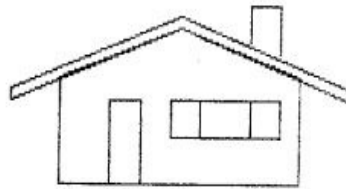
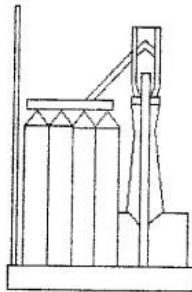
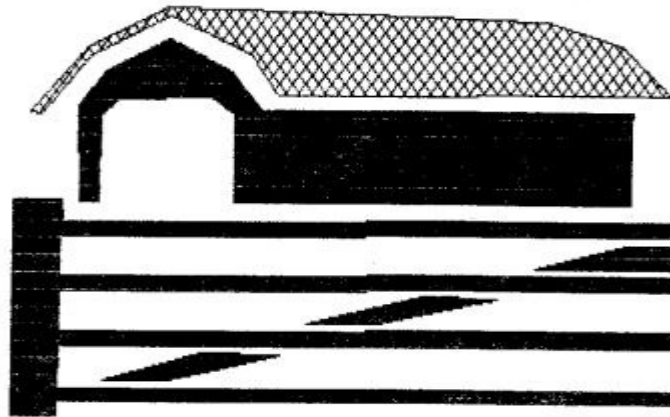


Everest TOWNSHIP

Cass County, North Dakota



ZONING ORDINANCE

and Regulations

Updated 2023

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ARTICLE 1: INTRODUCTION

1.1 Title

These regulations shall be known, and may be cited and referred to as the Everest Township Zoning Ordinance.

1.2 Purpose and Intent

- 1.2.1 To protect public health, safety, morals, comfort, convenience, prosperity and general welfare of the Township of Everest, Cass County, North Dakota.
- 1.2.2 To secure safety from fire, panic, noxious fumes, and other dangers.
- 1.2.3 To promote orderly development of land and water resources and to prevent conflict among land uses and structures.
- 1.2.4 To preserve and protect farming operations, farm lands, and natural resources of the township.

1.3 Authority

These regulations are adopted under the authority granted by Chapter 58-03 of the North Dakota Century Code.

1.4 Jurisdiction

1.4.1 General

These regulations shall apply to the use and enjoyment of all lands within Everest Township, Cass County, North Dakota.

1.4.2 Extraterritorial Areas

When an incorporated municipality has declared its intent to exercise its extraterritorial authority as provided by Chapter 40-47 of the North Dakota Century Code, these regulations shall not apply to the area delineated for that purpose.

1.5 Interpretation

These regulations shall be held to be minimum requirements adopted for promotion of purposes cited in Section 1.2. Whenever, the requirements of these regulations are at variance with the requirements of other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive shall govern unless otherwise specifically stated.

1.6 Severability

If any part, provision or portion of these regulations is adjudged invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

1.7 Effective Date

These regulations shall be effective upon adoption by the Township Board of Supervisors as provided by the North Dakota Century Code.

1.8 Exceptions

These regulations shall not apply to the use of land and buildings for agriculture as defined herein with the exception of feedlot operations.

ARTICLE 2: RULES AND DEFINITIONS

2.1 Rules

In construction of these regulations, the rules and definitions contained in this section shall be observed and applied except when the context clearly indicates otherwise.

2.1.1 Words used in present tense shall include the future.

2.1.2 Words used in singular number shall include the plural number, and the plural the singular.

2.1.3 Shall is a mandatory word and not discretionary.

2.1.4 May is a permissive word.

2.2 Definitions

"Accessory Building and Uses" means a subordinate building or portion of the main building the use of which is clearly incidental to and serves exclusively the principal building or principal use. The accessory building or use shall be located on the same zoning lot and it is established to contribute to the comfort, convenience or necessity of occupants of the principal building or principal use.

"Adult Bookstore" means an enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing sexual activities or anatomic areas, such as genitals, breasts, or buttocks.

"Adult Cinema" means an enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of sexual activities or specified anatomical areas, such as genitals, breasts, or buttocks, for observation by patrons therein return for the payment of consideration, irrespective of the number of patrons who may be able to view the presentation at one time.

"Adult Entertainment Facility" means an enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting describing or relating to specified sexual activities or specified anatomical areas, such as genitals, breasts, or buttocks.

"Adult Entertainment Center" means an adult bookstore, adult cinema, adult entertainment facility or any combination thereof.

"Agriculture" means the process of producing food and fiber customary to the family farming operation with a minimum of 40 acres in area, excluding commercial feedlots, processing and manufacturing of the farm-based products.

"Airport" means any area designated for the landing and take off of aircraft and any appurtenant areas which are used or intended for use for airport buildings and structures including runways, taxi- ways, aircraft storage and tie down areas, hangars and other related facilities and open spaces other than landing strips used for family purposes.

"Animal Feeding Operation" AFO means a place where: livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; animal waste or manure accumulates. This term does not include an animal wintering operation.

"Animal Hospital or Kennel" means a building or premises set up for treatment and boarding of domestic animals including veterinary facilities.

"Animal Unit Equivalent" means a unitless number developed from the nutrient and volume characteristics of manure for a specific livestock type. The term animal units is used to normalize the number of animals (e.g. head) for each specific livestock type which produce comparable bulk quantities of manure.

"Building" means any structure designed or intended for shelter, housing, business, office, and accommodation of persons, animals, chattels or property.

"Building Area" means that portion of the zoning lot that can be occupied by the principal use, excluding the front, rear and side yards.

"Building Height" means vertical distance from the grade to the highest point of the roof.

"Building Line" means a line establishing the minimum distance that structures may be placed from the lot lines or highway right-of-way. For the purposes of these regulations the building line is the same as setback line.

"Building, Principal" means a building, the principal use of which is single family and multi-family dwellings, and offices, shops, stores and other uses.

"Channel" means a natural or man-made watercourse for conducting the flowing water.

"Club or Lodge" means a private club or lodge which is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverages.

"Commercial Gravel Pit" means any mining and extraction of earth materials for commercial or private sale.

"Comprehensive Plan" means a guide for management of the physical resources and development of the Township as adopted by the Board of Supervisors.

"Conditional Use" means use of a special nature not automatically permitted in a zoning district and which requires review and approval of the Zoning Commission after public hearing.

"Conforming Building or Structure" means a building or structure which complies with all requirements of these regulations and other regulations adopted by the Township.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures or accessory structures, the construction of additions or alternations to buildings or structures, ditching, lagooning, dredging, filling, grading, paving, excavation and drilling operations.

"Development Plan" means a document including maps and data for physical development of an area as provided by these regulations.

"Directory Sign" is a sign that directs a person to a business location in Everest Township.

"District" means a section or sections of the township for which regulations governing the use of building and premises, the building heights, size of yards, lot area, lot width and the use are uniform.

"Dwelling" means any building or portion thereof, used exclusively for human habitation including single family and multiple family units but not including hotels or motels.

"Dwelling, Multiple Family" means a single building or portion thereof, containing two (2) or more dwelling units.

"Dwelling, Single Family" means a building containing one dwelling unit for one family only.

"Encroachment" means any fill, building, structure or use including accessory uses projecting into the required yard areas or public and private property.

"Establishment" means a place of business for processing, production, assembly, sales, service of goods and materials.

"Farming or Ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract where by a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.

"Feedlot" is a parcel of land that contains an operation for feeding or raising animals.

"Flood Plain" means an area that may be covered by floodwater including but not limited to regional floods.

"Frontage" means the front part of a lot abutting a public right-of-way, or road or highway.

"Grade" means the land elevation at the horizontal intersection of the ground and the building.

"Home Occupation" means any occupation which: (a) carried on in a dwelling unit by members of the family; (b) is clearly secondary to the use of the residential dwelling, and (c) does not create excessive noise, traffic or conflict with adjoining uses.

"Hotel or Motel" means a building in which lodging accommodations, with or without meals is provided for compensation.

"Junk or Salvage" shall include, but is not limited to, waste or scrap material or parts from machinery, farm implements, motor vehicles, campers, trailers, or blighted mobile homes; unused furniture, appliances, remnants of wood, metal, carpet, building materials, or any other cast-off material of any kind, including trash and rubbish, whether or not the same could be put to any reasonable use.

"Junkyard or Salvage Yard" means an open area where waste, scrap, junk, or salvage material, including parts of used motor vehicles, appliances, farm implements, or other unused item, are bought, sold, exchanged, stored, baled, parked, disassembled, or handled.

"Kennel, Animal" means any premises where dogs, cats and other household pets are boarded, bred and maintained for compensation.

"Landfill" means especially selected, designed, and operated sites for disposal of solid waste in accordance with N.D.C.C. 23-29-03 and the provisions of this ordinance.

"Lot" means a piece, parcel, lot or area of land of continuous assemblage established by survey, plat or deed.

"Lot Lines" means the property lines bounding the lot.

"Lot Width" means the horizontal distance between the side lot lines of a lot measured at the front building setback line.

"Lot, Zoning" means a single lot, parcel, tract of land within a zoning district developed or to be developed.

"Manufactured Home" is a structure that is constructed almost entirely in a factory and rests on a permanent chassis. The wheels can be removed but the chassis stays in place. Also called a Mobile Home.

"Mobile Home" - see Manufactured Home.

"Mobile Home Park" means a parcel of land for which a detailed plan indicating the location of lots, blocks, streets, facilities and utilities exists, for the placement of Mobile or Manufactured Homes.

"Modular Homes" are factory-built homes. Unlike manufactured homes, they do not rest on a steel chassis. They are transported to the building site and erected in sections with heavy equipment. Modular homes must conform to the building codes for the locations where they are erected.

"Non-conforming Building" means any building which does not comply with any or all of these regulations.

"Non-conforming Use" means any principal use of land or building which does not comply with any or all of these regulations.

"Open Space" is a portion of a development that is permanently set aside for public or private use and will not be developed.

"Nursing Home or Convalescent Home" means a home for the aged or infirm which unrelated persons are accommodated for compensation.

"Permitted Uses" means those uses, buildings or structures which comply with the provisions of specific zoning districts because of the similarities in nature and relationship to each other. Permitted uses may require permits. Permitted uses are distinct from conditional uses that are authorized only if certain requirements of these provisions are met after a public hearing and approval by the Board of Supervisors.

"Person" means any individual, firm, corporation, partnership or legal entity.

"Planned Development" means a grouping of buildings and structures on a site of ten (10) or more acres in single ownership which is not limited by the yard or building height limitations but is based on a detailed development plan and recorded in the Office of the County Register of Deeds upon approval by the Township Board of Supervisors.

"Private Gravel Pit" means for private use, incidental to farming, which is not for sale, the mining and extraction of earth materials.

"Public Roadway or Public Way" means any dedicated and recorded right-of-way including alleys, sidewalks, streets, roads or highways.

"Regional Flood" means a flood determined by the state and Federal Emergency Management Agency which is representative of large floods known to have occurred in the County.

"Residential Solar Array" means solar panels wired together to power a single house.

"Service Station" means any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.

"Setback" refers to the distance (measured in feet) a house or structure must be from the front, side and rear property lines. Setbacks allow for access to underground utilities and distance between properties. "Setback" also means the distance from a property boundary enclosing a concentrated animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for non-farm or non-ranch purposes, or the nearest land zoned or used for residential, recreational, or commercial purposes.

"Sign" means any emblem, name, identification, description or illustration which is used for outdoor advertising having permanent location on the ground or attached to a trailer or other portable device, or attached to or painted on a building including bulletin boards, billboards and poster boards, but excluding real estate for sale signs, political campaign signs, public information and traffic signs.

"Site Plan" means a detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in these regulations.

"Solar Farm" . Unlike residential and commercial solar capture systems, Solar Farms are decentralized and usually consist of ground-mounted solar panels installed across large areas. Solar farms provide power to the electric grid. Solar farms are also known as solar parks and solar power stations.

"Structural Alterations" means any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.

"Structure" means anything constructed or erected, the use of which requires permanent location on the ground including advertising signs and billboards.

"Surface Waters" means waters of the State which include, but are not limited to, rivers, streams, creeks, coulees, ponds, intermittent streams, and wetlands.

"Variance" means the relaxation of the terms of the zoning regulations in relationship to building height, size of the front, rear and side yards, where the literal enforcement of these regulations could create unreasonable hardship, but it is not contrary to the purposes of the Township Comprehensive Plan and these regulations.

"Wind Energy Conversion Systems" Any device that is designed to convert wind power to another form of energy such as electricity, mechanical or heat (also referred to as wind charger, wind turbine, and wind mill).

"Winter Feed Lot" means a parcel of land where animals are sheltered incidental to farming at any time between October 15 and May 15 of cash production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing.

"Yard" means an open space on the zoning lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.

"Zoning Commission" means a body consisting of the three (3) Township supervisors under the authority of Chapter 58-03-13 of the North Dakota Century Code to review the planning issues, review zoning requests, zoning amendments, conditional uses, and make recommendations to the Everest Township Board of Supervisors.

ARTICLE 3: GENERAL PROVISIONS

3.1 Compliance

No building or land shall hereafter be used or occupied and no building shall be erected, moved, or altered unless in conformity with these regulations.

3.1.1 Building Height, Lot Area and Yards

No building shall exceed the height, occupy larger part of lot area, and no lot shall be created smaller than the requirements of these regulations.

3.1.2 Substandard Lots or Parcels

All existing lots and parcels at the date of adoption of these regulations shall be deemed buildable unless for the reasons of land suitability, flooding and other physical limitations contrary to the purpose of these regulations.

3.2 Amendments

The Township Board of Supervisors may, from time to time, amend, supplement or repeal any part of these regulations after a public notice and hearing.

3.3 Comprehensive Plan

These regulations are administered and enforced to implement the Comprehensive Plan of Everest Township, a document adopted by the Board of Supervisors as a policy guide for protection of the township natural resources and accommodating the type of development deemed appropriate including but not limited to the following objectives.

3.2.1 To protect the character and maintain the stability of farming activities and production in the township.

3.2.2 To separate and control unavoidable nuisance producing uses to minimize the adverse impacts on the surrounding areas or uses.

3.2.3 To facilitate traffic movement and promote development of compatible uses.

3.2.4 To conserve and enhance the taxable value of land and buildings in the township.

3.2.5 To encourage the most appropriate use of land in the township.

3.2.6 To regulate and restrict the location and intensity of use of buildings and land not related to farming.

3.4 Non-conforming Uses

The lawful use of a building, premises, or lot which exists at the date of adoption of these regulations may be continued. Where a non-conforming use is discontinued for a period of more than twelve consecutive calendar months, any subsequent use or occupancy of such building, premises or lot shall conform to these regulations. Whenever a building is destroyed or damaged by fire or other casualty to the extent of more than sixty percent (60%) of its market value, it shall not be restored unless said building shall conform to the provisions of the district in which it is located. Non-conforming uses shall not be expanded to occupy a larger area of land than existed at the date of adoption of these regulations. If expansion is desired, no expansion shall take place unless approved by the Township Board of Supervisors after a public hearing, after the Zoning Commission has reviewed such request and has made recommendations to the Board of Supervisors.

