the premises of an adult establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

**Enclosed Regional Shopping Mall** means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large anchor stores, such as department stores. The common walkway or mall is enclosed, climate controlled and lighted, usually with an inward orientation of the stores facing the walkway.

**Nudity** means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

**Operator of Adult Establishment** means any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

**Semi-Nude or Semi-Nudity** means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

**Specified Anatomical Areas** shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and/or female breast below a point immediately above the top of the areola.

**Specified Sexual Activities** shall mean intercourse, oral copulation, masturbation, or sodomy.

#### **8.09.04 Performance Standards**

1. No person shall establish, operate, or cause to be operated an adult establishment in Cherry County within:
  - A. 1,000 feet of another adult establishment.
  - B. 500 feet of a business licensed to sell alcohol at the premises; or
  - C. 1,000 feet of a residential district, residential use, residence, church, educational institution, park, or recreational facility.
  - D. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure containing the adult establishment to the closest point on a property boundary of another adult establishment, a business licensed to sell alcohol at the premises, a residential district, a residential use, a residence, a church, an educational institution, park, or a recreational facility.
2. No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.
3. No patron, employee of an adult establishment, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.
4. No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee of an adult establishment who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.
5. No employee of an adult establishment who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee of an adult establishment or the clothing of such an employee of an adult establishment on the premises of an adult establishment.
6. No person shall bring their own alcoholic beverages onto the premises of an adult establishment.
7. No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of an adult establishment.
8. No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any employee of an adult establishment who is semi-nude or who appears semi-nude on the premises of the adult establishment unless an operator of the adult establishment is present in the same room.

9. A person who operates or causes to be operated an adult establishment which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
  - A. The operator of the adult establishment shall, within one week of opening the adult establishment for business, submit to the County Zoning Administrator a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.
  - B. It shall be the duty of the operator of the adult establishment, and of any employees of the adult establishment present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
  - C. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five-foot candles as measured at the floor level. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
  - D. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
  - E. It shall be the duty of the operator of an adult establishment to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
    - 1). That the occupancy of viewing rooms less than 150 square feet is limited to one person.
    - 2). That specified sexual activity on the premises is prohibited.
    - 3). That the making of openings between viewing rooms is prohibited.
    - 4). That violators will be required to leave the premises.
    - 5). That violations of these regulations are unlawful.
  - F. It shall be the duty of the operator of an adult establishment to enforce the regulations articulated in 8.09.04 (9)(E)(5). though 8.09.04 (9)(E)(5) above.
  - G. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator of the adult establishment's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises have two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator of an adult establishment to ensure that at least one employee of an adult establishment is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator of an adult establishment, and it shall also be the duty of any employees of an adult establishment present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
  - H. It shall be the duty of the operator of an adult establishment to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
  - I. It shall be unlawful for a person having a duty under subsections 8.09.04 (9)(A) through 8.09.04 (9)(H) above to knowingly or recklessly fail to fulfill that duty.
  - J. No patron shall knowingly or recklessly enter or remain in viewing rooms less than 150 square feet in area that is occupied by any other patron.
  - K. No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.



L. No person shall knowingly or recklessly make any hole or opening between viewing rooms.

10. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state shall be sufficient to establish a violation of a provision of this section 8.09.04.

---

### **Section 8.10 Conservation/Preservation Easements**

In accordance with Nebraska Revised Statute §76-2111 a conservation easement shall mean a right, covenant or condition of any deed, will, agreement or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of retaining or protecting the property in its natural, scenic or open condition, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat or open space, protecting air or other natural resources or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code.

#### **8.10.01 County Approval Required**

In accordance with Nebraska Revised Statutes §76-2112 in order to minimize conflicts with land use planning, each conservation / preservation easement shall be approved by the County Board of Commissioners. The County Board of Commissioners shall first refer the proposed easement to the County Planning Commission which shall, within 60 days of the referral, provide comments regarding the conformity of the proposed easement to the Cherry County, Nebraska Comprehensive Plan. If such comments are not received within said 60 days, the proposed easement shall be deemed approved by the Planning Commission.

#### **8.10.02 Application for Approval**

The owner or agent of the owner of real property on which a conservation / preservation easement is proposed shall submit a copy of the proposed easement to the Zoning Administrator for referral to the Planning Commission and County Board of Commissioners. Said application shall be without an application fee. The Zoning Administrator shall request a meeting of the Planning Commission and shall place consideration of the proposed easement as an agenda item.

#### **8.10.03 Planning Commission Consideration**

In accordance with Nebraska Revised Statutes §76-2112, the Planning Commission shall review the proposed easement for consistency with the Cherry County, Nebraska Comprehensive Plan of current adoption, and specifically review the proposed easement for compliance with the definition of such easements as set forth in Article 2 above and for consistency with the Future Land Use Plan set out in such Comprehensive Plan. If such proposed easement complies with said definition and the Comprehensive Plan, a recommendation of approval shall be forwarded to the County Board of Commissioners, provided that a recommendation of denial of such proposed easement may be forwarded if:

1. The proposed easement is found to be not in the public interest because the proposed easement is inconsistent with the Comprehensive Plan, or
2. The proposed easement is found to be not in the public interest because the proposed easement is inconsistent with any national, state, regional or local program furthering conservation or preservation, or
3. The proposed easement is found to be not in the public interest because the proposed easement is inconsistent with any known proposal by a governmental body for use of the land on which the easement is proposed.

#### **8.10.04 County Board of Commissioners Consideration**

After receiving a recommendation with regard to any proposed conservation / preservation easement, the County Board of Commissioners shall review the recommendation of the Planning Commission and shall approve or deny such easement based upon the same factors set forth in Section 8.10.03 above. The County Board shall provide written notification to the application regarding the Board's decision on the proposed easement within 10 calendar days of the decision of the Board.

**Section 8.11 Above ground Storage Tanks (AST)**

All above ground storage tanks shall comply with the following requirements.

1. All Commercial ASTs shall be on a minimum site of three acres of land.
2. All Commercial ASTs shall comply with all requirements of the Nebraska State Fire Marshal's office. Proof of said compliance is required prior to operating said location.
3. All Commercial ASTs shall have the proper containment cells as required by NDEE and EPA. Proof of said compliance is required prior to operating said location.
4. All Commercial ASTs shall be set back a minimum of 100 feet from any right-of-way.
5. All Commercial ASTs shall have a minimum separation distance of 300 feet from any structure not on the applicant's property or development.
6. All Commercial ASTs shall have their own separate and distinct ingress and egress points to the site.
7. A Commercial AST that is established as a fuel or fertilizer depot may be required to have more than one point of ingress and egress.
8. All entry points shall be reviewed and signed off on, as to location, by the County Highway Superintendent in the case of a county road or NDOT in the case of a state or federal highway. Proof of said compliance is required prior to operating said location.
9. All Commercial ASTs shall provide specific list and data to the county and the local fire departments regarding the materials stored on the site.
10. A Commercial AST that is established as a fuel or fertilizer depot may be required to conduct a traffic study to determine traffic impacts of the site on the surrounding transportation system.

**Section 8.12 Bed and Breakfast**

Bed and Breakfasts shall meet the following requirements:

1. Maintain a residential exterior appearance.
2. Breakfast must be served on premises and included within the room charge for guest of the facility and shall be the only meal provided.
3. Owner must reside on the premises.
4. Off-street parking shall be provided at one space per occupant room.

**Section 8.13 Junk Yards or Salvage Yards**

Junk Yards and salvage of materials may be allowed in identified districts; provided the following minimum conditions are met (additional conditions may be required depending upon the operation and the proposed location:

1. Construction and operation shall comply with all applicable codes or requirements.
2. Receiving areas for junk or salvage material shall be designed to avoid the depositing of junk or salvage material outside a building or outside screened (solid fence) storage areas.
3. See Section 8.05 for Screening requirements.
4. Junk yards and salvage of materials shall contain a minimum of three acres and shall not be located within a designated 100-year floodplain area as identified by the Corps of Engineers.
5. Junk or salvage material kept outside a building or buildings shall not be located closer than 500 feet from any designated State or Federal highway, or locally designated Expressway, Major Arterial, and Other Arterial as per the NDOT or subsequent successor agency.
6. Junk material kept outside a building or buildings shall not be located in the required front yard.
7. Junk or salvage material kept outside a building or buildings shall be a minimum of 660 feet from the any residential district or use.
8. All motor vehicles shall have all fluids drained prior to placement within the facility.

