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CHAPTER 150: GENERAL PROVISIONS

Section:

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150.1 MINNESOTA ACCESSIBILITY CODE.

(A) The Minnesota Accessibility Code, established pursuant to M.S. 168.59 to 168.75, as they may be amended from time to time, and as provided for in Minn. Rules Ch. 1341, as it may be amended from time to time, is adopted as the building code for accessibility in this city.

(8) No building subject to the provisions of the Minnesota Accessibility Code shall be constructed, reconstructed or substantially altered, or undergo a change in use within the city unless the building will comply with the Minnesota Accessibility Code after the construction or alteration is completed or the change in use occurs.

(C) Any person who constructs, reconstructs or substantially alters any building subject to the Minnesota Accessibility Code, or changes the use of any such building shall, before construction or alteration begins, certify to the City Clerk that the applicable provisions of the Minnesota Accessibility Code will be complied with.

(0) No person shall be issued a building, zoning or land use permit unless they certify that any structure to be located on the property shall be constructed or reconstructed in compliance with the handicapped accessibility provisions, if they apply to the structure to be constructed, substantially altered or reconstructed .

law.

(E) A violation of this section is a misdemeanor punished as provided by Minnesota

150.2 CONTRACTOR'S LICENSE REQUIRED.

No residential building contractor, residential remodeler, or other person who is required to be licensed by the state under the provisions of M.S. 326.83 to 326.991, as they may be amended from time to time, and no person employing a residential contractor, who is required to be licensed, shall be issued a building, zoning or land use permit unless that contractor is licensed. Any person applying for a permit who is required to have a state license but who does not have a state license shall be reported to the State Commissioner of Commerce, who may begin an action against the person.

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CHAPTER 151 SUBDIVISION ORDINANCE

Section 151.01 GENERAL PROVISIONS AND DEFINITIONS .

151.11 Title. *This Ordinance shall be known as the Sub-division Ordinance of the City of Dellwood.*

151.12 Purpose. Pursuant to the authority contained in Minnesota Statutes, Section 462.358 , this Ordinance is adopted for the following purposes:

- a) to provide for the orderly, economic and safe development of land and municipal services and facilities.
- b) to promote the public health, safety morals and general welfare of the residents of the City of Dellwood.
- c) to assure equitable consideration of all subdivision by uniform procedures.

151.13 Scope. The provisions of this Ordinance apply to any division of land within the City of Dellwood into two or more parcels, whether by platting, replatting, conveyance, registered land survey, or other means.

151.14 Compliance. No land shall be subdivided as defined herein, and no permit shall be issued for the construction, repair, or alteration of any building or other improvement on such land, unless a plat thereof has been approved and recorded, and the improvements required by the City Council relative to subdivision have been constructed or guaranteed as provided herein.

151.15 Required Approvals. No plat shall be recorded or be of any validity, until it shall have been first approved by the City Council by duly adopted resolution and then recorded in the office of the County Recorder of Washington County.

151.2 Conflict. Whenever there may be a difference between minimum standards or dimensions expressed herein and those contained in any law, statute, ordinance, resolution or regulations of any governmental unit or agency having jurisdiction in Dellwood, then the highest or most restrictive standards or dimensions shall apply. It is not intended hereby to repeal, abrogate, annul in any manner impair other governmental bodies, or interfere with private restrictions placed upon property by deed, covenant or other private agreements, except that the most restrictive shall apply.

151.3 Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance.

151.04 Definitions. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the text, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

151.41 Building - Any structure built or placed upon land for the support, shelter, or enclosure of persons, animals or property of any kind.

151.42 Building Set-back - The minimum horizontal distance between a building and a lot line.

151.43 City. The City of Dellwood, Minnesota.

151.44 City Council - The Council of the City of Dellwood, Minnesota.

151.45 Comprehensive Plan - The Comprehensive Plan adopted by the City and includes all plans of the City for land use, transportation, facilities, community facilities, shoreland and wetland regulations, septic sewer regulations, building code and all ordinances enacted pursuant to or in conjunction with said Plan.

151.46 Easement A limited right to or for the use of land for a specifically stated purpose such as, but not limited to roads, utilities, and drainage facilities.

151.47 Lot - A parcel or portion of land in a plat, separated from other parcels or portions by description.

151.48 Owner - Applicant - The owner of the land proposed to be subdivided.

151.49 Planning Commission - The Planning Commission of the City of Dellwood.

151.0410 Final Plat - The final map, drawing or chart on which the subdivider's plan of subdivision is presented to the Council for approval, and which, if approved, will be submitted to the County Recorder for recording.