3.5 Land Suitability

No land shall be used for a purpose which is held unsuitable for the reason of flooding, soil limitations, inadequate drainage, incompatibility with adjoining uses or any condition likely to be harmful to the health, safety or the welfare of the people in the area. The Township Zoning Commission and Board of Supervisors may require information and data to determine the land suitability. The Township may consult with county and state agencies to assist in its determination.

3.6 Conditionally Permitted Uses

Where a use is classified as a Conditionally Permitted Use under these regulations and exists at the date of adoption of these regulations, it shall remain a Conditionally Permitted Use under terms set forth on the previous Conditionally Permitted Use Permit. Where a use is not allowed as a Conditional Use or Permitted Use under these regulations, and exists at the date of adoption of these regulations, it shall be considered a Non-Conforming Use and shall be subject to the non-conforming buildings and use provisions. Any use not listed as a permitted use or a conditional permitted use shall automatically be reviewed as a Conditionally Permitted Use which will be approved or denied by the Zoning Commission and Board of Supervisors after a public hearing.

3.7 Road and Highway Access and Harm to Roads

The Board of Supervisors may adopt rules and regulations and may require a permit as to the number of access points per mile, the width, construction and other features of the access point to the adjoining properties. Farm driveways and field access points are exempt from these provisions. **Any harm caused to any road or highway shall be reported to the Township Supervisors and shall be repaired at the expense of the person or entity causing said harm. Penalties shall be rendered under North Dakota Law for any intentional damage to roads, ditches, right of ways, highways, or other Township public access points.**

3.8 Location on Minimum Maintenance Roads

No structure, building, or dwelling may be erected or moved to any parcel located on a minimum maintenance road unless the owners of such structure, building, or dwelling agree to bear all costs of improving such road to the specifications of the Township. Such standards shall be spelled out in a Road Improvement Agreement signed by both the Township Supervisors and the owner(s) of the parcel(s) affected. All land owners within 1 (one) mile of proposed improvements shall be notified by the applicant to allow for alternate routes during road improvement.

3.9 Road and Highway Setback - Tree Plantings, Shelterbelts

All buildings and structures shall be placed at least 100 (one hundred) feet from township, county and state highway rights-of-way for the purpose of preventing hazardous accumulations of snow and to allow for future widening of public right-of-ways. Tree plantings and shelterbelts shall be planted at a minimum of 200' from the center of road.

3.10 Riverbank and Floodway Setbacks

All buildings, structures and sewer systems shall be placed at least 200 (two hundred) feet from rivers, streams, floodways and legal drain right-of-ways for the purpose of preventing or reducing damages due to flooding and bank failures.

3.11 Building Standards

All structures or buildings shall conform to requirements of the North Dakota State Building Code, N.D.C.C. 54-21.3, the most recent addition of the National Fire Protection Association, and the National Electrical Code

All individual and community water supply and sewage disposal systems shall conform to the requirements set forth in the North Dakota Plumbing Code and Sanitary Code.

ARTICLE 4: ZONING DISTRICT BOUNDARIES AND MAP (Also See Appendix)

4.1 Zoning Districts

In order to carry out the purposes and provisions of these regulations, the following zoning districts are hereby established:

- a. Agricultural District
- b. Residential District
- c. Commercial District

4.2 Zoning District Map

4.2.1 Zoning Districts Map

The location and boundaries of the zoning districts are hereby established as shown on the "Zoning District Map" on file in the Office of the Township Zoning Administrator and attached within these Ordinances. The zoning district map, together with all information shown thereon, and all amendments thereto, shall be an integral part of these regulations.

4.2.2 Public Roads and Highways as Boundary

Where zoning district boundary lines are indicated as following roads and highways or extensions thereof, such boundary lines shall be construed to be the center line of said roads and highways or extension thereof unless clearly shown to the contrary.

4.2.3 Property Line as Boundary

Where a zoning district boundary line coincides approximately but not exactly with the property line, the zoning boundary shall be construed to be the lot line at that location. All section lines, quarter section lines and quarter section lines may be construed as the property lines.

4.2.4 District Description for Unsubdivided Lands

For unsubdivided property, zoning district boundaries are determined by metes and bounds description or by a legal description as deemed necessary.

4.2.5 Vacated Areas

Where a public road or highway is vacated by the official action of the Board of Township Supervisors, the zoning district boundaries shall be extended to the center of the vacated public road or highway.

4.2.6 Zoning District Boundary Interpretation

Where any uncertainty exists as to the exact location of the zoning district boundary lines, the Board of Supervisors shall determine the location of such boundary lines. Any costs incurred in such location shall be born by the person making such request.

4.2.7 Certification

The official zoning map shall bear a certificate with the signature of the Chairman of the Township Board of Supervisors and certification of the Township Clerk and date of adoption of the zoning map as an integral part of these regulations.

ARTICLE 5: ZONING DISTRICT REGULATIONS

5.1 AGRICULTURAL District

5.1.1 Purpose

The purpose of this district is to provide for preservation and protection of agricultural lands and to discourage uses incompatible with agricultural operations or which are detrimental to agricultural land utilization.

5.1.2 Permitted Uses

- 5.1.2.1 All types of farming and ranching operations including dairying, livestock and poultry raising, apiaries and fur farming.
- 5.1.2.2 Accessory Buildings and Structures used in non-commercial farming operations.
- 5.1.2.3 Single Family Non-Farm dwelling located on an existing farmstead.
- 5.1.2.4 Existing Single Family Non-Farm dwellings located on an existing farmstead.
- 5.1.2.5 Single Family Non-Farm dwelling on 20 (Twenty) acres or more

5.1.3 Conditionally Permitted Uses

- 5.1.3.1 Additional Single Family Non-Farm dwelling on 20 (Twenty) acres or more.
- 5.1.3.2 Borrow Pits
- 5.1.3.3 Cemeteries.
- 5.1.3.4 Churches.
- 5.1.3.5 Golf Courses.
- 5.1.3.6 Grain Elevators and Accessory Structures.
- 5.1.3.7 Home Occupations.
- 5.1.3.8 Parks and Playgrounds.
- 5.1.3.9 Manufactured Housing (Subject to 5.2.9 below).
- 5.1.3.10 Public and Private Schools.
- 5.1.3.11 Public Buildings and Facilities Including County Garages.
- 5.1.3.12 Stock Piling of Sand and Gravel for Road Construction and Maintenance.
- 5.1.3.13 Utility Lines and Pipe Lines Including Substations for Transformers, Pumping Stations and Lift Stations. See Provisions for Solar Farms, Wind Farms, and Pipelines.
- 5.1.3.14 Water Reservoirs.
- 5.1.3.15 Manufacturing and Processing of Wood Products
- 5.1.3.16 Antique and Craft shops.
- 5.1.3.17 Art Studios.
- 5.1.3.18 Feedlots for feeding livestock, fur bearers and poultry subject to the provisions of 6.7.

- 5.1.3.19 Voltage Transmission Lines and Accessory Structures.
- 5.1.3.20 Manufacturing and Processing of Agricultural Products Produced in the Area.
- 5.1.3.21 Radio, TV Stations and Towers.
- 5.1.3.22 Sale and Services of Agricultural Equipment and Machinery.
- 5.1.3.23 Salvage and Junk Yards Subject to Provisions of Section 6.6.
- 5.1.3.24 Sanitary Landfills subject to the Provisions of Section 6.5.
- 5.1.3.25 Sewage Lagoons and Wastewater Treatment Facilities.
- 5.1.3.26 Skeet, Trap and Rifle Ranges.
- 5.1.3.27 Storage of Farm Related Chemicals.
- 5.1.3.28 Veterinary Clinics, Animal Hospitals and Domestic Animal Kennels not nearer than 500 (five hundred) feet from any Residence except the Residence of the Owner or Operator.
- 5.1.3.29 Mining of Sand, Gravel, Clay and General Excavation subject to Provisions of Section 6.9.
- 5.1.3.30 Solar Farms and Accessory Structures. See Appendix.
- 5.1.3.31 Wind Farms and Accessory Structures. See Appendix.

5.1.4 Lot Area and Lot Width

- 5.1.4.1 For non-farm residential uses, the lot area shall not be less than 20 (twenty) acres.
- 5.1.4.2 For non-residential uses, the lot area shall not be less than 20 (twenty) acres.
- 5.1.4.3 The lot width for any use in agricultural district shall not be less than 200 (two hundred) feet.

5.1.5 Yard Requirements

- 5.1.5.1 The minimum front yard, measured from the front lot line shall not be less than 100 (one hundred) feet for properties abutting township roads and 100 (one hundred) feet for properties fronting on other rights-of-ways.
- 5.1.5.2 The minimum rear yard, measured from the rear lot line shall not be less than 50 (fifty) feet.
- 5.1.5.3 The minimum side yard, measured from the side lot line shall not be less than 50 (fifty) feet.

5.1.6 Building Height

- 5.1.6.1 The building height for residential buildings shall not exceed two and one half stories or 35 (thirty-five) feet except for farm buildings and structures.
- 5.1.6.2 The building height for manufacturing of agricultural products shall be determined by the Township Board of Supervisors.
- 5.1.6.3 The building height, excepting radio and TV towers and church steeples, for all other uses shall not exceed 35 (thirty-five) feet.

5.1.7 Parking Requirements

For non-farm uses, the parking requirements shall be subject to the provisions of Section 6.3 of these regulations.

5.1.8 Sign Requirements

Sign requirements shall be subject to the provisions of Section 6.4 of these regulations.

5.2 RESIDENTIAL District

5.2.1 Purpose

The Residential District is established to encourage the establishment and preservation of low density residential neighborhoods with primarily single-family dwellings. It is further to provide for certain other uses such as educational, religious, recreational activities compatible with residential areas and to reserve undeveloped lands for similar types of residential development. promote a primarily residential rural environment and to accommodate low density detached single family residential units uninterrupted by conflicting uses and incompatible activities.

5.2.2 Permitted Uses

- 5.2.2.1 Single family detached dwelling units.
- 5.2.2.2 Neighborhood playgrounds and open spaces.
- 5.2.2.3 Accessory buildings and structures for residential use (see 5.2.4 below)
- 5.2.2.4 Day care facilities subject to the requirements of the North Dakota State Department of Health and Consolidated Laboratories.
- 5.2.2.5 Manufactured homes, subject to Section 5.2.11 below.

5.2.3 Conditional Uses

- 5.2.3.1 Public facilities including parks, public water and sewerage systems.
- 5.2.3.2 Multi-family dwelling units not exceeding 1 (one) unit per acre provided that public water and sewer are available.
- 5.2.3.3 Mobile home parks, where public water and sewer is available, with the following requirements may be permitted.
 - (1) A site plan showing location of streets, utilities, off-street parking, driveways walkways blocks, lots, playground and park area.
 - (2) The mobile home park shall contain a minimum of 20 (twenty) acres of land.
 - (3) The maximum number of mobile homes shall be 2 (two) units per gross acre.
 - (4) Each mobile home shall be placed on a lot at least 50 (fifty) feet wide with a minimum area of 5,000 (five thousand) square feet.
 - (5) Each unit shall be placed on a stand and anchored to provide a firm foundation and prevent accidental movement or overturning.
 - a) If located in a flood plain, must be placed on a permanent foundation of concrete, block or wood.
 - (6) Each unit shall have a minimum setback of 20 (twenty) feet within the parks, and 100 (one hundred) feet from the township roads and 100 one hundred feet from other highway rights-of-way outside of the park.
 - (7) Each unit shall have a minimum side yard of 10 (ten) feet.
 - (8) All units shall be served by underground utilities unless waived by the Zoning Commission.
 - (9) There shall be 2 (two) off-street parking spaces per unit
- 5.2.3.4 Churches, schools and township related facilities, provided they are not located in structures originally constructed as a dwelling unit.
- 5.2.3.5 Home occupations.

5.2.3.6 Water reservoirs, water storage tanks, and water pumping stations.

5.2.4 Permitted Accessory Uses:

5.2.4.1 Private garages and private storage buildings subject to building codes and setbacks.

5.2.4.2 Fenced swimming pools.

5.2.4.3 Two (2) unregistered vehicles unless the vehicles are enclosed by a structure.

5.2.4.4 Chicken coops with a maximum of 20 chickens per lot, subject to the provisions of 6.14 (b-d). No roosters shall be allowed in the Residential District.

5.2.5 Prohibited Uses

5.2.5.1 All other uses not specifically granted as a permitted use nor a conditional use in this district.

5.2.6 Lot Area and Lot Width

5.2.6.1 Lot shall contain no less than 40,000 sq feet for single family uses without public sewer.

5.2.6.2 Where public sewer is available, the minimum lot area shall be 1 (one) acre for single family uses.

5.2.6.3 The minimum lot width shall be no less than 100 (one hundred) feet.

5.2.6.4 The minimum lot depth shall be no less than 120 (one hundred twenty) feet.

5.2.7 Yard Requirements

5.2.7.1 The minimum front yard, measured from the front lot line, shall be no less than 50 (fifty) feet on township roads and 50 (fifty) feet for all other highway rights-of-way.

5.2.7.2 The minimum rear yard, measured from the rear lot line, shall not be less than 25 (twenty five) feet.

5.2.7.3 The minimum side yard, measured from the side lot line, shall not be less than 15 (fifteen) feet on each side of a lot.

5.2.7.4 Non-attached Accessory Building setback: 5 (five) feet from rear and side of property line.

5.2.8 Building Height

No building shall be more than 2-1/2 (two and one half) stories or 35 (thirty five) feet high except farm buildings and church steeples.

5.2.9 Parking Requirements

5.2.9.1 There shall be a minimum of 2 (two) off-street parking spaces provided for each residential dwelling unit.

5.2.9.2 The parking needs for the conditionally permitted uses and non-residential uses shall be subject to the requirements of Section 6.3.

5.2.10 Sign Requirements

5.2.10.1 There shall be no more than one identification sign per residential dwelling structure not exceeding 5 (five) square feet in area. The sign may be wall, pedestal, or ground type but it shall not project into the public right-of-way or public property.

5.2.10.2 Temporary signs including "For Rent", political campaign signs, greeting signs, and rally signs are permitted.

5.2.10.3 See section 6.4 for additional sign requirements.

5.2.11 Manufactured Housing (“Mobile Home”, “Manufactured Home”, or “Trailer Home”)

Manufactured housing may be located in Everest Township provided:

- 5.2.11.1 A zoning certificate has been issued by the Township.
- 5.2.11.2 The structure meets or exceeds the National Manufactured Housing Construction and Safety Standard Act (42 U.S.C. 5401 et seq. (1976).
- 5.2.11.3 The structure is anchored to a permanent foundation.
- 5.2.11.4 The structure must have a living area of at least 900 square feet.
- 5.2.11.5 The structure must have tie-downs if brought in on wheeled chassis, and must be given skirts.