**Section 8.14 Biofuels and Distillation Facilities**

The following conditions shall be met when locating a biofuels facility within the zoning jurisdiction of Cherry County. The standards are intended to protect the health, safety, and general welfare of the residents of Cherry County.

1. Access to the facility shall be paved and connected to a hard-surfaced street/road classified as an arterial.
2. If access is onto a county road or city street, the applicant must provide evidence that the paving of such highway, road or street is sufficient to carry, without damage to the roadway, the weight and size of the loads of grain and liquid and any by-product entering or leaving the facility by truck.

3. If the road or street is not capable of carrying the weight and size of the loads, then the applicant shall be required to make any necessary upgrades to the paving in order for the pavement to handle the size and weight of the loads.
4. The applicant shall be required to construct and acquire rights-of-way for all turning lanes and signals necessary to handle the increase in truck traffic.
5. The facility, if located adjacent to a railroad line, shall have sufficient area to provide for sidings for loading and unloading raw or finished product. The sidings shall be constructed at the applicant's expense.
6. The facility shall not be located in an area where topography impairs the dispersal of steam, smoke, or other discharges from the facility.
7. Water supply wells for the facility shall not be located within the 20-year time of travel of any municipal well.
8. The facility shall be designed to recycle, in a manner compliant with all county and state rules and regulations, a minimum of 75 percent of the water used by the facility including water used for distillation.
9. All fuel storage tanks shall be located in a manner that will not allow for contamination of any groundwater or surface water.
10. Total equipment height limited to the requirements of the zoning district.
11. All fuel storage tanks shall be within an impermeable containment levy system.
12. Site plan review required.
13. Lighting must be compliant with all applicable regulations.

---

#### **Section 8.15 Self-Storage Units (Mini-Warehouses)**

1. Minimum lot size of the Self-Storage facility shall be three acres.
2. Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.
3. All driveways, parking, loading and vehicle circulation areas shall be surfaced with concrete, asphalt, asphaltic concrete, crushed rock, or other approved rock other than gravel. All driveways within the facility shall provide a hard surface with a minimum width of 25 feet.
4. All storage must be within enclosed buildings and shall not include the storage of hazardous materials.
5. The total area covered by buildings shall not exceed 50 percent of the site.
6. The storage of hazardous, toxic, or explosive substances, including, but not limited to, hazardous waste, industrial solid waste, medical waste, municipal solid waste, septage, or used oil shall not be allowed.
7. Facilities must maintain landscape buffer yards of 50 feet adjacent to any public Right-of-Way and 20 feet adjacent to other property lines, unless greater setbacks are required, a total of 35 percent of all yards shall be landscaped.
8. Site development shall include provisions for storm water management in accordance with the Regulations of the State of Nebraska.
9. Height limitations shall require a maximum height of 20 feet for any structure in the facility.

---

#### **Section 8.16 Waste Disposal Sites**

A Permit may be granted for any waste material disposal, garbage disposal, or land fill operations in the designated zoning district; provided the following criteria shall be considered (among others determined appropriate/relevant by the County):

1. The effects on the adjacent property and traffic
2. The public necessity and advantage
3. The maintenance of access routes related to all weather conditions and droppings of rubbish and litter
4. The effects on underground water quality
5. The immediate and long-term effects on the environment and the public
6. The concerns for public safety
7. The application shall include documents to indicate conformance to all applicable governmental regulations and standards

8. The application shall include affidavits or permits from the Environmental Protection Agency and/or the Nebraska Department of Environment and Energy, in the event approval is required by these agencies.

## **Section 8.17 Sanitary Landfill Regulations**

### **8.17.01 Purpose**

It is hereby found and declared that unsanitary disposal of garbage and refuse creates health and sanitary hazards, promotes the breeding of rats, flies, and other vermin, pollutes water and the atmosphere, produces noxious odors and insults the aesthetic values of the citizens of Cherry County. It is hereby further found and declared that the elimination of open dumps and the prevention of health, sanitation and aesthetic nuisances in the future is in the best interests of the citizens of Cherry County and the State of Nebraska; and that the accomplishment of this end will be fostered and encouraged by the enactment and enforcement of this Regulation. The enactment and enforcement of this Regulation is hereby declared to be essential to the public interest and it is intended that the Regulation be liberally construed to effectuate the purposes as stated herein.

### **8.17.02 Definitions**

For the purpose of this Regulation, certain terms and words are herewith defined, as set forth in this Regulation. All words used in the present tense shall include the future tense, all words in the plural number shall include the singular number and all words in the singular number shall include the plural number; unless the natural construction of the wording indicates otherwise.

**Applicant:** Individuals, firms, corporations, or any political subdivisions of the State including any governmental authority created by statute.

**Department:** The Nebraska Department of Environment and Energy.

**Garbage:** Rejected food wastes including waste accumulation of animal, fruit or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables, and dead animals rejected by rendering plants.

**Junk:** Old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material; provided, however, that the placement of broken concrete for riprap and fill material for embankment reconstruction and erosion retardation only, with a County approved CUP, shall be exempt from the requirements of this Section.

**Person:** Any person, firm, partnership, association, corporation, company or organization of any kind.

**Rubbish:** Nonputrescible solid waste, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety; provided, however, that the placement of broken concrete for rip-rap and fill material for embankment reconstruction and erosion retardation only, with a County approved CUP, shall be exempt from the requirements of this Section.

**Refuse:** Putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings and solid market and industrial wastes; provided, however, that the placement of broken concrete for riprap and fill material for embankment reconstruction and erosion retardation only, with a County approved CUP, shall be exempt from the requirements of this Section.

**Sanitary Landfill:** A type of operation in which garbage, rubbish, and refuse is deposited by plan on a specified portion of land, is compacted by force applied by mechanical equipment, and then is covered by compacted suitable covering material to a depth of at least six to twelve inches over individual cells of garbage and refuse or garbage or refuse, which are closed at the end of each day, and to a depth of at least four feet over the finished landfill.

**8.17.03 Permits**

It shall be unlawful for any person to use any land, premises or property within Cherry County for the disposal of any garbage, rubbish, and refuse, or garbage, rubbish, or refuse without first making application to the County.

The application to operate a sanitary landfill shall be filed with the Cherry County Planning and Zoning and shall contain:

1. A description and plat of the land on which the disposal of garbage and refuse or garbage or refuse is proposed
2. A description of the sequence and plan of operation
3. Type and capacity of equipment to be used for operations
4. Plans for fire, nuisance, and vermin control
5. Existing and proposed roadways and easements
6. Existing topography and water courses
7. A diagram and written statement explaining the proposed location and extent of earthwork and fill operations
8. Proposed measures to control storm drainage and estimated daily or weekly volume of garbage and refuse, or garbage or refuse to be placed in the sanitary landfill
9. Subsoil data including percolation tests, ground water, and soil types.

No permit to operate a sanitary landfill will be issued, unless the applicant has first complied with the requirements of the Nebraska Department of Environment and Energy and the applicable sections of the Nebraska State Statutes, Sections 13-1701 through 13-1714.

Any permit to operate a sanitary landfill will become null and void whenever the Nebraska Department of Environment and Energy revokes a license or does not renew a license.

**8.17.04 Disposal Conditions**

No person shall dump or otherwise dispose of any refuse, garbage, junk, or rubbish at any place except a licensed and permitted sanitary landfill area; however, this does not prohibit a person from disposing of refuse and rubbish from his own household upon his own land as long as such disposal does not create a nuisance or hazard to health or others; and provided, however, that the placement of broken concrete for rip-rap and fill material for embankment reconstruction and erosion retardation only, with a County approved permit shall be exempt from the requirements of this Section.

The following conditions shall be agreed to by the operator/owner:

1. That the permittee, his agents, and servants, will comply with all of the terms, conditions, provisions, requirements and specifications contained in these regulations.
2. That the permittee, his agents, and servants, will faithfully operate the sanitary landfill for which the permit is issued in accordance with the provisions of these Regulations.
3. That the permittee, his agents and servants, will save harmless Cherry County from any expense incurred through the failure of the permittee, his agents and servants, to operate and maintain the sanitary landfill as required by these Regulations, including any expense Cherry County may be put to for correcting any condition or violation of these Regulations by Cherry County's own labor and equipment whenever the Cherry County Board of Commissioners determines it is necessary for Cherry County to correct any unsanitary condition or conditions that violate of these Regulations or from any damages growing out of the negligence of the permittee or his agents or servants.
4. That the permittee and his agents, as further assurance for the operation of the sanitary landfill, shall provide therein, that in the event, the permittee fails to comply and fails to operate the sanitary landfill within the terms, requirements, and conditions of these Regulations for any period of time, the Cherry County Board of Commissioners may then, upon resolution, have the right to have hired the necessary equipment and labor to adequately bring the landfill operation to a satisfactory closing.