151.0411 Preliminary Plan - The preliminary map, drawing or survey indicating the proposed layout of the subdivision to be submitted to the Planning Commission, together with supporting data required by this ordinance.

151.0412 Public Improvement - Any drainage ditch, or conduit, street, sidewalk, bicycle or pedestrian way, parking area, park, tree, lawn, wall, fence, or other facility for which the City may ultimately assume the responsibility of maintenance and control, or which may affect an improvement for which local governmental responsibility is established. All such improvements shall be properly bonded in compliance with this Ordinance.

151.0413 Sewage Treatment System - A septic tank, seepage tile sewage disposal system, or any other approved sewage treatment device.

151.0414 Street - A way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, or however otherwise designated.

The City Council shall determine when a given street is an "arterial street", "collector street", "cul-de-sac" or "minor street".

"Arterial Street" is a fast or heavy traffic street of continuity and used primarily as a traffic artery for inter-communication among large areas.

"Collector Street" is a street which carries traffic from minor streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.

"Cul-de-sac" is a minor street with only one outlet, and having an appropriate terminal for the safe and convenient reversal of traffic movement and maintenance vehicles.

"Minor Street" is a street used primarily for access to the abutting properties. "Street Width" is the shortest distance between the lines delineating the right-of-way of a street.

151.0415 Minor Subdivision - A division of land into not more than three lots or parcels for the purpose of transfer of ownership or building development. The term includes replatting, rearrangement, resubdividing.

151.05 Prohibitions and Enforcement.

151.51 Recording of Plat. No plat of any subdivision shall be entitled to record in the County Recorders office or have any validity until it shall have been approved in the manner prescribed herein. In the event any such unapproved plat is recorded, it shall be considered invalid and the Council shall institute proceedings to have the plat stricken from the records of Washington County.

151.52 Sale of Land. No owner or agent of the owner of any land shall transfer , sell, agree to sell, or negotiate to sell any land by reference to, exhibition of, or by the use of a plat before such plan or plat has been approved and recorded in the manner prescribed herein. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of this Ordinance.

151.53 Permits.

(a) The City Clerk shall not issue a building permit for any structure on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed herein.

(b) The City Clerk shall not issue a permit for the installation of wells and septic tanks upon any lot not approved and recorded in the manner prescribed herein.

151.54 Public Improvements and Services. The City hereby defines its policy to be that the City will withhold all public improvements and services, including the maintenance and plowing of streets, from all subdivisions which have not been approved, and from all areas dedicated to the public, which have not been accepted by the Council in the manner prescribed herein.

151.55 Revision of Flat After Approval. No changes erasures, modifications or revisions shall be made in any final plat after approval has been given by the Council, unless the said revision is approved by the Council.

151.06 PRELIMINARY PLAN

151.61 Data Required For Preliminary Plan 151.0611 Scale. Scale shall be 1 inch to 100 feet.

151.0612 Identification and Description:

A. Proposed names of the Plat, which name shall not duplicate or be alike in pronunciation of the name of any plat heretofore recorded in the County.

B. Location by section, town, range or by other legal description.

C. Names and addresses of the Applicant , surveyor and designer of the plan. The Applicant shall submit a statement that he is the owner of the land being platted.

D. Graphic scale

(E. North-Point

F. Date of preparation.

151.0613 Existing Conditions in tract and in Surrounding Area to a Distance of 350 Feet:

A. Boundary line of proposed subdivision, clearly indicated in relation to a known section, quarter section or quarter-quarter section lines, comprising a legal description of the entire property being platted.

B. Total approximate acreage.

C. Streets, railroad rights-of-way and utility easements, existing utilities.

D. Boundary lines and ownership of adjoining unplatted land.

E. Buildings and structures.

F. Culverts or other underground utilities and facilities.

G. Topography, showing lakes, watercourses, marsh areas, areas subject to flooding or overflow, wetlands and all other significant features , and contour map with vertical intervals of not more than two feet, except that contour lines shall be no more than one hundred feet apart. Contour lines shall be shown by means of dashed lines on the preliminary plan.

151.0614 Subdivision Design Features:

A. Layout of proposed streets, showing widths and the name of any street heretofore used in the City or its environs shall not be used unless the proposed street is an extension of an already named street, in which event that name shall be used.