5.3 COMMERCIAL District

5.3.1 Purpose

The purpose of the Commercial District is to establish and preserve areas for the development of local commercial activity that allows for easy access to transportation facilities but does NOT create strip or spot commercial development. The Commercial District provisions are intended to provide for areas that 1) are independent from adjacent zoning areas or uses; 2) use extensive outdoor storage or warehousing; 3) can accommodate vehicular access for customers and visitors.

5.3.2 Permitted uses

Agriculture and the normal incidents to agriculture, and in addition:

- 5.3.2.1 Light manufacturing and similar type industrial operations which are consistent with the purposes of this district provided that:
 - a. odor and/or noise do not negatively impact adjacent properties.
 - b. adequate physical separation from adjacent properties is provided for in the form of space, trees, hedges, or fences.
 - c. noise, odor, and light pollution preventions are adopted pursuant to these regulations.
- 5.3.2.2 Industrial shops and businesses, including aircraft maintenance, refurbishing, and repair; construction, plumbing, heating, electrical, sheet metal, and roofing.
- 5.3.2.3 Airport facilities, related operations, structures, and frontage.

5.3.3 Conditionally Permitted uses

- 5.3.3.1 General commercial uses, such as full-service gas stations, eating and drinking establishments, sales of new and used motor vehicles, motor vehicle rental, sale of construction equipment, farm implements, mobile homes, and recreational vehicles, and the sale of lumber and other building materials.
- 5.3.3.2 Repair and service of automobiles, trucks, mobile homes and construction equipment.
- 5.3.3.3 Contract construction services.
- 5.3.3.4 Plant nurseries and greenhouses.
- 5.3.3.5 Recreational uses which, by their nature, require large land areas to buffer them from adjoining uses, such as racetracks, drive-in movie theaters or fairgrounds.
- 5.3.3.6 Veterinary clinics with overnight boarding facilities.
- 5.3.3.7 Hotels and motels.
- 5.3.3.8 Public buildings and essential services.

- 5.3.3.9 On-premise and off-premise signs.
- 5.3.3.10 Parking lots.
- 5.3.3.11 General warehousing and storage, not to include auto wrecking, junk and other salvage storage.
- 5.3.3.12 Motor freight or other trucking facilities, truck stops and truck repair services.
- 5.3.3.13 Grain elevators, seed cleaning, seed drying, feed mixing and grinding plants.
- 5.3.3.14 Other: uses not listed but similar to the permitted uses above and consistent with the stated purpose of this district.

5.3.4 Prohibited Uses:

All other uses not expressly permitted as of right or on conditions are prohibited from being located within this district.

5.3.5 Minimum Lot Sizes:

The minimum permitted lot size shall be 40,000 square feet.
 Minimum required lot width shall be 100 feet.
 Minimum required lot depth shall be 120 feet.
 Not more than 25 percent of the total lot may be covered by buildings.

5.3.6 Yard Requirements

Front yard: 50 feet
 Side yard: 15 feet
 Rear yard: 25 feet
 Non-attached Accessory Building setback: 5 feet from rear and side property lines.

5.3.7 Building Height

The maximum building height shall be two and one-half stories, but not exceeding 35 feet in height.

5.3.8 Parking Requirements

The provisions of Section 6.3 shall apply in the Commercial District.

5.3.9 Sign Requirements

The provisions of Section 6.4 shall apply in the Commercial District, except the Section 6.4.2.2 shall not apply. In lieu of such Section 6.4.2.2, within the Commercial District, no sign may be placed within fifty (50) feet from, and measured perpendicular to, the improved surface of any public road (including the gravel shoulder of any paved public road), in a manner as to materially impede vision between a height of two and one half (2.5 feet) feet and ten (10) feet above the center grades of such public roads.

ARTICLE 6: SPECIAL PROVISIONS for all Districts and as noted

6.1 Moving of Buildings and Structures

6.1.1 Permit Required

No building or structure shall be moved into Everest Township from any place outside the township or wholly within the township from one lot or parcel to another without first making application to the Zoning Administrator and securing a permit. The building or structure must be placed on a permanent slab or foundation within 90 days of moving into township. A permit fee shall accompany each application for a moving permit and/or a building permit

as required by these regulations.

6.1.2 Buildings Exempted

No moving permit shall be required for moving farm structures within the same parcel. No moving permit shall be required to lift or move an existing dwelling for the purpose of replacing or repairing a foundation or slab if setting down within the same parcel. No moving permit shall be required for the moving of any other dwelling, building, or structure, or part thereof in size smaller than the following dimension: 8 feet high, 10 feet wide and 15 feet long.

6.1.3 Code Compliance Required

Whether or not a permit is required, no building or structure shall be moved into a location within the Township unless it will conform to the building, plumbing, heating, electrical and other construction regulations of the township relating to new structures. If construction, alteration or repair work on such building or structure will be necessary to make it conform to such regulations, permit for such work shall be obtained before such building or structure is moved into the township, which shall make provisions for the doing of such work, including placing the structure on permanent footings, foundation or slab within 90 days after such building or structure is so located.

No such building or structure shall be moved to a location within the township unless it will conform to the zoning regulations of Everest Township and will be a building or structure of the same general character and appearance as other state code buildings or structures in the vicinity. If the Zoning Administrator shall be in doubt as to whether such building or structure will sufficiently conform to the character of the neighborhood into which it is proposed to be moved, he may refer the matter to the Everest Township Board of Supervisors for determination, or, in the event that the Zoning Administrator refuses or neglects to issue a moving permit, the applicant has the right to petition the Everest Township Board of Supervisors for a hearing. The Board of Supervisors may hold a public hearing on said question and shall determine whether or not such building or structure will be permitted at the proposed location.

6.1.4 Contents of Application

Upon making an application required by these regulations, the applicant shall furnish the Zoning Administrator with such information as he may require relative to the size, location, method of construction and type of building or structure, the equipment proposed to be used in the moving, the length of time that such building or structure will be on the township roads, the days and hours when such moving s to be made, the financial responsibility of the applicant and the insurance protection carried by the applicant. The applicant shall give access to said building or structure to the Zoning Administrator for the purposes of inspection and shall permit the Zoning Administrator to inspect the equipment to be used in such moving. No such application for a moving permit shall be granted by the Zoning Administrator unless such building or structure can be moved with reasonable safety to persons or property within the township. The Zoning Administrator may impose such conditions as are necessary to assure compliance with the regulations of the township and to assure the public safety from injury to persons or property within the township.

6.1.5 Special Condition of Permit

If any conditions are imposed upon the proposed moving operation, said permit shall not be granted until the applicant shall have agreed to and assented to such conditions in writing.

6.1.6 Cash Deposit Required

Before any permit is issued, the applicant shall make a cash deposit with the Zoning Administrator to reimburse the township for any expense incurred in connection with said moving and to guarantee that all rubbish and materials will be removed from premises from which the building or structure has been moved, and that all wells and excavations be filled and leveled to existing grade and left in a safe and sanitary condition. If such conditions with respect to such premises are not met, the Zoning Administrator shall proceed to do the necessary work and charge the cost thereof against the cash deposit. After all work under said permit is completed and after deducting any expenses incurred by the Township, any monies remaining in the cash deposit shall be returned to the person making such deposit. If said deposit is inadequate, the applicant shall, by reason of such application and permit, be obligated to pay any such additional expense within 30 days after the completion of said work. The amount of cash deposit or bond shall, in each instance, be set by the Board of Township Supervisors after inspection of the building to be moved, but said cash deposit or bond shall not exceed \$2,000.00.

6.1.7 Preparation Required Prior to Moving

Before moving any house, or structure, the owner of the premises from which it is moved shall plug the sewer line with a concrete stopper, shut off the water, and pay for all sewer and water service previously provided. The

electric, telephone and gas service which might be connected to or with the house or structure shall be removed by the said company.

6.1.8 Displacement of Wires

In every case in which moving operation shall require the displacement of any overhead wires, it shall be performed by the person, firm or corporation owning, operating and controlling such wires. Prior to the issuance of a permit for moving operations which will entail the moving of overhead wires, the applicant shall furnish the Zoning Administrator with satisfactory proof that the displacement of such wires will be made by the person, firm or corporation owning, operating and controlling such wires on the dates and at the times designated for the passage of such house or structure.

6.1.9 Emergency Orders

At any time during such moving operation, the Zoning Administrator may issue any further order, whether of an emergency nature or otherwise, as may be necessary to compel compliance with these regulations, the terms of the application and permit, or to insure the public safety.

6.1.10 Revocation of Permit

Refusal by the permit holder or any person acting on his behalf to comply with the terms or provisions of these regulations or to adopt any safety or precautionary device or method imposed upon such moving operation shall be a violation of these regulations and shall be cause for immediate revocation of the permit.

6.1.11 Safety Measures

Any flares, street barriers, parking signs or similar safety devices required by law or required pursuant to the terms of these regulations shall be provided by the permit holder at his own expense. Any harm to any road resulting from the moving under these regulations, shall be repaired at the applicant's expense.

6.2 Platting Development and Utilities Regulations

Platting non-farm development is regulated by the Cass County Subdivision Ordinance, adopted and effective March 6, 2006. The ordinance applies to any person, partnership, corporation, or limited liability company who or which being the owner or agent of and lot, tract, or parcel of land shall lay out, construct, open or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel or other purposes or for the common use of occupants of buildings abutting thereon, or who sells, transfers or agrees or enter into an agreement to sell land in a subdivision whether by reference to or by other use of a plat of such subdivision or erect any building thereon. The Township's density limits supercede the County density limits pursuant to North Dakota Century Code 53-03-11.

6.3 Off-Street Parking

6.3.1 Purpose

The purpose of this section is to provide for the off-street parking regulations to:

- 6.3.1.1 Increase the safety and capacity of public roads by requiring off-street parking or loading facilities.
- 6.3.1.2 Minimize adverse effects of off-street parking and off-street loading facilities on the adjacent properties.
- 6.3.1.3 Lessen congestion and preventing the overtaxing of public roads by regulating the location and capacity of off-street parking or off-street loading facilities.

6.3.2 General Requirements

- 6.3.2.1 An off-street automobile parking space shall be at least 9 (nine) feet wide and 20 (twenty) feet long, exclusive of access drives or ramps.

- 6.3.2.2 All open off-street parking areas with 4 (four) or more spaces and all loading berths shall be:
- (1) Improved with all weather surfaces to provide a durable and dust free surface;
 - (2) Graded to dispose of all surface water run-offs but not be diverted to adjoining properties.

6.3.3 Special Requirements

- 6.3.3.1 No building shall be erected or enlarged without meeting the following parking requirements.
- (1) Business: professional or public office building, studio, bank, medical or dental clinics, three (3) parking spaces plus one additional space for each four hundred (400) square feet of floor area over one thousand (1,000) square feet.
 - (2) Hotels and motels: one parking space for each room plus one space for each two hundred (200) square feet of eating and drinking establishments or restaurants.
 - (3) Private club or lodge: one parking space for each two hundred (200) square feet of service area.
 - (4) Restaurant, eating and drinking establishments: one parking space for each one hundred (100) square feet of floor area.

6.4 Signs

The purposes of regulating signs in the Township is to provide for a visually pleasant environment and minimize potentially unsafe conditions for all age groups, but yet offer many opportunities for public and private information and advertising.

6.4.1 General Requirements, for all Districts

- 6.4.1.1 No sign shall be located, erected, moved, reconstructed, extended, enlarged or structurally altered without obtaining a permit from the Zoning Administrator.
- 6.4.1.2 Signs shall not be permitted within 300 (three hundred) feet of any road crossing which is measured from the point of intersection of the road centerlines. For state and federal highways the state and federal sign requirements shall apply.
- 6.4.1.3 Directory signs shall not be larger than 10 (ten) square feet in area for permitted uses.

6.4.2 In Residential Districts

- 6.4.2.1 Signs may only be associated with the permitted uses or home occupations.
- 6.4.2.2 House number signs on residential dwellings are limited to two (2) square feet and may bear only the property numbers, post office box numbers, and names of the occupants.
- 6.4.2.3 Temporary signs connected with political elections are allowed and must be removed after the election date.
- 6.4.2.4 A sign advertising only the sale, rental or lease of the building or premises are allowed.
- 6.4.2.5 Flags and insignias of any government or governmental agency are not allowed except when displayed in connection with a commercial promotion.
- 6.4.2.6 A zoning certificate must be obtained prior to installation of any permanent sign with the exception of house number signs and temporary signs.

6.4.3 In Commercial Districts

- 6.4.3.1 A zoning certificate must be obtained prior to installation of any signs.
- 6.4.3.2 All commercial signs erected or placed in Everest Township located adjacent to the County Highways and Interstate Highway right-of-ways shall be located on property zoned Commercial, and shall obtain approval from the North Dakota State Highway Department prior to application and consideration from Everest Township.
- 6.4.3.4 The foundation base and posts of all signs must be on private property.

- 6.4.3.5 No part of any sign or projection may protrude into a public right-of-way, and may not be installed within six (6) feet of the actual or proposed curb line. If a street is widened, the sign shall be moved back at the owner's expense to maintain the six (6) foot distance of the curb regulation.
- 6.4.3.6 All sources of artificial light other than street lights shall be fixed and directed or designed so as not to cause a measurable increase of light onto any abutting lot.
- 6.4.3.7 No sign can be of a height so that if it falls it will project more than half way across a street right-of-way.
- 6.4.3.8 For home occupation use it is permissible to have one sign, not to exceed two square feet, mounted flat against the wall of the principle building, non-illuminated..

6.5 Sanitary Landfills and Solid Waste Sites

6.5.1 Compliance with North Dakota State Laws and Rules and County Ordinances and Procedures

Any person who operates sanitary landfills or solid waste sites shall comply with all North Dakota state laws and administrative rules set forth by the state agencies.

Where a county solid waste ordinance exists, any person who operates a sanitary landfill or solid waste site shall comply with the County Ordinance, Rules, and Procedures.

6.5.2 Township Ordinance and Procedures

The Township hereby adopts solid waste provisions, subject to the provisions of N.D.C.C. 11-33-20, to assure meeting the purposes of these regulations and the township comprehensive plan.

6.5.3 Purpose

The purpose of these provisions is to protect public health, ground and surface water, conflict with present land uses and preservation and protection of natural resources in the Township.

6.5.4 Site Approval Requirements

All solid sites require approval by Township Board of Supervisors.

6.5.5 Locational Standards

6.5.5.1 No landfill, incinerator shall be located within 1 mile of residential uses or unincorporated community.

6.5.5.2 No landfill shall be located in areas, which due to high water table, flooding, or soil conditions may affect the quality of surface and ground water.

6.5.5.3 No landfill operation shall be located nearer than 500 (five hundred) feet of all road and highway rights-of-way.

6.5.6 Data Submission Requirements

6.5.6.1 Maps of the area showing existing features such as roads, highways, vegetation cover, water courses, drainage way, soils, topography, depth of water table, wet lands, sloughs, existing uses, buildings and structures including the existing utility lines.