**8.17.05 Physical Improvements**

The following physical improvements shall be made before a sanitary landfill site is approved for operation:

1. The property shall be fenced as shown on approved plans for application with an entrance gate that can be locked. A temporary inner fence shall be installed bordering all active areas of landfill areas to reasonably control or to stop blowing paper and other materials.
2. Operating procedures and time schedules shall be clearly listed on signs posted at the site entrance.
3. Where employees or personnel will be on duty for more than four consecutive hours, convenient sheltered toilet facilities shall be provided.

#### **8.17.06 Regulations**

The following regulations shall be observed by any person, firm or corporation to whom a permit is granted for the operation of a sanitary landfill. These regulations shall govern the operation of all sanitary landfills in Cherry County and any failure to observe these regulations shall be sufficient grounds for suspension or revocation of the permit as hereinafter provided.

1. All garbage and other refuse accepted by the permit holder shall be thoroughly compacted by equipment of a size and weight capable of carrying out all necessary operations. Sufficient auxiliary equipment shall be available on the site or otherwise available to permit operation in case of equipment breakdown.
2. Mixed refuse material shall be spread out on the working face of the landfill so that the depth does not exceed a maximum depth of two feet prior to its compaction.
3. The area of the landfill shall be policed as necessary to prevent fire and smoke and to collect all scattered materials; shall be neat and orderly at all times and shall be covered at the end of each day's operation, as well as when wind conditions warrant it through the day, with sufficient material to prevent blowing litter, fly and rodent attraction and breeding, release of odor, fire hazard, and unsightly appearance.
4. A minimum depth of 12 inches of compacted cover and final spread cover material shall be kept on all inactive faces of the landfill at all times. The active faces of the landfill shall be covered at the end of each day's operation, with cover material.
5. When the fill has been brought up to four feet below the desired finished grade, it shall be covered with compacted cover material for a minimum depth of four feet, graded and seeded in such a manner as to prevent erosion. The finally graded and seeded finished surface of the fill shall be maintained at final grade free from erosion and in a well seeded manner for a period of two years after filling operations have been completed.
6. Where the trench system of sanitary landfill is used, successive parallel trenches must be at least two feet apart.
7. Where the landfill operation is conducted in a ravine, the sides of the ravine shall be terraced prior to landfilling if the slope of the sides of the ravine is 1:1 or greater.
8. In the event that refuse material exists on the site at the time the permit is issued, whether in the form of an open dump or any other form, such refuse material shall be collected, compacted, and covered with cover material at least four feet in depth at the finished grade or with at least six inches of cover material on areas in which landfilling operations will be conducted. This cover operation shall be completed within 15 working days after the issuance of a permit for the sanitary landfill unless some other period of time is specified in the permit.
9. Access roads to the disposal area shall be maintained and surfaced so as to be negotiable by trucks and other motor vehicles at all reasonable times.
10. The salvage or scavenging of materials from the landfill is prohibited.
11. The burning of garbage and refuse, or garbage or refuse, on the landfill site is prohibited.
12. No landfill operations shall be conducted so that fill will be placed in streambeds or other areas where streams would be obstructed or where erosion by the stream would remove cover material. There shall be no seepage or drainage of any material from the fill of such a nature as would constitute an odor nuisance or health hazard or pollute any water course or underground water aquifer.
13. The permittee shall provide surface drainage facilities on the landfill site which will permit the drainage of storm water. The existence of standing pools of water on the finished face of the landfill six hours after the last precipitation shall constitute evidence of inadequate surface drainage.
14. The permittee shall take such measures as are necessary to control dust.
15. Deposition of liquids and hazardous material contaminated or polluted liquids or hazardous substance shall be deposited only after receiving approval from the Nebraska Department of Environment and Energy as to such time and such location with the immediate coverage.
16. Other reasonable measures shall be taken to control insects and rodents.

17. Noncombustible and non-putrescible waste such as cinders, broken paving or materials resulting from construction or demolition work may be deposited in the landfill provided such materials shall be leveled and spread at sufficient intervals to prevent unsightly appearance or rodent harborage and shall be covered as required for a completed sanitary landfill; provided, however, that the placement of broken concrete for rip-rap and fill material for embankment reconstruction and erosion retardation only, with a County approved CUP, shall be exempt from the requirements of this Section.
18. The discharging of firearms is prohibited.
19. Before any site is abandoned, all exposed refuse shall be covered with a layer of suitable cover material, to minimum compacted depth of four feet. The site otherwise shall be left in a reasonably neat condition so as not to offend adjacent property owners and incite opposition to the establishment of new sites.
20. A comment letter from the County Highway Superintendent.

#### **8.17.07 Enforcement - Permit Suspension and Revocation**

The officers responsible for the enforcement of the provisions of this Regulation shall be the Zoning Administrator and/or County Sheriff, or other designees as set by the Board of Commissioners.

The officers will notify in writing any permit holder who is violating the provisions of this Section, or of the Zoning Regulations, of the specific manner in which the Regulations are being violated. Unless said violation is corrected within a reasonable time after notice is received in writing to the permit holder, the officers shall notify the County Board of Commissioners in writing stating the non-compliance or violation. In the event the permit holder refuses to correct the violations within 24 hours after notice in writing by the officers, as directed by the Board of Commissioners, the Board of Commissioners may, in the interest of public health, direct Cherry County either with the equipment and employees of the permit holder or with equipment and employees of Cherry County to do such work as is necessary to correct any condition violating this Regulation, and which, if left uncorrected may be hazardous to the public health. The cost to Cherry County of correcting such conditions shall be incurred against the permit holder who shall be required to pay all costs and expenses of Cherry County in correcting said conditions or the County may use the cash or performance bond to pay the incurred expenses. The County Board of Commissioners may, after the permit holder is given an opportunity for a hearing, revoke the permit for the violation of any of the provisions of this Regulation.

#### **8.17.08 Permit Reinstatement**

Whenever any sanitary landfill permit provided for in this Regulation has been revoked, a request for reinstatement shall be treated the same as the initial CUP application.

---

### **Section 8.18 Solar Energy Uses**

No solar panel, neighborhood solar or solar farm shall be installed or constructed within the zoning jurisdiction of Cherry County unless a Conditional Use Permit has been issued. All solar units shall be constructed in conformance with all state and national building and fire codes. For those devices that include electrical, plumbing and/or heating constructions, the applicable permits shall also be obtained. Solar panels shall meet the requirements found in this section.

#### **8.18.01 General Solar Definitions**

**ACCESSORY SOLAR ENERGY SYSTEMS:** include any photovoltaic, concentrated solar thermal, or solar hot water devices that are accessory to, and incorporated into the development of an authorized use of the property, and which are designed for the purpose of reducing or meeting on-site energy needs.

**CONCENTRATED SOLAR POWER:** A solar conversion system (SCS) that generates power by using mirrors or lenses to concentrate a large area of sunlight, or solar thermal energy, unto a small area. These include but are not limited to the following technologies: Parabolic trough, Solar power tower, enclosed trough, Fresnel reflectors and Dish Stirling.

**DEVELOPMENT:** Any plat, subdivision, or planned unit development created under the Cherry County subdivision and zoning regulations.

**ELECTRIC UTILITY:** The public electric utility providing retail service to a given area.

**NET EXCESS GENERATION:** On an ISCS, net excess generation means the net amount of energy, if any, by which the output of a qualified facility exceeds a customer-generator's total electricity requirements during a billing period.

**NET METERING:** Net metering means a system of metering electricity in which a local distribution utility:

1. Credits a customer-generator at the applicable retail rate for each kilowatt-hour produced by a qualified facility during a billing period up to the total of the customer-generator's electricity requirements during that billing period. A customer-generator may be charged a minimum monthly fee that is the same as other noncustomer-generators in the same rate class but shall not be charged any additional standby, capacity, demand, interconnection, or other fee or charge; and
2. Compensates the customer-generator for Net Excess Generation during the billing period at a rate equal to the electric utility avoided cost of electric supply over the billing period. The monetary credits shall be applied to the bills of the customer-generator for the preceding billing period and shall offset the cost of energy owed by the customer-generator. If the energy portion of the customer-generator's bill is less than zero in any month, monetary credits shall be carried over to future bills of the customer-generator until the balance is zero. At the end of each annualized period, any excess monetary credits shall be paid out to coincide with the final bill of that period.