B. Location and widths of proposed pedestrian ways and utility easements.

C. Layout, numbers, dimensions and acreage of each lot.

D. Areas, other than streets, pedestrian ways and utility easements intended to be dedicated or reserved for public use, including the size of such area or areas in acres, common open space, and proposed means of maintaining common open space or park land.

(E. Street lighting and street signs.

F. Proposed restrictive covenants, if any.

G. Plans for water supply, sewage disposal, drainage and flood control, including a report by a registered Civil Engineer on the feasibility of individual on-site sewer and water systems on each lot, with soil boring analysis and percolation tests to verify conclusions.

H. A plan for soil erosion and sediment control during construction and after development has been completed.

I. A vegetation preservation and protection plan that shows those trees proposed to be removed, those to remain, the types and locations of trees and other vegetation that are to be planted.

J. Such other information as may be requested by the City Engineer, Attorney, Surveyor, Planning Commission or City Council, including grading plans and staging plans for development, if any.

151.62 Submission of Preliminary Plan - The Applicant shall submit to the City Clerk the following:

a. 12 Copies of the preliminary plan.

b. A cash fee as established by resolution of the City Council. This fee will be used for the expenses of the City in connection with approval or disapproval of said preliminary plan and final plat.

c. A list of all property owners' names and addresses located within 350 feet of the subject property.

151.63 Clerk's Duties - The Clerk shall forthwith:

a. Submit two copies of the preliminary plan to the Planning Commission, one copy each to the City Engineer and City Attorney, one copy to each of the companies providing telephone and electric service to the City; and if the subdivision requires access to a County road, one copy to the County Engineer; and if the plat borders a Federal, State or State Aid Highway, one copy to the District Engineer of the Minnesota Highway Department.

b. Place the matter on the agenda of the next regular meeting of the Planning Commission occurring at least 14 days after the date of filing of the Preliminary Plan.

151.064 Public Hearing -

The Planning Commission upon receipt of said application shall set a public hearing upon the preliminary plan. Notice of said hearing shall include a legal property description, and be published in the official newspaper at least 10 days prior to the hearing, and written notification shall be mailed at least 10 days prior to the hearing to all owners of land situated within 350 feet of the boundaries of the subject property. The Planning Commission shall conduct the hearing, and report its findings and make recommendations to the City Council.

151.65 Engineer's Report-

The City Engineer shall submit his report to the Planning Commission at least 10 days before the hearing on the preliminary plan. This report shall address itself to the engineering problems presented and to the feasibility of street location and construction and to any drainage problems that might be encountered.

151.66 Planning Commission Report-

Upon completion of the Public Hearing, the Planning Commission shall prepare and submit its report together with a copy of the Preliminary Plan to the City Council. The Planning Commission has the authority to recommend approval, disapproval, or conditions which must be met prior to approval.

151.67 Council Action. At its next regular meeting following receipt of the Planning Commission's report, the City Council shall review the report and the Preliminary Plan. The Council may hold another public hearing, although none is required, or take action to approve, disapprove, or specify conditions for approval of the Preliminary Plan. The Council's decision shall be furnished to the applicant.

151.7 FINAL PLAT

151.71 Data Required. The following data shall be shown on the final plat at the time of its submission to the City Clerk.

a) Name of subdivision.

b) Scale shall be 1 inch to 100 feet.

c) Identification system for all lots and blocks.

d) Area and dimensions of each lot and width and depth of building line as established by the zoning ordinance of the City.

e) True angles and distances tied to the nearest established street

lines or official monuments (not less than three) which shall be accurately described in the plat.

f) Section lines accurately tied to the boundary lines of the plat by distances and angles.

g) Location of municipal, or township boundaries within or adjacent to the plat.

(h) Accurate location of all monuments.

i) Complete curve data, including radius, internal angles, points and curvatures, tangent bearings, and lengths of all distances.

j) Any data required under supervision or regulation of the County Surveyor, including accurate angular and lineal dimensions

for all lines, angles and curvatures used to describe boundaries, streets, easements and areas to be reserved for utilities and common open space.

k) Any supplemental data required by the City.

l) A complete and accurate legal description of the entire area embraced within the plat.

m) Certification by a registered land surveyor that the plat represents a survey made by him and that monuments and markers shown thereon exist as located and that all dimensions and geodetic details are correct, in the form required by Minnesota Statutes Section 505.03, as amended.