6.5.6.2 A plan for operation of the site including a descriptive text explaining consistency or inconsistency with the natural or man made environment.

6.5.6.3 Records of data and information submitted to the state of North Dakota appropriate agencies and the county as a part of application for state and county permits.

6.5.6.4 The Township Board of Supervisors may require additional information if it deems it necessary.

6.5.7 Statement of Findings

Upon the public notification and a public hearing the Everest Township Board of Supervisors shall determine whether the proposed site meets the requirements of these regulations. The Everest Township Board of Supervisors may place conditions for approval of the site.

6.6 Junkyards or Salvage Yards

6.6.1 Purpose

The purpose of these requirements is to preserve and protect the visual and other environmental amenities of the rural areas while allowing junkyards and salvage yards as business places.

6.6.2 Site Approval Requirements

All sites for junkyards and salvage yards require approval by the Everest Township Board of Supervisors.

6.6.3 Locational Standards

- 6.6.3.1 No junkyard or salvage yard shall be located within 1 mile of a residential district or a residentially used parcel; or within 500 (five hundred) feet of a commercial district, buildings and structures.
- 6.6.3.2 No junkyard or salvage yard shall be located in areas which, due to high water table, flooding and soil conditions may affect the quality of surface and ground water.
- 6.6.3.3 No junkyard or salvage yard shall be located nearer than 250 (two hundred fifty) feet of all road and highway rights-of-way.
- 6.6.3.4 All junkyards or salvage yards, and operations thereof, shall be screened from the public view unless the junk or salvage material is placed 500 (five hundred) feet away from any highway right-of-way or more than 250 (two hundred fifty) township road right-of-way *and* is screened by natural vegetation or landform.

6.7 Feed Lots in Agricultural Zone

6.7.1 Purpose

These regulations are designed to allow feed lots for feeding of livestock, furbearers and poultry and at the same time, protect the adjoining uses against odor, run off and other incompatible characteristics associated with feed lots.

6.7.2 General Requirements

- (1) All feedlots as defined by this code are only permitted as conditional uses subject to the provisions of this code and the requirements of the North Dakota State Health Department. Wherever the provisions of this ordinance conflict with the requirement of ND State Health Department, the more restrictive requirements shall apply.
- (2) All feedlots shall be designed and constructed with all reasonable preventative measures to avoid surface run-off including construction of sealed collection and retention ponds.
- (3) Where appropriate, there shall be sufficient drainage to avoid pollution of the ground and surface water from the standing effluents.
- (4) Feedlots shall not be placed in the flood plains.
- (5) The applicant, as a part of site approval application, shall submit a plan for removal and disposal of the liquid and solid waste generated by the feed lot.

- (6) An "animal unit equivalent" is a unitless number developed from the nutrient and volume characteristics of manure for a specific livestock type. The term "animal units" is used to normalize the number of animal (e.g., head) for each specific livestock type which produce comparable bulk quantities of manure. The animal unit equivalents for types of livestock and the numbers of livestock for facility size thresholds of 300 animal units (a.u.), and so forth, are listed in the following table.
- (7) An Animal feeding operation or AFO means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: a) Animals (other than aquatic animals) have been, are, or will be stable or confined and fed or maintained for a total of 45 days or more in any 12-month period; and b) Crops, vegetation, forage growth, post-harvest residues are not sustained in the normal growing seasons over any portion of the lot or facility. All AFO shall apply to the setback distance as listed in the following table. In no event shall an AFO be located nearer than .50 miles from a residential platted development, Commercial Zoning district, or any city limits, park, cemetery, church, school or residence other than owner/operator's residence.
- (8) The requirements are not applicable to winter feedlots as defined in the definitions.
- (9) **Livestock Equivalents (heads)
for two sizes of Animal Feeding Operations (in A.U. equivalent)**

Livestock Type	Animal Unit Equivalent (A.U.)	300 A.U.	1,000 A.U.
1 horse	1	300 head	1,000 head
1 dairy cow	1.33	225	750
1 mature beef	1	300	1000
1 beef feeder - finishing	1	300	1000
1 beef feeder - backgrounding	0.75	400	1333
1 mature bison	1	300	1000
1 bison feeder	1	300	1000
1 swine >55 lbs	0.4	750	2500
1 sheep	0.4	750	2500
1 goose or duck	0.2	1500	5000
1 turkey	0.2	1500	5000
1 chicken	0.1	3000	10000

(10)

SETBACK DISTANCES FOR ANIMAL FEEDING OPERATIONS (AFO)

Number Animal Units (A.U.)		Hog Operations	Other Operations
Small AFO	25-50	1 mile	.5 mile
	51-99	1.5 miles	1 mile
	100-299	2 miles	1 mile
Medium AFO	300-999	2 miles	2 miles
Largo AFO	1000+	2 miles	2 miles

6.8 Animals Prohibited in all Zones

Any genus/species of animal which is capable of killing, inflicting serious injury upon, or causing illness or disease among human beings or domestic animals and having a known tendency (either in its natural state, in the wild, or as a tame, feral or domesticated animal) as a species to do so, and is declared to be a dangerous animal by the board of supervisors, are prohibited in Everest Township.

Dangerous and/or exotic animals such as, but not limited to, lions, tigers, cheetahs, bears, wolves, wolf-dog hybrids, fox, lynx, bobcats, venomous or constricting reptiles, alligators, bats, venomous spiders, monkeys, chimpanzees, etc. are prohibited except for traveling fairs, circuses, and brief veterinary care unless a conditional use permit is obtained.

6.9 Mining of Sand, Gravel, Clay and General Ground Excavation

6.9.1 Purpose

The purpose of these provisions is to provide for mining and extraction of materials for commercial uses, and to protect and preserve agricultural land by guiding such operations, and to minimize the traffic, noise, dust, fume and vibration impact on the adjoining uses and the city. Not allowed in the Residential District.

6.9.2 Site Approval Requirements

All excavation sites require approval by the Township. See definitions of "commercial gravel pit" and "private gravel pit". All new excavations are considered conditional uses and shall conform to provisions of the conditional use permit requirements of these regulations.

6.9.3 Data Submission Requirements

- (1) A site plan for operation and reclamation of the mined land including maps showing location of the land to be mined, location of roads and point of access to the site, adjacent residences within one mile of site, maps showing the existing and proposed contours after the land is mined and a time table for operation of the site. There will be a minimum 1 to 3 slope. All topsoil shall be replaced and planted to natural protected vegetation.
- (2) Reclamation of the site shall be completed within one year of the resource being exhausted, abandoned or closure of the operation of the site.
- (3) Proof of compatibility with the existing landform including vegetation, and surface and ground water resources.
- (4) Bonding required as follows:

0 - 5 acres	no bond
6 - 19 acres	\$25,000
20-39 acres	\$50,000
40+ acres	\$100,000
- (5) The Township shall require the bond be obtained through a US based company having a AAA rating from Moody's Investment Service or equivalent rating. Bond shall list Everest Township as an additional party.

6.9.4 Proximity to Existing Uses

The operation of sand and gravel sites shall not be nearer than five hundred (500) feet from any residential uses.

6.9.5 Permit Requirements

Any person who operates a sand and gravel operation shall obtain a permit from the planning and zoning committee before starting any mining or excavation of the sand and gravel sites, and after review by the planning and zoning board and approval by the Township Board.

6.10 Garden Sheds

A garden shed in a Residential Zone shall be no larger than ten (10) feet by twelve (12) feet and no greater than twelve (12) feet in height. Garden sheds shall be located no less than five (5) feet from the rear and side lot lines in rear corners of the property. There shall be no more than two (2) garden sheds on any zoning lot. Said structures shall have doors facing into the property.

6.11 Public Nuisances

The maintenance of public nuisances including, but not limited to noxious weeds, smoke, gases, radio interference, blighted structures or buildings, substantial noise in excess of 75 dB during the day and 65 dB at night, accumulation of junk, trash, rubbish, automobiles, dead or diseased trees shall be subject to the provisions of the Township.

6.12 Noise

Sustained noise of over 75 dB during the day and 65 dB at night is not allowed. No person shall operate any pile driver, steam shovel, pneumatic hammer, derrick, or other appliance between the hours of 10:00 p.m. and 7:00 a.m..

6.13 Recreational Vehicles (RV) and Travel Trailers (Campers)

The use of recreational vehicles, travel trailers and other trailers used for temporary occupancy shall be limited to one hundred eighty days (180) per year within the township, at a density of no more than 1 unit per acre per lot or parcel. A permit is required for all other temporary uses. Storage of resident-owned Rv's and Travel Trailers for personal use are exempt.

6.14 Animal Units on Single Family, Non-Farming Residential Use in Agricultural District

1. Livestock Animal Units shall not exceed one (1) unit (a horse is considered one animal unit - see section 6.7 above) per acre density provided that:
 - a. there shall be minimum of one (1) acre for one animal unit, and an additional acre for every additional animal unit kept on the property. More animal units on acreage will require a permit.
 - b. the residential use area shall be separated from the area to be used as an animal enclosure by a fence and that the entire animal enclosure area shall be fenced to prevent escape and subsequent damage to adjacent property. Keeping of chickens or ducks are exempt.
 - c. no structure intended for housing animals (with the exception of chicken coops) or any manure pile shall be closer than 500 feet from any residential structures other than that of the owner.
 - d. all manure and other animal wastes be removed and disposed of properly on at least an annual basis. Burning manure is not considered a proper disposal method and will not be allowed.
 - e. the number of animal units permitted shall be based on the size of the portion of the parcel to be used as an animal enclosure, and that animal enclosure area shall not be less than 2 acres, with the exception of chicken enclosures and runs. See separate requirements for Residential District.

6.15 Trees and Tree Plantings:

1. No person or persons, corporations or otherwise, whether owners or tenants of any property along the streets or roadways of the Township shall permit any trees to project more than eight (8) feet over the sidewalks, streets, and roadways, and less than twelve (12) feet above streets and roadways.
2. It is the duty of all persons, whether owners or tenants to keep the trees along public streets and roadways adjoining such property trimmed in such manner that trees shall not interfere with travel on said streets, roadways, and sidewalks.
3. No persons, firms or corporations shall plant any tree, shrub, or other vegetable growth except lawn grass on

any road right-of-way, or within confines of the ditch back slope.

4. For the purpose of insuring reasonable visibility at street or roadway intersections, trees shall be trimmed to at least twelve (12) feet above street or roadway surface and eight (8) feet over sidewalks.
5. Shelterbelts and farmstead windbreaks shall not be planted closer than two-hundred (200) feet from center of road. Farmstead windbreaks setback shall be two hundred (200) feet from center of road. Variances for trees and fences shall be issued through appropriate highway officials or Township Supervisors.
6. Shelterbelts and farmstead windbreaks shall be planted as per the Natural Resources Conservation Service-North Dakota, Windbreak/Shelterbelt Establishment-380 Design and Installation Guide, available at the Cass County Soil Conservation District, West Fargo, ND.
7. Windbreaks shall be located no closer than 33 feet away from any property line unless both property owners execute a signed agreement allowing closer planting.
8. No trees shall be placed within the easement area of overhead transmission lines unless permission has been secured from the appropriate utility company and the Everest Township Board of Supervisors.
9. Windbreaks that are adjacent to or which cross legal and private drainage ways should be set back at least one hundred (100) feet to prevent snow and ice buildup that would restrict spring drainage.

6.16 Fences

1. No site-obscuring fence over forty-eight (48) inches in height shall be erected within the front yard of any lot used for residential purposes.
2. No fence shall exceed a height of six (6) feet without first obtaining a permit from the Zoning Administrator.
3. Enclosures of electrical installations are subject to the current National Electrical Code.
4. No permanent fence shall be erected on a road right-of-way or within the confines of the ditch back stop.
5. Electrical fences shall conform in all respects to the State of North Dakota regulations for electrical wiring, and shall be energized only with underwriters laboratories approved equipment.

6.17 Yard Encroachments:

Every part of a yard or court shall be open and unobstructed by any building or structure, from its lowest point upward, except as follows:

1. Accessory structures, as governed by the Ordinances, are permitted in rear yards, up to the setback required.
2. Add-on entryways to an existing residential dwelling shall not exceed 80 square feet in size, but shall not extend into the front-yard minimum depth requirement.
3. A Building Permit is required for any additions made to any existing building.

6.18 Home Occupations, Standards for Approval

Home Occupations shall be considered as a conditional use and shall conform to the provisions of the conditional use permit requirements of these regulations.

- a. Rural Home Occupations may be located in a separate non-residential or farm building provided any building principally used for the home occupation shall not exceed one thousand two hundred and eighty (1,280) square feet. Minimum lot size for a separate non-residential building shall be one (1) acre.
- b. Employees are limited to two full time or four part time personnel.

- c. Structural additions may be made to a dwelling provided the alterations shall not exceed twenty-five (25) percent of the main floor of the area of the dwelling, not including basement or garage floor area. A Building Permit is required.
- d. Site shall be limited to single lot in residential sites or farmstead sites.

6.19 Utilities

- 1. The term "utilities" includes, but is not limited to, electric power, electrical transmission lines, wind conversion systems, commercial wind generators, dams, electrical and telephone towers and substations, natural gas pipelines, petroleum product pipelines, CO2 pipelines, solar farms, water and sewer lines, telephone lines and other above ground or underground communication and energy transfer lines and other pipelines.

Solar Farms have additional requirements. See APPENDIX A
 Commercial Wind Energy Facilities have additional requirements. See APPENDIX B.

- 2. All new utility lines, pipelines, solar farms, wind farms, and any components thereof, require a permit.
- 3. All new utility lines and pipelines are considered conditional uses and shall conform to the provisions of the Conditional Use Permit requirements of these regulations, and must include a proposed route map upon application.
- 4. All pipelines, natural gas, petroleum, carbon dioxide, energy transfer lines, and other hazardous material lines, shall be placed at least 7' deep so as not to interfere with farming operations and drain tile; and to protect the Township and general public should buried lines be affected by natural underground freeze/thaw conditions or other damage or affecting occurrence.
- 5. Excavation for tunneling of any pipelines under roads, farm drains, group drains and local drains shall be done by the company owning or leasing said pipelines and the cost of said excavation and damages to be born by the said company.
- 6. All wind generators shall be set back one thousand (1,000) feet from residences other than that of the owner/operator. Commercial Wind Energy Facilities have a separate Ordinance as APPENDIX B herein.
- 7. All utilities shall notify the township supervisors within thirty days of abandoning a tower site or utilities. All utilities shall be removed within one year after abandonment with the land returned to pre-utility condition. All expenses related to removal shall be that of the utility owner or operator. All permitting requirements shall apply.
- 8. All utilities, excluding wind generators, shall be set back the height of the tower plus twenty-five percent (25%).
- 9. Tower heights, including cell phone towers, are for stated use, and subject to FAA, FCC, and other regulating bodies. A Permit as a Conditional Use for all Districts is required for any tower erected in the Township.