**SOLAR ACCESS:** the ability to receive sunlight across real property for any solar energy device.

**SOLAR ACCESS EASEMENT:** A right, expressed as an easement, covenant, condition, restriction or other property interest in any deed, will or other instrument executed by or on behalf of any landowner or in any order of taking, appropriate to protect the solar skyspace of a solar collector at a particularly described location to forbid or limit any or all of the following where detrimental to access to solar energy: structures on or above ground; vegetation on or above ground; or other activities. Such right shall specifically describe a solar skyspace in three-dimensional terms in which the activity, structures or vegetation are forbidden or limited or in which such an easement shall set performance criteria for adequate collections of solar energy at a particular location.

**SOLAR CONVERSION SYSTEM (SCS):** An assembly, structure, or design, including passive elements, used for gathering, concentrating or absorbing direct or indirect solar energy, specifically designed for holding a substantial amount of useful thermal energy and to transfer that energy to a gas, solid or liquid or to use that energy directly; this may include, but is not limited to, a mechanism or process used for gathering solar energy through thermal gradients, or a component used to transfer thermal energy to a gas, solid or liquid or to convert into electricity.

**SOLAR CONVERSION SYSTEM, COMMERCIAL (CSCS):** A commercial solar conversion system (CSCS) is a series of solar panels and equipment connected to commercially supply the converted energy to a community and/or power grid. A CSCS shall have a one-way connection to the power grid.



Example of a Solar Conversion System, Ground-mounted

**SOLAR CONVERSION SYSTEM, GROUND-MOUNTED:** Any SCS which is directly supported and attached to the ground.

**SOLAR CONVERSION SYSTEM, INDIVIDUAL (ISCS):** An individual solar conversion system (ISCS) shall be for the specific use of an individual residential, commercial, public, or industrial use.



**SOLAR CONVERSION SYSTEM, NEIGHBORHOOD (NSCS):** A neighborhood solar conversion system (NSCS) is a series of solar panels and equipment connected to supply converted energy to a specific neighborhood and its uses.

**SOLAR CONVERSION SYSTEM, STRUCTURE-MOUNTED:** Any SCS which is directly connected to and supported by a building.

**SOLAR SKYSPACE:** The maximum three-dimensional space extending from a solar collector to all positions of the sun necessary for efficient use of the collector.

1. Where a solar energy system is used for heating purposes only, solar skyspace shall mean the maximum three-dimensional space extending from a solar energy collector to all positions of the sun between nine o'clock (9:00) A.M. and three o'clock (3:00) P.M. local apparent time from September 22 through March 22 of each year.
2. Where a solar energy system is used for cooling purposes only, solar skyspace shall mean the maximum three-dimensional space extending from a solar collector to all positions of the sun between eight o'clock (8:00) A.M. and four o'clock (4:00) P.M. local apparent time from March 23 through September 21 of each year.



Example of a Solar Conversion System, Structure-mounted

**SOLAR ORIENTED SUBDIVISION:** A subdivision in which a minimum of 65 percent of the lots are solar-oriented lots.

**SOUTH OR SOUTH-FACING:** True south, or 20 degrees east of magnetic south.

#### 8.18.02 General Provisions Applying to ISCS, NSCS, and/or CSCS

The following provisions apply, typically, to two or more of the different solar conversion systems in this Section.

1. Solar panels used to provide power to agricultural irrigation wells, potable drinking wells, and other agricultural uses (not residence, barns, sheds) shall be exempt from these regulations.
2. For commercial and neighborhood SCS: Applicant shall provide evidence that the project meets commonly accepted management practices for avian, wildlife, and environmental protections in place at the time of application.
3. For commercial and neighborhood SCS: Applicant shall comply with specific requirements of the appropriate fire district.
4. Maintenance: All system and components shall be kept in operational condition, including appearance of all components; plus, the ground beneath the SCS shall be kept in a presentable manner based upon the ground cover decided.
5. Decommissioning: All systems when they are no longer generating power and will no longer be used shall follow a decommissioning plan that has been agreed to upfront by Cherry County, the electric utility, and the owner/developer.
6. Repowering: If any SCS is no longer operating for purposes of Repowering, replacement, or maintenance, Decommissioning provisions will not apply for up to six months. However, an SCS that is not operating or is operating at a substantially reduced capacity for more than six months will be considered abandoned and Decommissioning provisions will apply.
7. Repowering does not require a new Conditional Use permit or permit amendment if the footprint of the SCS is the same or reduced. Any increase in the footprint of the facility will require a permit amendment.
8. Any applicant for a SCS project shall meet with and shall indicate they have met the requirements of the electric utility and have in place an interconnection agreement with the electric utility.
9. All NSCS and CSCS operations shall have located at key access points signage stating specific language as outlined by the electric utility.
10. No SCS shall be constructed in the identified Floodway.
11. Concentrated Solar Power (CSP) systems are prohibited within Cherry County's jurisdiction.
12. Financial assurances shall be in place as part of the Decommissioning Plan

**8.18.03 Individual Solar Conversion Systems****1. General Requirements for ISCS:**

ISCS's shall conform to the required front, side, and rear lot setback requirements except as provided herein:

- A. An SCS which is attached to an integral part of the principal building shall meet all local, state, and federal codes for building, electrical, plumbing, and accessibility.
- B. A ground-mounted SCS may be located only in the required rear yard provided it does not exceed 12-feet in height and is located not less than five feet from the rear lot line and not closer than one foot to any existing easement as measured from the closest point of the structure including its foundation and anchorage.
- C. No ground mounted SCS shall be located in the required side yard or front yard.
- D. All ISCS's shall have an agreed to solar access easement, on the south side of the yard, from any neighboring properties. Said easement shall be filed as an instrument to each property's deed and said easement shall stay in place as long as the ground mounted SCS is in place and operational.
- E. The applicant for any ISCS shall provide evidence that they have a working Net Metering agreement with the electric utility.

**2. Structural Requirements:**

The physical structure and connections to existing structures shall conform to the applicable local, state, and federal codes.

**3. Plot Plan:**

The application for a permit shall be accompanied by a plot plan drawn to scale showing property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed solar panel.

**4. Preexisting Solar Panels:**

Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to the adoption of these Regulations, pursuant to a valid building permit issued by Cherry County, may continue to be utilized so long as it is maintained in operational condition.

**5. Decommissioning**

- A. Whenever an SCS ceases operation on a property, it shall be required to report this to Cherry County and the electric utility.
- B. Whenever, a ground mounted SCS is no longer operating, the property owner shall have six months to completely remove the structure and wiring. The location of the SCS shall be returned to a usable state based upon the surrounding property.

**8.18.04 Neighborhood Solar Conversion Systems****1. General Requirements for NSCS:**

NSCS's shall meet the following requirements as provided herein:

- A. An NSCS shall be set on its own lot within the neighborhood/development.
- B. The NSCS shall be designed and constructed for no more than the anticipated maximum solar usage in the designated neighborhood or development.
- C. No excess power generated shall be sold or given to a user outside the agreed upon neighborhood or development, except via a Net Metering agreement.
- D. The developer shall provide Cherry County with all solar easements established; however, Cherry County shall not be responsible for enforcing said easements.
- E. All solar easements shall be enforced by an established Homeowners Association for the development/neighborhood.
- F. A ground mounted NSCS shall be protected with fencing and/or bollards.
- G. All connections to the uses within the neighborhood shall be made underground.
- H. An access agreement between the developer, Homeowners Association, and any other necessary other entity and the electric utility shall exist in case of an emergency.
- I. A Net Metering agreement between the developer, Homeowners Association, and any other entity and the electric utility shall exist in case of excess electricity; and

- J. All ground mounted NSCS's shall have an agreed to solar access easement from any neighboring properties. Said easement shall be filed as an instrument to each property's deed and said easement shall stay in place as long as the ground- mounted NSCS is in place and operational.

## 2. **Structural Requirements:**

The physical structure and connections to existing structures shall conform to the applicable local, state, and federal codes.

## 3. **Solar Oriented Subdivision/Plot Plan:**

- A. Whenever a NSCS is part of a proposed new subdivision, the developer shall outline the specific lot or outlot where the NSCS will be placed.

Specific developments/neighborhoods initially designed with an NSCS shall identify all solar easements on the preliminary and final plats and shall be recorded the same as other utility easements. In addition, the subdivision plats shall indicate, in addition to all other requirements in the subdivision regulations, the location of all proposed underground conduits serving the other lots in said subdivision.