151.8 Design Standards

151.81 Streets

A. General design. The design of all streets shall be considered in their relation to public safety, existing and planned streets, efficient circulation of traffic, topographical conditions, run-off of storm water, and proposed uses of the land to be served by such streets.

B. Standards and Specifications - For the construction of roads or streets, as well as grading, surfacing, soil tests, and drainage, shall be those on file in the office of the City Clerk at the time of the submission of the final plat, as may be established from time to time by resolution of the City Council. Standards and specifications on file are considered minimum standards. Sufficient soils and engineering data must be provided to substantiate using these minimum standards or other appropriate standards.

151.82 Easements

A. Utilities - All utilities shall be placed underground. Easements at least 12 feet wide centered on lot lines, shall be provided for utilities where necessary. They shall have continuity of alignment from block to block.

B. Drainage - Where a plat is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, together with such further width or construction or both, as will be adequate for storm-water runoff. The easement shall include not only the stream channel, but also adjoining areas that have been or may be subject to flooding.

151.083 Lots.

A. Location. All lots shall front upon a publicly dedicated street.

8. Side Lot Lines. Side lot lines shall be substantially at right angles or radial to the street lines.

C. Water Courses. Lots abutting upon a water course, drainage way, channel, or stream, shall have an additional depth or width, as required under the provisions of the Shoreland and Wetlands regulations of the Zoning Ordinance of the City of Dellwood.

D. Features. In the subdividing of any land, due regard shall be shown for all natural features, such as tree growth, water courses, historic spots or similar conditions, which, if preserved, will add attractiveness and stability to the proposed development.

E. Lot Remnants. All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots, rather than allowed to remain as unusable parcels. However, outlets may be used if it can be demonstrated that future subdivision of adjoining land will absorb these outlots into standard lots.

151.09 Required Improvements.

151.91 Payment by applicant to the City of all expenses of staff and/or consulting time by City Engineer, City Attorney and City Planner.

151.92 Monuments shall be placed at all block corners, angle points, points of curves in streets and at intermediate points as shown on the final plat, and as required by the City Engineer. Pipes or steel rods shall be placed at the corners of each lot and at each intersection of street centerlines. All U.S., state, county, or other official bench-marks, monuments or triangular stations in or adjacent to the property shall be preserved in precise position.

151.93 Streets. The streets shall be designed and constructed in accordance with the requirements of this Ordinance. The design shall be based on average daily traffic count of heavy commercial vehicles and passenger cars. The City Engineer will determine the design and traffic count for each street.

151.94 Drainage Facilities. Such facilities and easements shall be installed as will adequately provide for the drainage of surface water, as determined by the City Engineer.

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151.95 Street Name Signs and Lighting Fixtures. These shall be placed at all locations as may be required by the City Council. Street names and design of street signs and lighting fixtures shall be subject to approval of the Council.

151.96 Stop Signs. Stop signs or yield right-of-way signs shall be placed on all streets intersecting a thoroughfare or collector street, if the City deems advisable, under direction of the City Engineer.

151.97 Specifications. All of the required improvements shall conform to the engineering standards and specifications of this ordinance, and those on file as described in Section 302.

151.98 Inspection. All improvements on site as described under engineering standards shall be inspected during construction by the City Engineer at the expense of the subdivider. This inspection shall include aggregate samples, bituminous mix samples, concrete samples and visual inspection of projects during the installation of work.

151.10 APPROVAL PROCEDURE

151.101 Submission of Final Plat - Unless an extension of time is requested by the applicant and granted by the Planning Commission, the

Final Plat shall be submitted to the City Clerk within six months following approval of the documents shall be submitted to the Clerk.

A Six copies of the Final Plat, which shall conform to the Preliminary Plan approved by the Council, except for such revisions as may have been required or approved by the Council.

B. An up-to-date certified abstract of title or registered property report, and such other evidence of title as the City Attorney may require showing title or control of the land to be in the applicant.

151.102 Clerk's Duties. The City Clerk shall refer one copy of the plat to the City Engineer, one copy to the Secretary of the Washington County Plat Commission, and a copy each to the telephone, power and cable companies.

151.103 Engineering and Legal Reports. The reports of the City Attorney and City Engineer shall be submitted to the Council within fifteen days after filing of the plat. The City Engineer shall state whether the Plat and the proposed improvements conform to the engineering standards and specifications established in this Ordinance.