ARTICLE 7: ADMINISTRATION AND ENFORCEMENT

7.1 Organization

To administer these regulations the following bodies are hereby vested with authority to act on behalf of the Township.

- (1) The Zoning Administrator
- (2) The Township Zoning Commission

7.2 The Zoning Administrator

The Zoning Administrator is a duly appointed township official authorized by the Everest Board of Supervisors and is responsible to administer Zoning Ordinances and Regulations; to assist the Zoning Commission and the Everest Board of Supervisors on any matter related to planning for and development of Everest Township.

7.2.1 Duties

- 7.2.1.1 Issue zoning certificates, permits and maintain records thereof.
- 7.2.1.2 Issue all building and repair permits.
- 7.2.1.3 Maintain zoning related records and zoning district map including records of all amendments, conditional uses and variances.
- 7.2.1.4 Receive, file and forward to the Zoning Commission and Board of Supervisors all applications for zoning amendments, site approvals and conditional uses.
- 7.2.1.5 Prepare and publish notices and notify adjoining property owners.
- 7.2.1.6 Notify, in writing, the property owner or user upon finding violation of these regulations and cite the nature of violation clearly and require compliance within a reasonable time. If the notification is not replied to or steps are not taken to correct the violations within 30 (thirty) days, the Code Administrator shall make a report of the findings to the Everest Board of Supervisors.

7.2.2 Interpretation of Regulations

All questions of interpretation of these Ordinances and Regulations shall be presented to the Zoning Administrator (for Building Permits) or the Township Zoning Commission (Township Zoning Ordinance matters). The Zoning Administrator shall work with the Everest Board of Supervisors to ascertain Board interpretations.

7.2.3 Building Permit Applications

Any person or persons intending to construct or reconstruct or relocate a building or make alterations to any building or structure, shall, before proceeding with any work, or commencing any excavation in connection with it, shall obtain a permit from the Zoning Administrator. These regulations shall also apply to mobile or manufactured homes.

- 7.2.3.1 Each application for a building permit shall be accompanied by a site plan consisting of the legal description and a map showing the actual dimensions of the lot to be built upon; the size, shape and location of the building to be constructed; the placement of any existing buildings or structures on the parcel; the locations of drainways, flood plains, other natural features; construction plans; and any other requirements of the Zoning Administrator as deemed necessary to determine compliance with these regulations.
- 7.2.3.2 The application shall specify the type of the building, structure, material of which it is composed, the part or portion of the lot to be occupied by the principal building and accessory buildings and the probable building cost, together with such additional plans and specifications as required by these regulations or Zoning Administrator.

7.2.4 Building Permits, Issuance

The Zoning Administrator shall issue a building permit if the proposed building or structure conforms to zoning and building provisions of these regulations. If the Zoning Administrator denies a permit because of non-conformance with these regulations, he shall inform the Everest Township Board of Supervisors of such denial, and inform the applicant of his/her right to appeal to the Board of Supervisors

7.2.5 Conditional Use and Site Approval Permits, Issuance

The Zoning Administrator shall issue a Conditional Use or Site Approval permit upon approval of the application by the Zoning Commission and Board of Supervisors stipulating all conditions set forth.

7.2.6 Building Permit Fees and Conditional Use Permit Fees

The Zoning Administrator shall charge and collect a fee according to the Schedule of Fees established by the Everest Township Board of Supervisors. The applicant for a Building Permit or Conditional Use Permit, or an amendment to the Zoning Ordinance, or Zoning District Ordinance, shall be liable for and pay to the Township Clerk sufficient sums of money to pay for and cover all of the costs incurred by the Township for the processing of such application, including, but not limited to: publication costs; attorney's fees; mileage; copy expense, etc. No Permit shall be issued until all such costs as described herein have been paid by the applicant, unless the Township Board of Supervisors has otherwise provided by resolution for a particular case.

7.2.7 Certificate of Occupancy or Use

The Zoning Administrator shall issue a certificate of occupancy upon inspection of the completed building, including placement of mobile homes and manufactured homes and assurance that all provisions and conditions set forth by the authority of these regulations are met. In the event the Zoning Administrator finds violations and deviations from the terms and conditions of these regulations, he shall make a report and recommendation for action to the Everest Township Board of Supervisors.

7.2.8 Variances

The Zoning Administrator shall issue a permit if the Everest Board of Supervisors reverses the decision. The terms of the variance or special use shall be stipulated in the permit.

7.3 The Township Zoning Commission

The Township Zoning Commission shall consist of the three (3) township supervisors. Where a city is exercising extraterritorial zoning jurisdiction, two members may be appointed by the City to the Township Zoning Commission.

7.3.1 Duties

- 7.3.1.1 To hear and recommend action to the Board of Supervisors on all applications for amendments to zoning districts.
- 7.3.1.2 To hear and recommend action to the Board of Supervisors on all applications for conditional uses and site approvals in the manner prescribed in these regulations.
- 7.3.1.3 To study, examine and recommend action to the Board of Supervisors on issues which may adversely affect the natural resources and farming operations in the Township.
- 7.3.1.4 To serve in an advisory capacity to the Township Board of Supervisors whereby final action is implemented.

7.3.2 Notice of Hearings

The Zoning Commission shall fix a reasonable date for hearing of applications for zoning district amendments, conditional use permits, site approval applications and other matters before it, and give public notice thereof in the official newspaper of the county and the nearest regularly published newspaper at least 15 (fifteen) days prior to the hearing. The notices shall give time and place of hearing and shall state the purpose of the hearing and that the applications and supporting documents for zoning district amendments and conditional use permits shall be available for public inspection by the Zoning Administrator.

7.3.3 Meetings

Meetings of the Zoning Commission shall be held at the call of the Chairperson and at such other times as the Zoning Commission may determine. All meetings shall be open to the public and any person may testify for or against a petition.

7.3.4 Violations and Penalties

Any person who violates any provision of these regulations or fails to comply with any of its requirements including the conditions or modification of use, building or structure shall upon conviction thereof forfeit not more than \$100 and in addition pay all expenses involved in the case. Each day such violation continues shall constitute a separate offense. Should a violation continue for more than 20 consecutive days, the penalty shall rise to \$1,000 on the 21st day and each day thereafter.

ARTICLE 8: PROCEDURES FOR AMENDMENTS, CONDITIONAL USES, VARIANCES, APPEALS

8.1 Zoning District Amendments

8.1.1 Public Hearing Notice

The notice of all such public hearings shall be published at least 15 (fifteen) days prior to the hearing in the official newspaper of the county. The notice of hearing shall include: (1) the time and place of hearing; (2) description of the property by street address for platted lands and clearly identifiable location for the unplatted lands; (3) the proposed use and requested zoning district change; (4) time and place for public inspection of the documents before the hearing. (5) At least 15 days prior to the hearing, the applicant shall mail, by registered mail, notice of the public hearing to property owners within one-half mile of the proposed development site.

8.1.2 Public Hearings

The Zoning Commission at the public hearing shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Zoning Commission shall take action for recommendation of approval, denial or modification of the petition. The Zoning Commission may require additional information before it completes its findings and makes a recommendation to the Board of Supervisors. Thereafter, the Board of Supervisors shall review the matter at a public hearing for final decision.

8.1.3 Data Submission Requirements

Petitions for zoning district change and conditional uses shall be submitted with the following information:

- 8.1.3.1 Legal description of the area proposed to be re-zoned on the mile of the site.
- 8.1.3.2 A map showing the existing land uses and zoning district classification of the area.
- 8.1.3.3 A site plan showing all buildings and uses in the zoning district proposed to be changed and the requested zoning district classification.
- 8.1.3.4 A fee shall be paid in accordance with the schedule established by the Everest Township Board of Supervisors.

8.1.4 Deliberation and Decision

Following a public hearing, the Zoning Commission, upon due deliberation, shall make a report of its findings and recommendation on the proposed amendment, and forward the same to the Board of Supervisors within 30 (thirty) days after the hearing. In making their findings, the Zoning Commission and Board of Supervisors shall ascertain as to whether the proposal for zoning district amendment is consistent with the Everest Township Comprehensive Plan and meets all requirements of these regulations and other regulations of the Township and recommend and forward the same to the Board of Supervisors.

8.2 Conditional Use Permits

8.2.1 Purpose

The development of these ordinances and regulations is based upon division of the township into districts, and within each district the use of land and building bulk and locations of building and structures are mutually compatible and substantially harmonious. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as permitted uses in any particular district, without consideration, in each case, of impact of those uses upon neighboring premises. Such uses, nevertheless, may be desirable or necessary to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses.

8.2.2 Public Hearing Notice

Shall be the same as the provisions set forth for public hearing notice for zoning district amendment in Section 8.1.1. Once a hearing date is set, public notice shall be made in accordance to Section 8.1.1.

8.2.3 Public Hearings

When considering an application for a Conditional Use in any District, the Zoning Commission shall hold a public hearing. Once a public hearing date is established, and at least fifteen (15) days prior to the date of hearing, notice of the purpose, time and place of such hearing shall be published in the official newspaper of Cass County. The applicant shall mail, by registered mail, notice of the public hearing to property owners within one-half mile of the proposed development site. Public hearings notice requirements shall be the same as in Section 8.1.1. The provisions of Section 8.1.2. shall apply to Conditional Use Permit applications.

8.2.4 Data Submission Requirements

Shall be the same as the provisions set forth for data submission requirements for zoning district amendment in Section 8.1.3.

8.2.5 Deliberation and Decision

Shall be the same as the provisions set forth for deliberation and decision for zoning district amendment in Section 8.1.4

8.2.6 Standards

No application for conditional use shall be approved unless findings are made that all of the following conditions are present:

- 8.2.6.1 That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- 8.2.6.2 That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.
- 8.2.6.3 That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- 8.2.6.4 That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- 8.2.6.5 That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic impact on the area.
- 8.2.6.6 That the conditional use shall substantially conform to all applicable regulations of the district in which it is located.

8.2.7 Conditions and Guarantees

- 8.2.7.1 Prior to the decision on any conditional use, the Everest Board of Supervisors may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the township and to secure compliance with the standards and requirements specified in Section 8.2.6. In all cases in which conditional uses are granted, the Board of Supervisors shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.
- 8.2.7.2 No alteration of a conditional use shall be permitted unless approved by the Everest Board of

Supervisors. Where the Board of Supervisors has approved or conditionally approved an application for a conditional use, such approval shall become null and void within 12 (twelve) months of the date of the Board of Supervisors action unless the use is commenced, construction is underway or the current owner possesses a valid building permit.

8.3 Variances

Variance from the terms of these regulations as to building height, lot area, and yard requirements, or other, may be granted provided that the applicant establishes proof of practical difficulty or undue hardship.

8.3.1 Public Hearing Notice

Notice of all such public hearings shall be published at least 15 (fifteen) days prior to the hearing in the official newspaper of the county. The notice of hearing shall include: (1) the time and place of hearing; (2) description of the property by street address for platted lands and clearly identifiable location for the unplatted lands; (3) the proposed use and requested zoning variance; (4) time and place for public inspection of the documents before the hearing.

8.3.2 Public Hearings

Shall be the same as the provisions set forth for public hearing notice for zoning district amendment in Section 8.1.

8.3.3 Data Submission Requirements

Petitions for variances shall be submitted with the following information.

- 8.3.3.1 Description of the property by street address for platted land and clearly identifiable location for the unplatted lands, the name and addresses of all owners of property lying within one mile of the site.
- 8.3.3.2 A map showing the existing land uses and zoning district classification of the area.
- 8.3.3.3 A fee shall be paid in accordance with the schedule established by the Zoning Commission.

8.3.4 Deliberation and Decision

In making its finding, the Zoning Commission and Everest Board of Supervisors shall follow the same provisions set forth for deliberation and decision for zoning district amendments in Section 8.1.4.

8.3.5 Standards

No application for variance shall be approved unless it is found that all of the following are present.

- 8.3.5.1 That special conditions and circumstances exist which are peculiar to the premises and which are not applicable to other premises in the same zoning district.
- 8.3.5.2 That literal interpretation of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.
- 8.3.5.3 That the special conditions and circumstances have not resulted from actions of the applicant.
- 8.3.5.4 That granting the variance requested will not confer upon the applicant any special privileges that are denied by these regulations to other premises.

8.3.6 Justification

- 8.3.6.1 That the reasons set forth in the application justify the granting of the variance.

- 8.3.6.2 The variance is the minimum which would make possible a reasonable use of the premises.
- 8.3.6.3 That the granting of variance will be in harmony with the general purpose of these regulations and will not be injurious to the surrounding premises, neighborhood or the city and will not be contrary to the comprehensive plan and the purposes of these regulations.
- 8.3.6.4 That there is practical difficulty or unnecessary hardship in use of the premises if the strict application of the regulations were to be carried out.

8.3.7 Authorized Variances

A variance shall not be granted for any yard or setback less than the yard or setback as required by these regulations:

- 8.3.7.1 To reduce not by more than twenty percent (20%) the applicable requirements for lot area and lot width.
- 8.3.7.2 To reduce the applicable off-street parking or loading facilities by no more than fifty percent (50%) of the requirements.
- 8.3.7.3 To permit the use of lot of record if it is smaller than the minimum size required by these regulations.
- 8.3.7.4 To permit roof alterations to provide additional windows, headroom or area for occupancy of third level.
- 8.3.7.5 To permit conversion of an existing building to a permitted residential use provided that it shall not conflict with standards described within these regulations.

8.4 Appeals of Administrative Decisions

8.4.1 Applicability

The Everest Board of Township Supervisors shall be authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official of the Township in the administration or enforcement of this zoning ordinance

8.4.2 Right to Appeal

Appeals of Administrative Decisions may be filed by any person aggrieved or by any officer, department, board or agency affected by any decision of the administrative officer.

8.4.3 Application Submittal

Applications for Appeals of Administrative Decisions shall be submitted to the Zoning Administrator in a form established by the Zoning Administrator along with a non-refundable fee that has been established by the Everest Board of Township Supervisors. No application shall be processed until the application is complete and the required fee has been paid.

8.4.4 Time of Filing Appeal

Appeals of Administrative Decisions shall be filed within 10 days of the date of the decision being appealed.

8.4.5 Effect of Filing

The filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Everest Township Board of Supervisors, after the appeal is filed, that, because of facts stated in the certification, a stay would cause immediate peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Everest Township Board of Supervisors, or by a court of record.

8.4.6 Transmittal of Papers

The Codes Administrator or the official whose decision is being appealed shall transmit to the Everest Township Board of Supervisors all papers constituting the record upon which the action appealed is taken.

8.4.7 Review and Action - Everest Township Board of Supervisors

Appeals of Administrative Decisions shall be taken to the Everest Township Board of Supervisors. The Board of Supervisors shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. In exercising the appeal power, the Everest Township Board of Supervisors shall have all powers of the official from whom the appeal is taken, and the Board of township Supervisors may reverse or affirm wholly or partly or may modify the decision being appealed. If the Board of Supervisors determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence. A concurring vote of three members of the Board of Township Supervisors shall be necessary to reverse any order, requirement, decision, or determination of an administrative official.