- B. The application for a permit shall be accompanied by a plot plan drawn to scale showing property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed solar panel.
- C. The developer shall install all underground wiring as prescribed by the electric utility.
- D. All underground wiring shall be protected by a utility easement or located within prescribed rights-of-way.
- E. The developer shall provide Cherry County with As-builts of the wiring locations within the subdivision.

## 4. **DECOMMISSIONING**

A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels must occur in the event they are not in use for 12 consecutive months. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site. Cherry County may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

### **8.18.05 Commercial Solar Conversion Systems:**

#### 1. **Applicability**

The purpose of this subsection is to provide standards for fixed-panel photovoltaic solar farms or CSCS consisting of ground-mounted solar panels capturing energy from the sun and converting it to electricity. The provisions of this section are based on a ground-mounted photovoltaic facility using a rammed post construction technique and panels supporting the flow of rainwater between each module and the growth of vegetation beneath the arrays and limiting the impacts of stormwater runoff. The rammed post construction technique allows for minimal disturbance to the existing ground and grading of the site. Based on the assumed solar farm design, Cherry County finds the use to be low intensity with minimal trip generation, low amounts of impervious cover, and low emission thus the use is compatible in urbanized, non-urbanized, or low-density areas with other uses.

#### 2. **Site Development Standards:**

- A. Lot coverage: No more than one percent of the gross site area shall be occupied by enclosed buildings and structures.
- B. Setbacks: A thirty-foot side and rear setback shall apply only to the setback area measured from a lot line that abuts a residential use or residential zoning district. The side or rear setback shall be eliminated where the use does not abut a residential use or residential zoning district, or the two districts are separated by a public right-of-way.
- C. Height: The average height of the solar panel arrays shall not exceed 12 feet.
- D. Landscaping Buffer: The primary use of the property shall determine the buffer requirement. Where a ground-mounted photovoltaic solar farm is the primary use the property shall be considered

industrial or agricultural for the purposes of buffer requirements, there are no requirements for screening from public streets.

- E. Stormwater Management: Fixed panel solar arrays shall be considered pervious, and the property shall be designed to absorb or detain specific runoff. The impervious cover calculation shall include the support posts of the panels, any roads or impervious driveway surfaces, parking areas and buildings on the site.
- F. A property developed pursuant to this subsection shall be required to plat however water and sewer connections shall not be required. Suitable fire department access shall be required.
- G. Signage shall conform to the Cherry County Sign Regulations.
- H. Customer owned on-site power lines shall be buried except when connecting to existing overhead utility lines. This requirement shall not apply to fiber optic connections.
- I. Fencing: Due the unique security requirements of this land use, and to facilitate the educational value of seeing this land use, fencing up to eight feet in height is permitted provided the fencing material is predominantly open.
- J. All State and Federal codes and provisions not specified in this subsection are required including but not limited to tree preservation, traffic impact analysis and historic preservation.

### 3. Submittal Requirements:

All Plans shall contain the following:

- A. These requirements shall apply to the Conditional Use Permit.
- B. A plot plan, drawn to scale, of the property indicating the total site acreage, landscape and buffer areas, tree preservation, location of all structures, the proposed location of the solar panels, the distances of the solar panels to structures on the property as well as distances to the property lines.
- C. The plot plan shall include any roads, electric lines and/ or overhead utility lines.
- D. A description of the electrical generating capacity and means of interconnecting with the electrical grid as coordinated and pre-approved with the appurtenant Power District.
- E. A copy of the interconnection agreement with the local electric utility
- F. Drawings or blueprints of solar panels and arrays in conjunction with the application for a building permit for a solar farm/solar power plant.
- G. Structural engineering analysis for a solar panel, array and its foundation, as applicable.
- H. Manufacturer's recommended installations, if any; and
- I. Documentation of land ownership and/or legal authority to construct on the property.
- J. A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels must occur in the event they are not in use for 12 consecutive months. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site. Cherry County reserves the right to require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

### 4. Compliance with Other Regulations:

- A. Zoning permit applications for CSCS's shall be accompanied by a line drawing of electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the State's adopted electrical code and that has been pre- approved by the associated power district meeting their Distribution Generation Requirements and Guidelines; and
- B. This subsection does not waive any requirements of any state or Federal codes, electrical codes or other technical codes as applicable.

### 5. Discontinuation.

A CSCS shall be considered abandoned after one year without energy production. The solar equipment owner shall remove all SCS equipment and appurtenances within 90 days of abandonment.

#### 8.18.06 Large Solar Farms:

- 1. A Large Solar Farm may be allowed in the CCAG and NRCAG Districts under the following conditions:
  - A. The Large Solar Farm shall use photovoltaic cells to convert solar energy into electricity.

- B. No electrical substation owned or operated by an electric supplier, or any other Farm owned or operated by an electric supplier to support the generation, transmission or distribution of electricity for a Large Solar Farm, shall be located as to cause an exceedance of the following noise level standards.
  - 1) From the hours of 10 pm to 7 am: 50 dBA maximum 10-minute LAeq
  - 2) From the hours of 7 am to 10 pm: 60 dBA maximum 10-minute LAeq

For the purposes of determining compliance with these standards, noise levels shall be measured at the closest exterior wall of any dwelling unit located on the property that submitted the noise complaint. If an electrical substation(s) violates a noise standard at a dwelling unit constructed after the electrical substation(s) is approved, then the electrical substation becomes a non-conforming use.

- C. Height: The average height of the solar panel arrays shall not exceed 15 feet.
- D. Stormwater Management: Large solar farms with fixed panel solar arrays shall submit and maintain all additional runoff on the project site; however, in no case shall the drainage basin be built on undisturbed land.
- E. Suitable fire department access shall be required, including:
  - 1) A minimum of two access points, if gated then the gates shall have a key code pad for entry.
  - 2) All drive lanes shall be a minimum of 16 feet in width.
  - 3) Drive lanes shall be a minimum of 660 feet apart.
  - 4) Drive lanes shall be maintained with gravel.
- F. All fire departments serving the proposed area shall be provided with additional training on fighting electrical fires involving these solar systems as well as any on-site battery storage. The developer shall have a signed agreement with the appropriate fire districts prior to issuance of the Conditional Use Permit.
- G. If the large solar farm is more than six miles from the volunteer fire station, then said development shall contain an internal fire suppression system for the purpose of minimizing fire spread prior to the volunteer fire department's arrival.
- H. The owner of said solar farm shall aid the local volunteer fire department(s) with financial assistance in purchasing adequate suppression materials for fighting fires at the location.
- I. Signage: Signage shall conform to **Article 7** of this Resolution as well as any sign limitations of the zoning districts.
- J. The developer shall have a signed road agreement with Cherry County, said agreement shall include:
  - 1) All roads from a highway to the entrance of a solar farm shall be paved with asphaltic concrete or concrete per State of Nebraska specifications.
  - 2) The existing conditions pre-construction as per joint on-site review by the developer and the County.
  - 3) Returning any road damage back to pre-construction conditions upon completion.
  - 4) The developer/solar farm owner shall continue to maintain said roads if damaged upon completion of the project.
- K. No large solar farms shall be located within areas considered environmentally sensitive (soils, wetlands, high water table, etc.); especially areas designated as being in the Valentine Soil Association.
- L. No large solar farms shall be located within any canyon within the county.
- M. No large solar farms shall be located in areas considered to contain moderate to high soil erodibility specifically within areas dominated by Valentine soils.
- N. Large solar farms shall not remove more than 20% of any land from production considered to be areas are prime farmland, Farmland of statewide importance, Prime farmland if drained, and Prime farmland if irrigated. This is based upon maps and data from the NRCS Soil Conservation.
- O. All electrical on site and leading to all substations shall be buried and shall not be buried in undisturbed land or within the canyons.
- P. The owner shall be required to maintain an insurance policy in the amount of \$2,000,000 for coverage of damages to adjacent properties due to fire or other natural causes.
- Q. Prior to a Conditional Use Permit being approved, the developer shall present the County with a signed interconnection agreement.