151.104 Burden on Applicant. The burden of establishing the suitability of land for subdivision shall be upon the applicant. It must be established that the land proposed to be subdivided is suitable with regard to the following conditions:

a) Adequate drainage of surface and sub-surface waters.

b) Adequate pure water supply. Each individual well shall produce at least 10 gallons per minute, have a well casing at least 14 inches in diameter and be grouted to provide a safe potable water supply.

c) Adequate soil conditions and sewage capacity to support the subdivision as to the maximum permissible density. All sewage disposal systems shall comply with the Standards of the Dellwood Sewer Ordinance, MPCA, and Minn. Dept. of Health.

d) Compliance with the policies and regulations of the Minnesota Environmental Quality Council, the Rice Creek Watershed District, the Minnesota Department of Natural Resources and the White Bear Lake Conservation District.

e) Ability to provide all public improvements reasonably necessitated by the subdivision .

f) Compliance with the purposes, objectives, and policies of the Comprehensive Plan.

151.105 Financing, Bonding and Development Contracts .

A. Prior to approval of a plat, the Council must be satisfied that all improvements required have been constructed, or that adequate guaranty has been furnished for their completion.

B. Surety Bonds. A bond executed by a surety company acceptable to the City, and based upon the estimate of the City Engineer, shall be furnished to the City by the applicant in an amount equal to one and one-half the estimated cost of construction of such improvements . The surety will be subject to the condition that the improvements will be completed within one year after approval of the Final Flat, and that in the event the required improvements are not so completed, the City may proceed with the work and hold the owner and the surety jointly and severally liable for the costs thereof.

C. Certified Check. In lieu of furnishing a surety bond, the applicant may deposit with the City Clerk a certified check payable to the City in the amount of one and one-half the estimated cost of the required improvements, on the condition that in the event the required improvements are not completed within one year after approval of the plat, the City may endorse and deposit said check in its account and apply the proceeds to the cost of completing the required improvements .

D. Development Contracts. In lieu of a surety bond or certified check as guaranty, the subdivider and the City, may prior to approval of a plat, enter into a secured development contract which shall provide for the design and construction of the required improvements by the City, upon such terms and conditions as the City and the subdivider may agree.

E. Surplus and Deficiency. In the event the funds available from the applicant surety, and/or certified check are not sufficient to complete the required improvements , the addition-al cost to the City shall be assessed against the land in the subdivision. Any balance remaining in such funds after completion of the required improvements by the City shall be refunded to the applicant, or surety, as their respective interests may appear.

151.106 Certification. Each plat shall contain a notarized certification of the owner, and any mortgagee or other person in interest, of the adoption of the plat and the dedication of streets and other public areas, and a certification showing that all taxes currently due on the land subdivided have been paid in full.

151.107 The Council shall act on the Final Plat within 60 days of the date on which it was filed with the City Clerk. No Final Flat will be approved that:

A. Does not conform to the preliminary plan as approved or amended by the Council

3. Does not meet the prescribed design standards and engineering specifications . C. Does not conform to the Zoning Ordinance.

151.108 If the final plat is approved by the Council, the applicant shall record it with the County Recorder within 60 days after the date of approval; otherwise the approval shall be considered void.

151.109 The applicant shall, immediately upon recording, furnish the City Clerk with two prints of the final plat showing evidence of the recording, and a film positive of the plat.

Section 151.11 MINOR SUBDIVISIONS.

151.111 In the case of a subdivision resulting in three (3) or less parcels, situated in a locality where conditions are well defined, the City Council may exempt the applicant from complying with some of the requirements of these regulations. In the case of a request to subdivide a lot which is a part of a recorded plat, or where the sub-division is to permit the adding of a parcel of land to an abutting lot or to create not more than three (3) new lots, and the newly created

property lines will not cause any resulting lot to be in violation of these regulations or the Zoning Ordinance, the division may be approved by the City Council, after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision. The newly created parcels shall meet all requirements of the Zoning Ordinance. Topographic data at ten

foot contour intervals, driveway access points, drainage plans, and soil tests for the installation of an on-site septic system shall be submitted for minor subdivision review. A

ertificate of Survey shall be prepared by a registered land surveyor showing the boundaries of the newly created lots. Prior to approval of a minor subdivision, the City Council reserves the right to require the dedication of streets, utility easements, or public park land or cash in lieu of land. In cases where the new lot and resulting lots created each exceed ten (10) acres and have five hundred (500) feet of frontage on a public road, subdivision approval is not required.