8.4.8 Review Criteria; Findings of Fact

An appeal shall be sustained only if the Board of Township Supervisors finds that the administrative official erred. Every decision of the Board of Township Supervisors shall be accompanied by written findings of fact specifying the reason for the decision. These findings shall be filed in the office of the Board of Township Supervisors within 15 days after the date of the final action.

ARTICLE 9: ADOPTION

Whereas, the Everest Township Zoning Commission has recommended adoption of the "Everest Township Zoning Ordinance and Regulations" and "Solar Farm, Solar Power, and Residential Solar Array Ordinance" (Appendix A) and "Wind Energy Facilities Ordinance" (Appendix B) and "Schedule of Fees" (Appendix C) to the Everest Township Board of Supervisors.

Therefore Be it Resolved that the Everest Township Board of Supervisors hereby ADOPTS the "Everest Township Zoning Ordinance and Regulations" and attached Solar Farm Ordinance (Appendix A); and Wind Energy Facilities Ordinance (Appendix B) and Schedule of Fees (Appendix C).

APPROVED AND ADOPTED 21st DAY OF March, 2023

EVEREST TOWNSHIP, Cass County, North Dakota.

BY Caryn Weber, Chairman (Caryn Weber)

BY David Ohnstad, Supervisor (David Ohnstad)

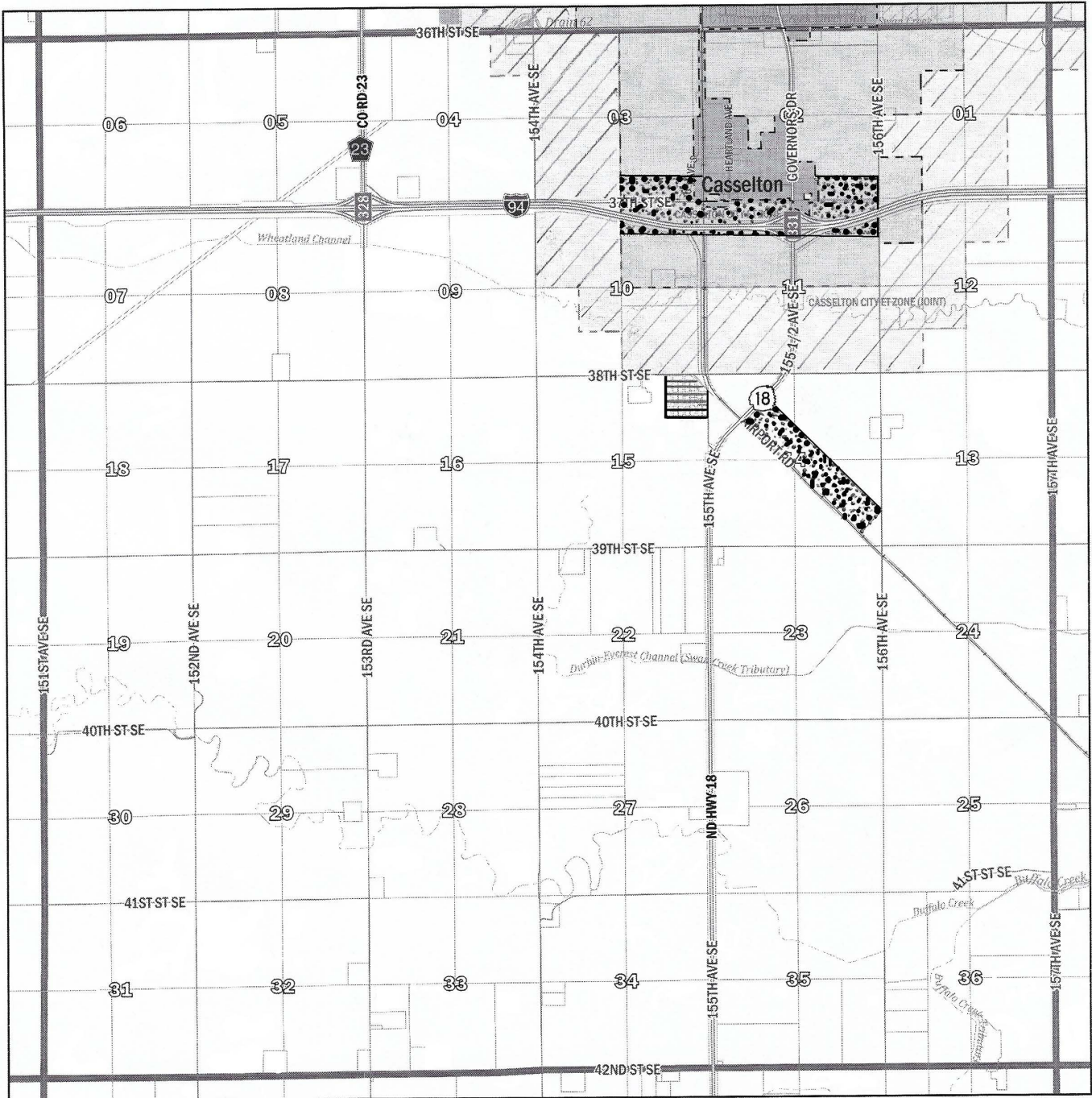
BY Eric Myren, Supervisor (Eric Myren)

BY Brian Otteson, Attest, Secretary/Clerk (Brian Otteson)

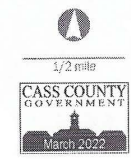
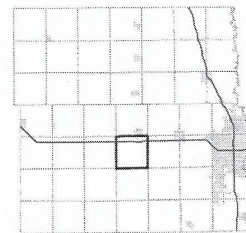
EVEREST TOWNSHIP

TOWNSHIP 139 N, RANGE 52 W

CASS COUNTY, ND



- Parcel
- City Limits
- Extraterritorial City Zoning Jurisdiction
- Extraterritorial City Zoning Jurisdiction (joint with Twp)
- Township
- = Agricultural
- = Residential
- = Commercial



Disclaimer: This map is made available as a public service. Maps and data are to be used for reference purposes only. Cass County and Everest Township is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or reuse of the information herein provided.

APPENDIX A

Solar Farm, Solar Power, and Residential Solar Array Ordinance

SOLAR FARM, SOLAR POWER, RESIDENTIAL SOLAR ARRAY

1. Intent and Purpose:

To regulate the use of Solar Energy within Everest Township as an alternative energy source and to provide for the land development, installation, and construction regulations for solar farm facilities subject to reasonable conditions that will protect the public health, safety, and welfare. These regulations establish minimum requirements and standards for the placement, construction, and modification of solar farm facilities, while allowing a renewable energy source for our Township in a safe, effective, and efficient manner.

2. Definitions used in this section:

a. Residential Solar Array – A small electricity generating system consisting of solar panels and associated equipment sized primarily to meet the needs of the on-site consumers for the home, farm, or small business on whose property they are constructed. While not intended to distribute electricity to other consumers or to be used as a primary purpose but rather as a supplemental energy source. They may be inter-connected to a public utility. Height restrictions apply.

b. Solar Farm – An electricity generating system consisting of solar panels and associated equipment designed or intended to provide electricity to off-site customers.

c. Participating Property – a parcel or tract of parcels where the owner of said parcel(s) has entered a contractual arrangement with the solar farm developer to allow the parcel(s) to be part of the solar farm.

d. Non-Participating Property – a parcel or tract of parcels that is not a participating property.

3. Residential Solar Arrays are allowed, as a Conditional Permitted Accessory Use, to be used by any residence or business in any zoning district.

4. Solar Farms are allowed only as a Conditional Permitted Use, in the Agricultural and Residential zoning districts. They are not permitted in other zoning districts.

5. Solar Farms require a site plan review and approval by the Township Board of Supervisors.

6. An applicant proposing a Solar Farm may use an overlay process and submit multiple parcels as a tract for examination for a Conditional Use Permit and site plan review. The applicant must have legal authority to submit the application for each parcel. Fees for the site plan review and special use permits will be assessed per parcel.

7. Minimum Lot Size:

Solar farm facilities shall not be constructed on parcels or tracts less than twenty (20) acres in size.

8. Height Restrictions:

All photovoltaic panels located in a solar farm shall be restricted to a maximum height of twelve (12) feet.

9. Setbacks:

All photovoltaic solar panels and support structures associated with such facilities, including perimeter security fencing, shall comply with the following minimum setbacks:

a. Three hundred (300) feet from a side or rear property line abutting a non participating parcel.

b. Three hundred (300) feet from any road or highway right-of-way

c. Three hundred (300) feet from the property line of a non-participating parcel containing an occupied structure or for which a legal building permit to create such a structure is in force at the time of the application.

d. Sixty (60) feet from any structure on a participating parcel which is not used as a component of the solar farm.

10. Maximum Lot Coverage:

Maximum lot coverage restrictions shall not apply to photovoltaic solar panels. Any other regulated structures on the parcel are subject to maximum lot coverage restrictions.

11. Safety/Access:

A security fence not less than seven (7) feet in height shall be placed around the perimeter of the solar power plant and electrical equipment. All gates and access points shall be locked when not in use. Knox boxes and keys shall be provided at locked entrances for emergency personnel access. Damaged fences shall be immediately repaired by the Solar Farm Operator.

12. Noise:

No solar farm facilities shall exceed sixty-five (65) dBA as measured at the property line.

13. The exterior surfaces of all equipment:

shall be generally neutral in color and substantially non-reflective of light.

14. Landscaping:

- a. Solar farm facilities shall be required to install a perimeter landscaping buffer surrounding and on the exterior of the security fence, excluding access points.
- b. The buffer zone shall be not less than twenty-five (25) feet in width and shall be planted with assorted vegetation to provide a year-round visual buffer both at installation and in the future.
- c. Plantings shall be not less than four (4) feet in height at planting and shall be ten (10) feet in height within three (3) years.
- d. The number, species, and spacing of the plantings shall be sufficient to provide an adequate visual buffer as determined by the Township Board of Supervisors. Plantings must be maintained, and dead, diseased, or damaged vegetation should be replaced annually or more frequently.
- e. Grass and weeds must be controlled in the buffer areas during the entire growing season.
- f. Vegetation under and around the solar panels must be maintained with proper mowing and weed control.

15. Local, State and Federal Permits:

Solar farm facilities shall be required to obtain all necessary permits from the U.S. Government, State of North Dakota, and Everest Township, and comply with standards of the State of North Dakota adopted codes.

16. Electrical Interconnections:

All electrical interconnection or distribution lines shall comply with all applicable codes and standard commercial large-scale utility requirements. Use of above ground transmission lines shall be prohibited within the site.

17. Solar Farms shall not create any radio frequency interference in violation of any State or Federal regulation.

18. Decommissioning:

The project or equipment end-of-life is defined as 12 months after the site or equipment is no longer used to produce power. The equipment shall be decommissioned within 6 months of end-of-life. Decommissioning shall remove all equipment and materials, including roadways and fencing, not claimed for use by the property owner. The land should be returned to its previous use. The land must be in condition suitable for use and must have a value equal to or greater than comparable land that was not used for the solar farm.

19. Bond:

The Township shall require a bond in the amount of 150% of the expected decommissioning cost. The estimate of the decommissioning cost shall be updated and reviewed at a minimum of once each five years. The required bond amount shall be adjusted as required by the change in decommissioning cost. The bond shall be through a US based company having a AAA rating from Moody's Investment service or equivalent rating. Bond shall list Everest Township as an additional party.

20. Additional Conditional Use Criteria:

The following topics shall be addressed in a Conditional Use Permit Application for solar farm facilities in addition to the Conditional Use Permit review criteria defined elsewhere in the zoning ordinance:

- a. Project description and rationale:
Identify the type, size, rated power output, performance, safety, and noise characteristics of the system, including the name and address of the manufacturer, and model. Identify time frame, project life, development phases, likely markets for the generated energy, and possible future expansions.
- b. Analysis of onsite traffic:
Estimated construction jobs, estimated permanent jobs associated with the development.
- c. Visual impacts:
Review and demonstrate the visual impact using photos or renditions of the project or similar projects with consideration given to tree plantings and setback requirements.
- d. Wildlife:
Review potential impact on wildlife on the site.
- e. Environmental analysis:
Identify impact on the water quality, water supply, potential ground contamination and changes to water flow in the project area. Analysis must identify possible issues caused by construction, operation, and decommissioning.
- f. Waste:
Identify solid waste or hazardous waste generated by the project.
- g. Lighting:
Provide lighting plans showing all lighting within the facility. No light may adversely affect adjacent parcels. All lighting must be shielded from adjoining parcels, and light poles are restricted to eighteen (18) feet in height.
- h. Transportation plan:
Provide access plan during construction and operation phases. Show proposed project service road ingress and egress access onto primary and secondary routes, layout of the plant service road system. Due to infrequent access to such facilities after construction is completed, it is not required to pave or curb solar panel access drives. It will be necessary to pave and curb any driveway and parking lots used for occupied offices that are located on site.
- i. Public safety:
Identify emergency and normal shutdown procedures. Identify potential hazards to adjacent properties, public roadways, the Township, and the public in general that may be created.
- j. Sound limitations and review:
Identify noise levels at the property line of the project boundary when completed.
- k. Telecommunications interference:
Identify electromagnetic fields and potential radio frequency interference generated by the project and present plan to prevent such interference.
- l. Life of the project and final reclamation:
Describe the decommissioning and final land reclamation plan after anticipated useful life or abandonment or termination of the project, including evidence of an agreement with the property owner that ensures proper final removal of power generating equipment within six (6) to twelve (12) months of decommissioning.

21. The Everest Township Zoning Commission and Board of Supervisors Review:

Because of the ever-changing technical capabilities of photovoltaic solar panels and of new technology in general, the Everest Township Board shall have the authority to review and consider alternatives in both dimensional requirements as well as physical development requirements found in this Section. The Everest Township Board reserves the right to amend these terms as technology changes. The Everest Township Board may update these zoning terms after notice and public hearing.

Therefore, "APPENDIX A: Solar Farm, Solar Power, and Residential Solar Array Ordinance" contained herein is hereby Adopted by the Everest Township Board of Supervisors.

APPROVED AND ADOPTED 21st DAY OF March, 2023

EVEREST TOWNSHIP

BY Lauren Weber, Chairman
BY [Signature], Supervisor
BY [Signature], Supervisor
BY Ben [Signature], Attest, Secretary/Clerk

APPENDIX B

WIND ENERGY FACILITIES ORDINANCE

RULES AND DEFINITIONS

Definitions for the purposes of this section:

“Abandonment” means the cessation of use of for at least the minimum period of time specified under this ordinance.