## R. Decommissioning Plan

Each application shall have a decommissioning plan (removal of equipment/improvements and restoration of lands) that is reviewed and approved by the County prior to beginning operations. The decommissioning plan shall provide the following:

- 1) A plan outlining the means, procedure, and costs of removing the Large Solar Farm, including, but not limited to, the solar panels and collectors, electrical wiring/cabling, fencing, and any related supporting infrastructure completely.
- 2) At the expense of the permittee, a cost estimate for the decommissioning of the Large Solar Farm and any estimated resale and salvage value shall be prepared by a professional engineer. The permittee shall provide to the County a revised and updated decommissioning cost estimate every five years from the date of approval to cover the cost of meeting this obligation. The decommissioning cost estimate shall explicitly detail the cost, any estimated resale and salvage values, shall account for inflation, cost and value changes, and advances in decommissioning technologies and approaches.
- 3) The estimated decommissioning cost, less any resale and salvage value, shall be guaranteed in one of the following forms: (i) surety bond in the amount of 110% of anticipated decommissioning costs, or (ii) cash to be held in escrow by the County at a bank. The owner of the Large Solar Farm shall provide the decommissioning cost guaranty no later than the end of the 2nd year of operation of each phase, and shall maintain the financial security thereafter for as long as the Large Solar Farm is in existence or upon discontinuance, decommissioning, or abandonment of the Large Solar Farm. Such financial security shall be updated every five years to cover the costs associated with the updated decommissioning cost estimates.
- 4) For purposes of this Section, discontinuance, decommissioning, or abandonment shall mean the Large Solar Farm has produced no energy for 12 consecutive months. The owner or operator shall have 12 months to complete decommissioning of the Large Solar Farm. If the owner or operator of the Large Solar Farm fails to remove the installation in accordance with the requirements of this permit or within 12 months following discontinuance, decommissioning, or abandonment, the County may collect the bond or other financial security and the County or a hired third party may enter the property to physically remove the installation.

S. The Large Solar Farm shall meet the following setback requirements:

Property Line Setbacks	
Non-Participating Property with a Dwelling	2,640 feet (1/2 mile)
Non-Participating Property without a Dwelling	2,640 feet (1/2 mile)
Participating Property with a Dwelling	0 feet
Participating Property without a Dwelling	0 feet
County roads	1,320 feet (1/4 mile)
State and Federal highways	1,980 feet (3/8 mile)

## T. Project Phasing:

1. The developer may phase the project; however, the following shall be followed:
  - A. Each phase shall be completed within 18 months of the approval date on the Conditional Use Permit
  - B. Each phase shall require a separate Conditional Use Permit

## U. Compliance with Other Regulations:

1. Zoning permit applications for solar farms shall be accompanied by a line drawing of electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the state's adopted electrical code and that has been pre-approved by the associated power district meeting their Distribution Generation Requirements and Guidelines; and
2. This subsection does not waive any requirements of any state or Federal codes, electrical codes or other technical codes as applicable.

## V. Discontinuance

A solar farm shall be considered abandoned after one year without energy production. The solar equipment owner shall remove all solar farm equipment and appurtenances within 180 days of abandonment.

### **Section 8.19 Dwelling Unit, Special Types**

This section is intended to establish special conditions by which Special types of dwelling units may be established within the jurisdiction of Cherry County.

#### **8.19.01 Tiny Houses**

Tiny houses fall under two separate categories, Site Built and RV/Park Model/Camper.

##### **Site Built Tiny Houses**

1. Tiny homes shall have at least one habitable room with not less than 120 sf of gross floor area.
2. Other habitable rooms shall have not less than 70 sf of floor area, except for kitchens.
3. Habitable rooms shall not be less than seven feet in any horizontal dimension.
4. Ceiling height effect on room area:
  - A. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - B. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
5. Ceiling heights shall be a minimum of seven feet in habitable spaces, hallways, bathrooms, and toilet rooms.
6. Every dwelling shall have toilet facilities-water closet, lavatory, and a bathtub or shower.
7. Tiny homes shall have a kitchen area and sink.
8. The unit shall provide heating and cooling systems as required by local, state and/or federal codes.
9. All electrical shall be in compliance with all local, state and/or federal electrical codes.
10. The unit shall meet all egress requirements found in local, state, and/or federal codes.
11. All foundations shall meet local, state, and/or federal building codes.
12. All structures shall meet the maximum coverage on a lot as any ordinary single-family dwelling.
13. Site Built Tiny Houses may be constructed in any floodplain; provided, they meet the elevation requirements.

##### **RV/Park Model/Camper**

1. The unit shall be constructed upon a single chassis.
2. The unit shall have 400 sf or less when measured at the largest horizontal projections.
3. The unit shall be self-propelled or permanently towable by a light duty truck.
4. The unit shall not be considered to be designed for use as a permanent dwelling but as a temporary living quarter.
5. All electrical, including temporary hook-ups, shall be in compliance with all local, state and/or federal electrical codes.
6. All plumbing and other mechanical systems shall not be permanently connected to a supply or discharge source.
7. The wheels and axles shall always remain on the unit.
8. Accessory structures shall not be supported by these units.

##### **Tiny House Villages/Communities**

Tiny house villages/communities may be allowed in identified areas and shall be designed using the PDO-Planned Development Overlay process within this Regulation.

#### **8.19.02 Grain Bin Homes**

Any residential structure meeting the definition of a grain bin home shall meet the following criteria:

1. Grain bin homes shall be structurally anchored to a permanent foundation and said foundation shall meet local, state, and/or federal building codes.
2. Grain bin homes shall have at least one habitable room with not less than 120 sf of gross floor area.
3. Other habitable rooms shall not be less than 70 sf of floor area, except for kitchens.
4. Habitable rooms shall not be less than seven feet in any horizontal dimension.
5. Ceiling height effect on room area:

- A. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - B. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
6. Ceiling heights shall be a minimum of seven feet in habitable spaces, hallways, bathrooms, and toilet rooms.
7. Every dwelling shall have toilet facilities-water closet, lavatory, and a bathtub or shower.
8. Grain bin homes shall have a kitchen area and sink.
9. The unit shall provide heating and cooling systems as required by local, state and/or federal codes.
10. All electrical shall be in compliance with all local, state and/or federal electrical codes.
11. The unit shall meet all egress requirements found in local, state, and/or federal codes.
12. Any and all extensions off the grain bin home shall be structurally designed regarding all attachments and cantilevers.
13. All modifications needed to convert the grain bin(s) into a dwelling unit shall be required to have all modifications designed and engineered by a licensed architect and/or engineer.
14. All items requiring the structure to be structurally designed/modified shall be sealed by a structural engineer.
15. All structures shall meet the maximum coverage on a lot as any ordinary single-family dwelling.

#### **8.19.03 Cargo Container Homes**

Any residential structure meeting the definition of a cargo container home shall meet the following criteria:

1. Cargo container homes shall be structurally anchored to a permanent foundation and said foundation shall meet local, state, and/or federal building codes.
2. Multiple containers shall be structurally and permanently attached to each other.
3. Cargo container homes shall have at least one habitable room with not less than 120 sf of gross floor area.
4. Other habitable rooms shall have not less than 70 sf of floor area, except for kitchens.
5. Habitable rooms shall not be less than seven feet in any horizontal dimension.
6. Ceiling height effect on room area:
  - A. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - B. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
7. Ceiling heights shall be a minimum of seven feet in habitable spaces, hallways, bathrooms, and toilet rooms.
8. Every dwelling shall have toilet facilities-water closet, lavatory, and a bathtub or shower.
9. Cargo container homes shall have a kitchen area and sink.
10. The unit shall provide heating and cooling systems as required by local, state and/or federal codes.
11. All electrical shall be in compliance with all local, state and/or federal electrical codes.
12. The unit shall meet all egress requirements found in local, state, and/or federal codes.
13. Any and all extensions off the cargo container home shall be structurally designed regarding all attachments and cantilevers.
14. All modifications needed to convert the cargo container(s) into a dwelling unit shall be required to have all modifications designed and engineered by a licensed architect and/or engineer.
15. All items requiring the structure to be structurally designed/modified shall be sealed by a structural engineer.
16. All structures shall meet the maximum coverage on a lot as any ordinary single-family dwelling.
17. Cargo Container Houses may be constructed in any floodplain; provided, they meet the elevation requirements.

#### **8.19.04 Tree house Homes**

Any residential structure meeting the definition of a tree house home shall meet the following criteria:

1. Tree house homes shall only be permitted as an accessory use to a primary structure.
2. Tree house homes shall have at least one habitable room with not less than 120 sf of gross floor area.
3. Other habitable rooms shall have not less than 70 sf of floor area, except for kitchens.
4. Habitable rooms shall not be less than seven feet in any horizontal dimension.
5. Ceiling height effect on room area:



- A. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - B. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
6. Ceiling heights shall be a minimum of seven feet in habitable spaces, and hallways.
7. The unit shall provide heating and cooling systems as required by local, state and/or federal codes.
8. All electrical shall be in compliance with all local, state and/or federal electrical codes.
9. The unit shall meet all egress requirements found in local, state, and/or federal codes.
10. All tree house homes designed as recreational structures and/or sleeping quarters shall be structurally designed prior to construction and sealed by a structural engineer.

#### **8.19.05 Quonset Homes**

Any residential structure meeting the definition of a Quonset home shall meet the following criteria:

1. Quonset homes shall be structurally anchored to a permanent foundation and said foundation shall meet local, state, and/or federal building codes.
2. Quonset homes shall have at least one habitable room with not less than 120 sf of gross floor area.
3. Other habitable rooms shall have not less than 70 sf of floor area, except for kitchens.
4. Habitable rooms shall not be less than seven feet in any horizontal dimension.
5. Ceiling height effect on room area:
  - A. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - B. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
6. Ceiling heights shall be a minimum of seven feet in habitable spaces, hallways, bathrooms, and toilet rooms.
7. Every dwelling shall have toilet facilities-water closet, lavatory, and a bathtub or shower.
8. Quonset homes shall have a kitchen area and sink.
9. The unit shall provide heating and cooling systems as required by local, state and/or federal codes.
10. All electrical shall be in compliance with all local, state and/or federal electrical codes.
11. The unit shall meet all egress requirements found in local, state, and/or federal codes.
12. Any and all extensions off the Quonset home shall be structurally designed regarding all attachments and cantilevers.
13. All modifications needed to convert the Quonset into a dwelling unit shall be required to have all modifications designed and engineered by a licensed architect and/or engineer.
14. All items requiring the structure to be structurally designed/modified shall be sealed by a structural engineer.
15. All structures shall meet the maximum coverage on a lot as any ordinary single-family dwelling.

#### **8.19.06 Shouses**

Any residential structure meeting the definition of a Shouse shall meet the following criteria:

1. Shouses shall be structurally anchored to a permanent foundation and said foundation shall meet local, state, and/or federal building codes.
2. Once a Shouse has been established, the overall structure, including the shop area will no longer be considered an agricultural structure/building.
3. Shouses shall have at least one habitable room with not less than 120 sf of gross floor area.
4. Other habitable rooms shall have not less than 70 sf of floor area, except for kitchens.
5. Habitable rooms shall not be less than seven feet in any horizontal dimension.
6. Ceiling height effect on room area:
  - A. Portions of a sloped ceiling measuring less than five feet or a furred ceiling measuring less than seven feet from the finished floor.
  - B. The finished ceiling shall not be considered as contributing to the minimum required habitable area for the room.
7. Ceiling heights shall be a minimum of seven feet in habitable spaces, hallways, bathrooms, and toilet rooms.
8. Every dwelling shall have toilet facilities-water closet, lavatory, and a bathtub or shower.
9. Shouses shall have a kitchen area and sink.
10. The unit shall provide heating and cooling systems as required by local, state and/or federal codes.
11. All electrical shall be in compliance with all local, state and/or federal electrical codes.

12. The unit shall meet all egress requirements found in local, state, and/or federal codes.
13. Any and all extensions off the Shouse shall be structurally designed regarding all attachments and cantilevers.
14. All modifications needed to convert the machine shed into a dwelling unit shall be required to have all modifications designed and engineered by a licensed architect and/or engineer.
15. All items requiring the structure to be structurally designed/modified shall be sealed by a structural engineer.
16. All structures shall meet the maximum coverage on a lot as any ordinary single-family dwelling.

---

## **Section 8.20 Short-term Rentals**

This section is intended to apply strictly to the use of property for short-term rentals within the unincorporated areas of Cherry County.

### **8.20.01 Performance Standards**

1. Said short-term rental may be located in a principal residential structure.
2. Said short-term rental may be allowed in any dwelling considered part of a multi-family dwelling including duplexes, single-family attached units or larger.
3. Said short-term rental shall not be located in an accessory dwelling unit.
4. Said short-term rental shall not allow the property to be used for party rentals.
5. Said short-term rental shall not be used for any type of illegal activities as defined by state and federal laws.
6. Said short-term rental shall file the required lodging taxes with the county and state.
7. Said short-term rental shall be properly maintained including structural maintenance and the grounds.
8. Said short-term rental shall meet all state and federal life safety codes and display said permits in a prominent location.
9. Said short-term rental shall not increase the normal level of traffic in the immediate area.
10. Said short-term rental shall not be used for any of the following:
  - A. Housing sex offenders.
  - B. Operating a structured sober living home or similar enterprise.
  - C. Selling illegal drugs.
  - D. Selling alcohol or another activity that requires a permit or license under the Nebraska Liquor Control Act; or
  - E. Operating a sexually oriented business.

### **8.20.02 Remedies**

Failure to comply with the regulations in Section 8.25.01, may result in any permit for a short-term rental to be revoked.

---

## **Section 8.21 Accessory Dwelling Units**

One accessory dwelling unit per lot may be allowed by Conditional Use Permit in the indicated zoning districts in Section 4.07 under the following conditions:

1. The accessory dwelling unit shall fit within the allowable development area of the lot.
2. The total square footage of the ADU shall not exceed the lesser of 1,000 square feet or 40% of the square footage of the principal dwelling, excluding the garages, carports, and space used for mechanical equipment, such as heating, utilities and water heater or pumps. Any other unfinished space in a basement is included in the square footage to allow it to be furnished in the future. The calculation for the principal dwelling shall be based on the floor area as of the date the special permit is filed.
3. No more than two bedrooms are allowed in the ADU. Bedroom shall mean any room or space used or intended to be used for sleeping purposes.
4. The owner of the lot is required to live on the property in either the principal dwelling or the ADU. The owner of the lot shall file with the Register of Deeds, a deed restriction agreement on the property stating the accessory dwelling cannot be sold separately from the principal dwelling. The deed restriction agreement must be to the satisfaction of the County Attorney. The deed restriction agreement shall be filed prior to any zoning permit for the ADU.
5. The ADU must share the same access point to the public or private street as the principal dwelling.

6. The ADU must meet the same setback requirements as the principal dwelling of the district. The height of the ADU must meet the height limit of the district for a dwelling but be no higher than the principal dwelling.
7. A detached ADU shall be located a distance no greater than 200 feet from the principal dwelling and must not be closer to the street right-of-way than the principal dwelling.
8. The ADU must share utilities with the principal dwelling unless the owner can demonstrate a practical problem with sharing due to the topography or other unique site considerations.

## ARTICLE 9: BOARD OF ADJUSTMENT

### Section 9.01 Intent

A Board of Adjustment is hereby created in accordance with Nebraska State Statutes governing such creation. The Board shall be an appeals body and may decide any matter appropriately brought before it.

### Section 9.02 Membership

The Board of Adjustment shall consist of five members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member is to be appointed for a term of three years and may be removed for cause by the appointing authority upon written charges and after public hearing. No member of the Board of Adjustment shall be a member of the County Board of Commissioners. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member of the Board of Adjustment shall be appointed by the County Board from the membership of the County Planning Commission, and the loss of membership on the Planning Commission by said member shall also result in their immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment.

### Section 9.03 Rules and Meetings

1. The Board of Adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. Said Chair, or in their absence the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the County Clerk and shall be a public record.
2. An appeal to the Board of Adjustment may be taken by any person or persons aggrieved or by any officer, department, board, or bureau of the County by any decision, other than the approval or denial of a conditional use permit application, of an administrative officer, planning commission, and/or County Board, depending upon the nature of aggrievement. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment, by filing with the Board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
3. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney.

### Section 9.04 Powers

1. The Board of Adjustment shall, subject to such appropriate conditions and safeguards as may be established by the County Board of Commissioners, have only the following powers:
  - A. To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures.
  - B. To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map, or for decisions upon other special questions upon which the board is authorized by such regulation to pass; and
  - C. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without

substantially impairing the intent and purpose of any zoning regulations, but no such variance shall be authorized unless the Board of Adjustment finds that:

- (1) The strict application of the resolution would produce undue hardship.
- (2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- (4) The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

D. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned, or the intended use of the property concerned is not of so general or recurring a nature as to make reasonable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

2. In exercising the above-mentioned powers, the Board may, in conformity with the provision of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. 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 on any matter upon which it is required to pass under any such regulation or to affect any variation in such regulation.

#### **Section 9.05 Appeal of Board Decisions**

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment or any officer, departments, board, or bureau of the county may seek review of such decision by the district court for the county in the manner provided by the laws of the state and particularly by Chapter 23, Laws of Nebraska.

---

**ARTICLE 10: ADMINISTRATION AND ENFORCEMENT****Section 10.01 Zoning Administrator**

A Zoning Administrator shall be appointed by the County Board of Commissioners and shall administer and enforce these Regulations. The Zoning Administrator may be provided with the assistance of such other persons as the County Board of Commissioners may direct.