“Accessory Building or Accessory Structure ” means a building that is located on the same parcel of property or manufactured home or recreational vehicle park space as the principal structure or use. This includes the use of which is incidental to the use of the principal use or structure, except for accessory parking facilities located elsewhere, plus pole bars, hay sheds, grain bins, grain handling systems, feed lots, and the like qualify as accessory structures on farms or farmsteads, and may or may not be located on the same parcel as the farm, residential dwelling or shop building. Garages, carports and shops are common accessory buildings. If a building is used for any residential, principal, or permitted use, it is not an accessory building. An accessory building can be attached to or detached from the principal structure.

“Anemometers” are used to measure wind speed and direction. See below for “MET Tower” definition.

“Blade Glint” means the intermittent reflection of the sun off the surface of the blades of one or more wind turbines.

“MET” Tower is a Meteorological Evaluation Tower, also called a Wind Measurement Tower, and are equipped with anemometers.

“Maintenance” means the cleaning, painting, repair, or replacement of defective parts (including plumbing, electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure.

“Modification or Modify” means any change, addition, swap-out, exchange, and the like that does not qualify as “Repairs and maintenance” is a modification. Also included is any change, addition, swap-out, exchange, and the like that requires or results in changes and/or upgrades to the structural integrity of a structure.

“Nuisance” A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
4. In any way renders other persons insecure in life or in the use of property. (NDCC 42-01-01)

“Repair” means the replacement of a defective part or product, or existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the structure or that would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installations, or that would be in violation of a provision of law or ordinance. The term “repair” or “repairs” shall not apply to any change in construction.

“Shadow Flicker” means the visual effect that results when the blades of an operating wind energy facility pass between the sun and an object and cast a readily observable, moving shadow on a person or property and the immediate vicinity.

“Wind Energy Facility, Large System” means a wind energy facility that has a rated capacity of more than twenty-five (25) kilowatts (kw) and less than one thousand (1,000) kw+.

“Wind Energy Facility, Small System” means a wind energy facility that has a rated capacity of not more than twenty-five (25) kw. Such a facility is used primarily for on-site consumption, and consists of no more than one wind turbine and any associated tower, control and /or conversion electronics.

“Wind Energy Facility, Utility-Scale” means a wind energy facility that has a related capacity of one thousand (1,000) kw or more.

“Wind Farm” means the same as “Wind Energy Facility, Utility-Scale”.

1. Purpose of this Ordinance

This ordinance provides a framework for siting, construction, operation, abandonment and decommissioning of a wind energy facility in Everest Township that will preserve the safety and well-being of the residents, future residents, environment and facilitate equitable and orderly development.

2. Regulatory Framework

A wind energy facility may only be constructed in Everest Township if the Applicant first obtains a permit and complies with the conditions of this ordinance.

3. Applicability

This ordinance governs the development and use of all land and structures for wind energy facilities. No building, structure, or land shall be used, occupied or altered, and no building, structure, or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered, unless in conformity with all the provisions of this regulation and all other applicable regulations, except as otherwise provided by this ordinance.

4. Wind Energy Permit Availability by Zone

A wind energy facility or part of one will be conditionally permitted or not permitted based on the generating capacity and land use district as established in the table below.

ZONING DISTRICT	Permitted Use	Conditionally Permitted Use
Agricultural	No	Yes
Residential	No	No
Commercial	No	No

5. Anemometers or Other Meteorological towers

Towers 100 feet or more tall must be marked in a way that satisfies FAA advice set out in FAA Advisory Circulars 47 CFR §§ 17.21-17.58 or their successors.

<http://wireless.fcc.gov/antenna/documentation/faadocs/7460-1K.pdf>

The drafters of this ordinance understand that the FAA only requires painting for towers 200' or taller.

Those who erect, maintain, own or operate a MET tower in Everest Township that is 100 feet or taller must apply the advice, methods and guidance in the FAA circulars to any tower 100 feet or higher. Neither an environmental statement nor assessment is required. In lieu of lighting, using the following combination of balls, flags, and sleeves is allowed.

- 1) One high visibility cable ball at least 21" (53 cm) in diameter on each outer guy-wire placed at about half the height of the MET tower;
- 2) Four high visibility flags at least 24" x 12" (78cm x 40cm) on each outer guy-wire placed at intervals that segment the guy-wire evenly;
- 3) High visibility sleeves, one per each anchor and one installed at 26 feet or (7.93m) height on each of the guy-wires.

6. Permit Application Information

- 1) The complete name, legal address and phone number of the prospective Applicant and responsible contact person.
- 2) A narrative overview of the project. In the contents of the narration there shall be, including but not limited to, a list of future prospective buyer(s) of the facility, the schedule for the proposed start and completion of construction, the generating capacity of the Wind Energy Facility (WEF), summary of all leases in the footprint and agreements one (1) mile outside of the footprint, and a five (5) year plan (every five (5) years throughout the duration of the WEF) are some items required.

- 3) A tabulation describing the specific number, types, and height of each wind turbine to be constructed, including their generating capacity, dimensions and respective manufacturers, and appurtenant structures and/or facilities.
- 4) Identification of the property on which the proposed WEF will be located.
- 5) A site plan showing the following:
 - a. Planned location of each wind turbine.
 - b. All property lines within two miles of the property lines (footprint) of the proposed site.
 - c. Setback lines.
 - d. Access roads and turnout locations.
 - e. Substations
 - f. Electrical cabling from the WEF to the substation(s) and from the substation(s) to where the electricity will leave the site.
 - g. Auxiliary equipment, buildings, and structures, including permanent meteorological towers.
 - h. Associated transmission lines
 - i. Conservation areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important local historic sites; native forests.
 - j. Location of all structures and properties within the geographical boundaries of any applicable setback.
- 6) For Utility-scale Wind Energy Facilities, an environmental impact study shall be submitted which includes review comments from all applicable state and federal agencies, including at least a division of the government that deals with natural resources, wildlife, health and human services, and waterways or bodies of water. The study shall cover, at a minimum, the potential impacts on the human population (such as audible and inaudible sound, shadow flicker and blade glint, viewsheds, blade throw, and ice and wind resistance, etc.), topsoil and subsoil conditions, as well as the animal populations, migratory areas used by waterfowl, the location of any and all air routes recognized by the FAA and /or established by any agency of the Department of Defense, land, and water (including impacts on groundwater resources due to foundations, pilings, etc.), and air. The study area shall include at least the two miles surrounding the footprint of the proposed WEF.

The Applicant shall provide Township Zoning Commission with an Escrow Account (referenced in Section 12.14.12) to cover all costs and expenses incurred related to the study for the WEF. The Township Zoning Commission shall use the Escrow Account funds to hire independent qualified experts, as needed, to conduct the tests specified below:

- a. The location of any of the following found within the confines of, or within two miles from the perimeter of, any proposed WEF shall be identified: open drainage courses, streams, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, wildlife habitats or sanctuaries, habitat of rare and endangered plants and animals, unique natural areas, sand and gravel aquifers, wells, and historic and /or archaeological resources. Together with a description of such features.
- b. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. Independent experts shall be chosen by the Township Zoning Commission and funded through the WEF Escrow Account. If the pre-construction field studies demonstrate significant adverse effect to the topsoil or subsoil, or to birds, bats, game animals, water resources, or habitat fragmentation, Township Zoning Commission and the WEF Applicant (includes Owner or Operator) shall develop an appropriate mitigation plan. It is acknowledged and accepted by the Applicant that some environmental impacts cannot be satisfactorily mitigated and that some of those projects will not be approved.
- c. In determining the nature and effectiveness of such mitigation plans, the Township Zoning Commission will be guided by its own consultants, the appropriate state and federal agencies, and applicable state and federal laws and regulations. The WEF Applicant will be responsible for the full cost of implementing the mitigation plan under the supervision of the Township Zoning Commission and its designated agents.
- d. After implementation of any mitigation plan, the Township Zoning Commission will review the plan to determine its effectiveness. Should Township Zoning Commission find the mitigation efforts inadequate, the WEF Applicant will be given 60 days from that finding, to resolve the deficiencies. In the absence of a successful resolution, Township Zoning Commission (at its discretion) shall have the right to deny the WEF Permit.
- e. The Applicant must provide a written memorandum from the appropriate state and federal agencies detailing their assessment of the proposed WEF.
- f. The Applicant must demonstrate, to the satisfaction of Township Zoning Commission, that the proposed WEF will not have an undue adverse effect on: the proposed sites geological stability; topsoil and subsoil; surface or subterranean water resources; rare, threatened, or endangered wildlife; raptor habitat; threatened or endangered plants and rare and exemplary natural plant communities and ecosystems; and will not substantially increase storm water runoff.
- g. The Applicant must provide a cumulative-impact assessment of the proposal in the context of other WEF's in the

region, including migratory bird, bat and large mammal corridors, and demonstrate that the WEF is not located in an area that will result in degradation of important wildlife corridors.

7) The United States Fish & Wildlife Service (USFWS) Land-based Wind Energy Guidelines (WEG) will be reviewed by the WEF and acknowledgement that the WEF will follow these guidelines as closely as possible. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Township Zoning Commission to ensure compliance with this ordinance.

8) Decommissioning Plan (referenced in Section 17):

A description of how the structural and turbine materials will be disposed of and how the site (land, roads, etc.) will be restored to the pre-existing WEF condition documented by the studies, reports and other documentation presented in the permit application, as well as

a. Anticipated life of the WEF

b. Estimated decommissioning costs (in current dollars), as provided by an appropriate licensed engineer or designee, including contingency costs of at least 10%.

c. Method for ensuring that funds will be available for decommissioning and restoration as set forth in Section 6.14.18

d. A verifiable means of determining if the decommissioning plan needs to be activated due to abandonment, such as a letter from the electric utility that wheels the power stating that it will notify the Zoning Administrator within 10 business days when electricity is not received from the WEF for any 30 consecutive days.

9) Stand-down Plan: the Applicant shall certify that the proposal is for wind turbines rated for the wind and turbulence specifications that meet the North Dakota Building Code and/or are of the class recommended by the governing body that sets such standards. A stand-down plan for high wind conditions shall be included along with any other materials needed for the certification.

10) Potential impacts on property values report shall be provided by the Applicant showing competent evidence that the proposed project will not degrade or diminish values of surrounding real properties within two miles of the boundary of the footprint of the WEF project. (referenced in Section 12.1.22)

11) If any portion of a proposal will be more than 200 feet tall, the Applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1 Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace. The Applicant shall establish to the satisfaction of the Township Zoning Commission that the proposed WEF will not adversely impact the restricted air space.

12) The Applicant shall conduct preventive maintenance inspections on every structure other than accessory buildings at least once every year and again after any wind or weather event which could potentially shorten the life expectancy, the integrity, or the maximum efficiency of the wind turbine or other accessories. Each inspection shall look for such things as metal fatigue, nut loosening, oil leaks and other potential failures that might impact the public health and safety, wildlife, soil contamination, air pollution, noise levels or other such injuries to the surrounding area. Such inspection reports shall be provided to the Zoning Administrator or designee within 30 days of the inspection.

The Applicant shall detail the maintenance schedule and non-maintenance actions that will be taken to keep the WEF operating quietly, efficiently, and non-polluting of the land, water, and air. Including, but not limited to, the minimization of loud or high-pitched sound, low frequency sound or vibration, blade glint, and fluid leaks.

13) WEF shall follow the Best Practices of the National Institute of Occupational Safety & Health. Hearing loss and health issues associated with the constant low frequency and intermediary high decibels caused by a wind turbine will be paid special attention to by the Applicant/owner/or operator. In addition, no WEF will run at over 55 decibels for a period of over 48 hours and at 82 decibels for more than 8 hours. This can be monitored at any time at the Township Zoning Commission's request and must be accurately measured at a location(s) designated by the Township Zoning Commission. If safety or health issues are brought to light, the Township Zoning Commission has the right to shut all or parts of the WEF down (discontinued use of the turbines) until the those issues are corrected.

14) Visual Impacts shall be reviewed by the Township Zoning Commission on a case by case basis during the permitting process. The Applicant shall produce documentation (maps, pictures, etc.) that proves there are no visual impacts throughout the WEF.

Applicant shall not install any lighting that exceeds the minimum required by the FAA. Where alternatives to strobe lighting are available from the FAA, such as sensor lighting, strobe lighting shall be the last resort and only if required by the FAA in the footprint.

- 15) If there are surrounding communities within a 3 mile radius of the footprint of the WEF, written notification of the application must be given to the governing body by that Applicant.
- 16) The Township Zoning Commission may deny an application for any of the following reasons:
- a. Conflict with safety and safety related codes and requirements.
 - b. The use or construction of a WEF that is contrary to an already stated purpose of a specific zoning or land use designation
 - c. The placement and location of a WEF that would create an unacceptable risk to residents or the public including noise impacts, visual impacts, impacts on surrounding communities, and/or adverse impacts identified in an environmental impact report.
 - d. The placement and location of a WEF would result in a conflict with, or compromise or change in, the nature or character of the surrounding area.
 - e. Conflicts with the provisions or this ordinance.
 - f. Failure to submit a complete application as required under this ordinance, including an incomplete or inadequate (as determined by Township Zoning Commission) Decommissioning Plan, Stand-down Plan, Maintenance Plan, and/or Road Analysis.
 - g. Conflicts with restricted air space or fly zone.
 - h. WEF creates a nuisance.
- 17) The permit approval shall be valid for a period of one year, with the option to extend the permit one time for another year. The same fees attached to the original application shall apply to the application for an extension. An approval of the application means that the Applicant has the authority to move forward with the WEF. The application will expire if an extension hasn't been requested or the WEF has not moved forward towards the project end goals. (Paperwork in order, construction begins, electrical connection system being put into place, etc.)

7. Setbacks

The following setbacks and separation requirements shall apply to all Wind Turbines in the WEF. Such minimum setbacks for the Wind Turbine shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) to the closest near vertical surface of the occupied or unoccupied structure, improvement, feed lot, or the nearest point of a boundary, bridge, line, or the center line of the improved surface of a road or airstrip.

- 1) Occupied Structures and Facilities: Each Wind Turbine shall be set back from the nearest occupied dwelling, accessory building, feed lot, commercial building, publicly used structure or facility at a distance of not less than one (1) mile. This setback applies whether the occupied dwelling, accessory building, feed lot, commercial building, publicly used structure or facility is inside the footprint or outside of the footprint.
- 2) Public Roads and Above Ground Communication and Electrical Lines: Each Wind Turbine shall be set back from the nearest public road or above ground communication and electrical lines at a minimum distance of 1.1 times the height of the tower at its highest point including the blades determined at the center of the existing right-of way. A minimum of 75 feet clearance must be maintained from the ground at the lowest point of the blades.
- 3) Wind Energy Facility Perimeter (Footprint): Each Wind Turbine shall be set back from the Wind Energy Facility Perimeter at a minimum distance of one thousand (1000) feet except if it falls under the Occupied Structures and Facilities setback. A variance may be requested if an authorized representative or agent of the Applicant and those affected parties on adjoining properties with associated wind rights, sign a formal and legally binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

8. Variance to a Setback Request

A variance may be requested if an authorized representative or agent of the Applicant and those affected parties sign a formal and legally binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

9. Notice of Hearing on Application for Variance Setback

It is the obligation of the party seeking the variance to the setback requirement to serve notice of the initial hearing on the application, in accord with the ND Rules of Civil Procedure, to all property owners whose land is located inside the

setback area sought to be diminished. Proof of service must be filed with the Township Zoning Commission prior to the hearing.