**Section 10.02 Zoning Permit Required**

1. It shall be unlawful to commence or do any excavating, erecting, constructing, reconstructing, enlarging, altering, or moving of any structure or to use or occupy or permit the use or occupancy of any building, land or premises, or construction or connection to water or sewer facilities or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a zoning permit shall have been issued therefore by the Zoning Administrator stating that the proposed use of the building or land conforms to these regulations.
2. The Zoning Administrator may issue a temporary zoning permit for uses in any district for the purpose of uses and buildings incidental and required in the construction of a principal permitted use in the district in which it is located and highway construction, provided that such use be of a temporary nature and does not involve the erection of substantial buildings. Such permit shall be granted in the form of a temporary and revocable permit for not more than six months subject to conditions as will safeguard the public health, safety and general welfare.

**Section 10.03 Application for a Zoning Permit**

1. Written application on forms prescribed and furnished by the Zoning Administrator stating such information as may be required for the enforcement of these regulations shall be submitted and shall be accompanied by a site plan, showing the actual shape and dimensions of the lot to be built upon or to be changed in its use, in whole or in part, the exact location, existing and intended use of each structure or part thereof, the number of families or housekeeping units the building is designed to accommodate and when no buildings are involved, the location of the present use and proposed use to be made of the lot, existing and proposed water and sanitary sewer facilities, as may be necessary to determine and provide for the enforcement of these regulations. One copy of such plans shall be returned to the owner when such plans shall have been approved by the Zoning Administrator together with such zoning permits as may be granted. All dimensions shown on these plans relating to the location and size of the lot to be built upon shall be based on actual survey. The lot and the location of the building thereon shall be staked out on the ground before construction is started.
2. The Zoning Administrator shall issue a written permit, or denial, thereof, with reasons in writing within 15 days from the date of the acceptance of the application. Those proposed uses requiring a zoning permit that are affected directly through these Regulations by another use currently in the conditional use process must yield until such use is permitted or denied.
3. Except where an extension has been obtained in writing from the Zoning Administrator, permits issued shall expire if work has not started within two-year.

**Section 10.04 Enforcement by the Zoning Administrator**

1. It shall be the duty of the Zoning Administrator to enforce these Regulations in accordance with its provisions. All departments, officials, and public employees of Cherry County which are vested with the duty or authority to issue permits or licenses, shall conform to the provisions of these regulations and shall issue no permit or license for any use, building or purpose, if the same would be in conflict with the provisions of these Regulations.
2. Any person, partnership, limited liability company, association, club, or corporation violating these regulations or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the County Board, or the Zoning Administrator, as well as any owner or owners of real estate within the district affected by these regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers in the county may institute proceedings or compel specific performance by the Zoning Administrator, County Board or any other responsible officials of the county.

## ARTICLE 11: AMENDMENTS

### Section 11.01 Amendments

#### 1. Authority:

For the purpose of promoting, and protecting the public health, safety and general welfare, the County Board may from time to time, in the manner hereinafter set forth, amend, change, supplement, revise, or repeal any or all of the regulations imposed in the districts or the Zoning map district boundaries themselves.

#### 2. Initiation of Amendments:

Amendments may be proposed by the legislative body, the Planning Commission, any other governmental body, the owner of the property affected or any other interested person or organization.

#### 3. Form of Proposed Amendment:

Such proposals shall be in writing and shall be accompanied by a filing fee as set by the Cherry County Board of Commissioners, except for proposals initiated by a governmental body. The proposal shall contain the recommended language if a change in the text is proposed or a map showing the present and proposed zoning if a zoning map change is initiated.

#### 4. Procedure for Consideration of Amendment:

##### A. Planning Commission Recommendation:

All proposed amendments shall first be submitted to the Planning Commission for recommendation and report prior to public hearings.

##### B. Notice of Hearing:

Upon the development of tentative recommendations, the Planning Commission shall:

- 1) Hold at least one public hearing.
- 2) Notice of the time and place of which shall be given by the publication thereof in a newspaper of general circulation in the County one time at least 10 days prior to such hearing.
- 3) Notice of the time and place of such hearing shall be given in writing to the Chairman of any municipal, county, or joint planning commission, or, if no planning commission exists, to the clerks of local government units, which have jurisdiction over land within three miles of the property affected by the proposed amendment.
- 4) Notice, in all cases, shall contain a statement regarding the proposed changes in regulations or restrictions or in the boundaries of any district.
- 5) If the proposed amendment will affect specific property, it shall be designated by legal description and general street location and, in addition to publication notice, written notice shall be mailed to all owners of land located within 1,000 feet of the area proposed for amendment if said neighboring property is located within the county's jurisdiction.
- 6) If said neighboring property is located within a municipal jurisdiction, notice shall be sent to property owners within 300 feet of the property to be rezoned.
- 7) Failure to receive notice, however, shall not invalidate any subsequent action taken by the Planning Commission or the County Board so long as such notice was in fact published and mailed in accordance with these provisions.

##### C. Hearing on Proposed Amendment:

- 1) The Planning Commission shall hold a public hearing on each proposed amendment and shall cause an accurate written summary to be made of the proceedings which summary shall be preserved by the Secretary to the Planning Commission.
- 2) The Planning Commission shall submit a written recommendation of approval or disapproval of such proposed amendment to the County Board within 30 days, which recommendation shall make findings based upon the evidence presented of:
  - a. The existing uses of land and zoning classifications of property in the area that will be affected by the proposed amendment.
  - b. The suitability of the property in question to the new zoning classification.
  - c. The effect of the proposed amendment on the use of land and administration of zoning in the County.
  - d. The accessibility of the property to County services; streets and roads, sewage and water facilities and refuse disposal services; and

- e. The general health, safety and welfare of the community and any other considerations deemed appropriate by the Planning Commission in furtherance of the objectives of zoning and the County comprehensive plan.
- D. Action by County Board:  
The County Board shall not act upon a proposed amendment to these Regulations until it shall have received a written recommendation and report from the Planning Commission and until notice of the hearing on the proposed amendment has been given in the manner prescribed in Section 11.01 (4) (B) of these Regulations.
- E. Notice of Hearing:  
Upon the development of recommendations from the Planning Commission, the County Board shall hold at least one public hearing thereon, notice of the time and place of which shall be given by the publication thereof in a newspaper of general circulation in the County one time at least 10 days prior to such hearing.
- F. Action by County Board:  
The County Board may adopt, modify or reject the recommendation of the Planning Commission and may either grant the proposed amendment by Resolution adopting the change or deny the amendment by failing to adopt a Resolution. If the proposal is not acted upon by the County Board within 90 days of the date upon which the report and recommendation is received from the Planning Commission, the proposal shall be deemed to have been denied.
- G. Protest:  
If a protest against the proposed amendment is filed in the Office of the County Clerk within 14 days after the Planning Commission public hearing, duly signed and acknowledged by the owners of 20 percent or more either of the area of the lots, included in the proposed amendment, or of those immediately adjacent in the rear thereof extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such proposed amendment shall not become effective except by the favorable vote of a 2/3 majority of the County Board.
- H. Upon adoption of an amendment to the Cherry County Zoning Regulation, the following steps shall be undertaken in order to provide a clear understanding of said amendment:
- 1) A copy of the adopted Resolution as approved by the County Board shall be placed in a section at the back of the Zoning Regulation.
  - 2) All deletions from the text shall be shown with a strikeout within the body of the regulation.
  - 3) All additions to the Zoning Regulation shall be shown as bold and in italics within the body of the regulation; and
  - 4) At the end of the amended section, in parenthesis, the date of passage and Resolution number shall be included within the body of the regulation.



**ARTICLE 12: LEGAL STATUS PROVISIONS****Section 12.01 Severability**

Should any article, section or provision of this Resolution be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Resolution as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 12.02 Purpose of Catch Heads**

The catch heads appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Resolution.

**Section 12.03 Repeal of Conflicting Resolutions**

All Resolutions or parts of Resolutions in conflict with this Resolution, or inconsistent with the provisions of this Resolution, are hereby repealed to the extent necessary to give this Resolution full force and effect.

**Section 12.04 Effective Date**

This Resolution shall take effect and be in force from and after its passage and publication according to law.

APPROVED AND ADOPTED by the Board of Commissioners of the county of Cherry, Nebraska.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_ (CHAIR, COUNTY BOARD OF COMMISSIONERS)

(Seal)

ATTEST:

\_\_\_\_\_ (COUNTY CLERK)