Where the provisions for variances on wind turbines differ from the general variance provision in this ordinance, this wind turbines special provision governs for wind turbine issues. The property owner may apply for a variance from a setback requirement involving an occupied structure, unoccupied structure, improvement, feed lot, antenna, tower, road, or bridge.

10. Contents of Setback Waiver

The party seeking the variance from the setback must attempt to obtain from the affected property owner, and should provide to the Township Zoning Commission, a waiver executed by each affected owner sought to be removed from the applicable setback protection. The waiver shall only be in effect for the length of the WEF permit.

The setback waiver signed by the affected property owner must describe how the proposed wind turbine location is not in compliance with the setback, and clearly state that consent is granted for the wind turbine or accessory to be closer to the owner's property than allowed by the ordinance. Legal counsel should be sought before signing a setback waiver.

11. Required Dignities of Valid Variance

A setback variance is only valid if granted by duly passed motion of the Township Zoning Commission, issued in writing, and signed by either the chairman of the Township Zoning Commission or the Township Zoning Administrator.

12. Escrow Account

The Applicant shall pay to Everest Township a fee as set forth in the fee schedule. The Township Zoning Commission reserves the right to obtain engineering, economic impact, aviation impact, or other professional services to aid it in the review of any submitted application. The Applicant shall reimburse Everest Township for the cost thereof prior to receiving the decision of the Township Zoning Commission on the application.

- 1) The Applicant shall reimburse Everest Township for all oversight expenses incurred related to the WEF from application through decommissioning.
- 2) These WEF related oversight expenses include, but are not limited to, amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning – e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" includes reasonable attorney fees for Everest Township if Everest Township has to sue the Applicant.
- 3) Any interest accruing to the Escrow Account shall stay with the account and be considered new principle.
- 4) This Escrow Account will be setup by the Applicant at the time of the WEF permit application. This Escrow Account will be at a financial institution approved by Everest Township, solely in the name of Everest Township, to be managed by Everest Township Treasurer and the Township Zoning Commission. The Applicant will make an initial deposit of \$50,000. A WEF application will not be processed until consent to these terms and proof of deposit has been provided by the Applicant.
- 5) If the WEF application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by Everest Township. The money will be returned, along with a statement as to these costs, within 30 day of the application being formally denied or receipt of a Letter of Withdrawal by the Applicant.
- 6) This Escrow Account will be maintained during the life of the WEF by the Applicant/owner/operator. The Applicant/owner/operator will replenish any Escrow funds used by Everest Township within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$50,000 shall be cause for revocation (or denial of renewal) of the WEF permit.
- 7) If the WEF is decommissioned to the satisfaction of the Township Zoning Commission, all Escrow Account funds will be returned to the Applicant/owner/operator, less related expenses incurred by Everest Township. The money will be returned, along with a statement as to these costs, within 30 days of the decommissioning process being completed.

13. Installation and Design

- 1) The electrical connection system from the wind turbines to a collection point or substation shall, to the maximum extent possible, be placed underground. The power from that collection point or substation may use overhead transmission lines, if approved by the Township Zoning Commission.
- 2) In order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting of crops, access roads to each tower should be built parallel or perpendicular to existing roads, not diagonally across fields for mere

convenience of the shortest route to a turbine.

- 3) The Applicant shall certify that the proposal is for wind turbines rated for the wind and turbulence specifications that meet the North Dakota Building Code and/or are of the class recommended by the governing body that sets such standards.

14. The WEF shall:

- 1) Be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Township Zoning Commission.
- 2) Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety.
- 3) Not contain any signs or other advertising. Each wind turbine will be marked with an identification number large enough to assist identification of the turbine number in an emergency.
- 4) Be sited and operated so as to not interfere with television, internet service, telephone (cellular or digital), microwave, satellite dish, navigational, or radio reception in neighboring areas. the Applicant/owner/operator of the WEF shall be responsible for the full cost of any remediation necessary to provide the same service or correct any problems; including relocation or removal of the facility causing or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto.
- 5) Have a leak containment system for oil, hydraulic fluids, and other non-solids that is certified by an expert (such as an engineer, OSHA, turbine manufacturer, etc.) acceptable to the Township Zoning Commission that all such fluids will be captured before they reach the ground. The Applicant shall pay the cost of the expert.

15. Roads:

The Applicant shall reimburse Everest Township for any and all repairs and reconstruction to roads that are necessary due to the construction, decommissioning or maintenance of the WEF. A qualified independent third party or other qualified person who has been agreed upon by the Township Zoning Commission and the Applicant shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the roads condition prior to construction or decommissioning of the WEF and again 30 days after the WEF is completed or removed.

Any road damage during construction that is done by the Applicant and/or one or more of its contractors or subcontractors that is identified by the third party shall be repaired or reconstructed to the satisfaction of the Township Zoning Commission at the Applicant's expense prior to the final inspection.

The surety for removal of a decommissioned WEF shall not be released until the Township Zoning Commission is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the Applicant and /or one or more of its contractors or subcontractors that is identified by the third party shall be repaired or reconstructed to the satisfaction of the Township Zoning Commission at the Applicant's expense. In addition, the Applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety. (referenced in Section 12.1.18)

The Applicant/owner/operator is also responsible for any grading maintenance, to be determined by the Everest Township Supervisors, needed during the use of Everest Township's roads for the construction, decommissioning and maintenance of the WEF.

If the WEF is needing snow removal on a township road, the Everest Township Supervisors shall be contacted and arrangements may be made with their approval for the removal of snow at the cost of the Applicant, if the snow removal is at the request of the Applicant/owner/operator and solely for WEF access.

16. Shadow Flicker, Blade Glint Report

The Applicant shall provide a shadow flicker and blade glint report for each proposed wind energy facility. The report shall:

- 1) Evaluate the worst case scenarios of wind constancy, sunshine constancy, and wind directions and speeds.
- 2) Map and describe the zones where shadow flicker and blade glint will likely be present within the project boundary and a two (2) mile radius beyond the project boundary.
- 3) Identify existing residences and the locations of their windows, locations of other structures and feed lots, wind speeds and directions, and existing vegetation and roadways.
- 4) Calculate the locations of shadow flicker caused by the WEF and the expected durations of the flicker at these locations.

- 5) Calculate the total number of hours per year of flicker at all locations.
- 6) Identify problem zones within a two (2) mile radius where shadow flicker will interfere with existing or future residences and roadways and describe proposed measures to mitigate these problems.

Based upon the findings of the report, the WEF shall be designed so that shadow flicker or blade glint will not fall on or in any roadway, occupied property, or feed lot unless approved by the Township Zoning Commission and or the property owner. This decision will weigh on the property owner's statements of approval or disapproval. If the flicker or blade glint exceeds any of the conditions agreed upon by the Applicant and the Township Zoning Commission, the source of the issue (turbine or turbines) will be shut down until the flicker or glint problem is remedied. Each such occurrence shall be a separate violation of this ordinance and the penalties shall be cumulative.

17. Decommissioning or Abandonment:

If the chief building official or designee of the WEF condemns any portion of WEF, or, if no electricity is generated for three (3) consecutive months from any wind turbine, the WEF owner and /or property owner shall have three (3) months to remedy the issues or complete the decommissioning of all or portions of the WEF according to the approved plan.

- 1) The Township Zoning Commission may grant extensions of time for repair and/or maintenance, for good cause, such as the parts being back-ordered from the manufacturer or supplier, contractors not available, or the need to repair a wind turbine damaged by high winds, tornados or ice storm.
- 2) Decommissioning shall include the complete removal of wind turbines, buildings, cabling, electrical components, accessory roads, and any other associated facilities and/or structures, including below ground (grade) items such as foundations and power lines.
- 3) Disturbed earth shall be graded to the original grade prior to the WEF or re-seeded (if in that condition prior to the WEF). The soil shall be put back into the same condition as it was prior to the WEF. The soil samples taken prior to the WEF will serve as the recipe for restoring the soil to its original condition prior to the WEF construction.

18. Surety for Removal of the WEF if Decommissioned or Abandoned:

The Applicant shall place with Everest Township an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of the facility's useful life, as detailed in the decommissioning plan. Such surety shall be a least \$250,000 for each wind turbine. The Applicant will have to request approval from the Township Zoning Commission if they wish to reduce this amount.

The surety shall be used by Everest Township to assure the faithful performance of the terms and conditions of this law and conditions of this ordinance, as well as to serve as a removal security to prevent the taxpayers from bearing the cost of removal in the event of the abandonment or cessation of use for more than 90 consecutive days. The full amount of the bond or security shall remain in full force and effect until any and all necessary site restoration is completed to restore the site to the pre-existing WEF condition documented by the studies, reports and other documentation presented in the permit application.

19. Reservation of Authority to Inspect WEF

In order to verify that the holder of a permit for a wind energy facility and any owners, all lessees, renters, and /or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, Everest Township may inspect allfacets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including all towers, buildings, and other structures constructed or located on the WEF site.

20. Permit Holder

The holder of a permit for a WEF shall secure and maintain for the duration of the permit public liability insurance as follows:

- 1) Commercial general liability covering personal injuries, death and property damage of \$1,000,000 per occurrence – \$2,000,000 aggregate which shall specifically include Rose Township Officers or agents or consultants as additional names insured.
- 2) Umbrella coverage for \$3,000,000:
 - a. All required insurance policies shall contain an endorsement obligating the insurance company to furnish Everest

Township with at least 30 days prior written notice in advance of a cancellation

- b. A copy of the insurance policy must be in Everest Township's possession before construction is initiated.
- c. A certificate of insurance that states that it is for informational purposes only and does not confer rights upon Everest Township shall not be deemed to comply with this ordinance.

21. Indemnification

Any application for a WEF within Everest Township's boundary shall contain an indemnification provision. The provision shall require the Applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt Everest Township and its officers, agents or consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said WEF.

22. Real Property Value Protection Plan:

The WEF Applicant/owner/operator or all, shall assure Everest Township that there will be no loss in real property value within two (2) miles of each wind turbine within their WEF. To legally support this claim, the Applicant/owner/operator shall consent in writing to a Real Property Value Protection Agreement as a condition of approval for the WEF. This agreement shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the WEF, that they have some protection from WEF related real property values losses.

The Applicant shall agree to guarantee the property values of all real property partially or fully within two (2) miles of the WEF. Any real property owner(s) included in that area who believe that their property may have been devalued due to the WEF, may elect to exercise the following option:

1) All appraiser costs are paid by the Applicant/owner/operator from the Escrow Account.

Applicant/owner/operator and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property (Diminution Value) caused by the proximity to the WEF. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WEF was proposed or constructed.

- a. If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged (Average Diminution Value or ADV).
- b. If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to Applicant/owner/operator and property owner a written appraisal report as to the Diminution Valuations for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
- c. In either case, the property owner may elect to receive payment from the Applicant/owner/operator of the ADV. The Applicant/owner/operator is required to make this payment within 60 days of receiving said written election from the property owner to have such payment made.

2) Other Agreement Conditions:

- a. If a property owner wants to exercise this option, they must do so within 10 years of the WEF receiving final permitted approval from Rose Township
- b. A property owner may elect to exercise this option only once.
- c. The Applicant/owner/operator and the property owner may accept mutually agreeable modifications of this agreement.
- d. This agreement applies to the property owner of record as of the date of the WEF application, and is not transferrable to subsequent owners.
- e. The property owner of record as of the date of the WEF application must reasonably maintain the property from that time until they choose to elect this option.
- f. The property owner must permit full access to the property by the appraisers as needed to perform the appraisals.
- g. The property owner must inform the appraisers of all known defects of the property as may be required by law as well as all consequential modifications or changes to the property subsequent to the date of the WEF application.

h. This agreement will be guaranteed by the Applicant/owner/operator (and all its successors and assigns) for 10 years following the WEF receiving final approval from Everest Township by providing a bond (or other surety) in an amount determined to be acceptable by Everest Township.

i. Payment by the Applicant/owner/operator not made within 60 days will accrue an interest penalty. This will be 10% annually from the date of the written election from property owner.

j. For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the Applicant/owner/operator.

k. Upon application, Applicant shall provide a performance bond (or equivalent) in an amount determined by Everest Township and held by Everest Township. This surety account will ensure execution of all aspects of this agreement including compensation of eligible property owners in the case of default by Applicant/owner/operator. Failure to maintain this surety account shall be cause for revocation or denial or renewal of the WEF Permit.

23. Transfer of Wind Energy Facility Siting Permit

In the event of a change in ownership or controlling interest in a WEF and the transfer of the permit, any successors and assigns of the original Applicant must agree to abide by and comply with the requirements and conditions of the permit for the duration of operation of the WEF permitted in Everest Township, or give notice of intent to not honor it and forfeit the permit and its rights. Within thirty (30) days of such change in ownership or controlling interest of any entity owning a WEF, the Applicant shall notify the Township Zoning Administrator. If the new entity has a different agent for service of process in the state, then the new agent's address and name need to be provided at the same time. A change of ownership that results in their inability, unwillingness, or failure to abide by the conditions of this ordinance or permit can be a basis for revocation of the permit.

Therefore, "APPENDIX B: Wind Energy Facilities Ordinance" contained herein is hereby
Adopted by the Everest Township Board of Supervisors.

APPROVED AND ADOPTED 21st DAY OF March, 2023

EVEREST TOWNSHIP

BY Garyn Weber, Chairman

BY [Signature], Supervisor

BY [Signature], Supervisor

BY Bm [Signature], Attest, Secretary/Clerk

APPENDIX C
SCHEDULE OF FEES

Application for building permit FEES vary:

Fees are dependent on the Scope of the Project and Value of Work to be done. Please contact any Everest Township Board Member for the current fee schedule.

In addition to Building Permit Fees, these fees may apply:

Application for Zoning District Amendment: \$200.00

Application for other Zoning Amendment: \$200.00

Application for Conditional Use Permit: \$200.00

Application for Conditional Use Permit for Home Occupations: \$50.00

Application for Variance: \$100.00

Fee to Appeal Administrative Decisions: \$100.00, refundable if decision is overturned

Attorney fees or other fees incurred by the Township relating to permits and ordinance amendment requests may be assigned to the applicant.

Therefore, "APPENDIX C: Schedule of Fees" contained herein is hereby Adopted by the Everest Township Board of Supervisors.

APPROVED AND ADOPTED 21st DAY OF March, 2023

EVEREST TOWNSHIP

BY , Chairman

BY , Supervisor

BY , Supervisor

BY , Attest, Secretary/Clerk