151.112 Any proposed minor subdivision which includes land abutting upon any existing or established trunk highway or proposed highway which has been designated by a centerline order filed in the office of the County Recorder shall first be presented to the commissioner of transportation for his written comments and recommendations. Where any minor subdivision

includes land abutting upon an existing or established county or county state aid highway, it shall first be submitted to the county engineer for his written comments and recommendations. Minor subdivision involving both a trunk highway and a highway under county jurisdiction shall be submitted to the commissioner of transportation and the county highway engineer. The commissioner of transportation and/or the county highway engineer shall submit the written comments and recommendations to the city within 30 days after the receipt by them of such a plat. Final action on such plat shall not be taken until after these required comments and recommendations have been received or until the thirty (30) day period has elapsed. A legible preliminary drawing or print of a proposed minor subdivision shall be acceptable for purposes of review by the commissioner of transportation or the county highway engineer. To such drawing

or print there shall be attached a written statement describing:

(A) the outlet for and means of disposal of surface waters from the proposed subdivided area;

(B) the land use designation or zoning category of the proposed subdivided area;

(C) the locations of ingress and egress to the proposed subdivided area; and

(D) a preliminary site plan for the proposed subdivided area, if one has been prepared.

Failure to obtain the written comments and recommendations of the commissioner of transportation or the county highway engineer shall in no manner affect the minor subdivision of said lands.

151.113 Re-subdivision. In the case of a request to divide a lot which is a part of a recorded plat where the division is to permit the adding of a parcel of land to an abutting lot or to create two lots and the newly created property line will not cause the other remaining portion of the lot to be in violation with this regulation or the Zoning Ordinance, the division may be approved by the

City after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

151.114 Land Division. No building permit shall be issued for any construction, enlargement, alteration, or repair, demolition or moving of any building or structure on

any lot or parcel resulting from such division, until such division has been approved by the City. Prior to the consideration of such division by the City they shall require that a

certified survey be submitted.

151.12 VARIANCES.

151.121 The City Council may grant a variance in any particular case where the applicant can show that by reason of the exceptional topography or other physical conditions the strict compliance to these regulations could cause an exceptional and undue hardship on the enjoyment of a substantial property right. Such relief may be granted provided there is no detriment to the public welfare and no impairment of intended purpose of this regulation. Such relief may be granted provided there is no

151.122 Application for any such variance shall be made in writing at the time when the preliminary plan is filed for consideration. Such application shall state fully all facts relied upon by the applicant, and shall be supplemented with maps, plans or other additional data which may aid the City in the analysis of the proposed project.

The Planning Commission shall make a finding of fact and recommend in writing such actions or conditions relating to the request as it may deem necessary to carry out the intent and purpose of the ordinance.

151.123 Council Action -The City Council shall serve as the Board of Adjustments and Appeal and shall not grant a variance until they have received a report and recommendation from the Planning Commission, or until 90 days has elapsed since the date of the first Planning Commission meeting at which the requested variance was considered, whichever is earlier.

151.124 Upon receiving the report and recommendation of the Planning Commission, the City Council serving as the Board of Adjustment and Appeals, shall place the matter on the agenda for the next regular meeting. The Council shall within 60 days thereafter make a written finding of fact and impose any conditions it considers necessary to protect the public health, safety and welfare. A Variance of this ordinance shall require a 4/5ths vote of the full Council. The Clerk shall promptly notify the applicant of the Council's decision in writing.

151.13 PENALTIES

151.131 Any person, firm or corporation violating any provision of this ordinance shall be guilty of a misdemeanor, punishable by a fine or by imprisonment or both. Each day during which the violation continues to exist shall constitute a separate offense.

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CHAPTER 152

COMPREHENSIVE ZONING AND SHORELAND MANAGEMENT ORDINANCE

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(CHAPTER 152

COMPREHENSIVE ZONING AND SHORELAND MANAGEMENT ORDINANCE

SECTION 152.1 GENERAL PROVISIONS

A. Title

This Ordinance shall be known as 'The Dellwood Comprehensive Zoning and Shoreland Management Ordinance. It is referred to herein as "this Ordinance."

B. Intent and Purpose

The intent of this Ordinance is to provide for an open, rural, low-density single family detailed residential dwellings and directly related complimentary uses to implement the City Comprehensive Land Use Plan which is on file at the City Office, and to protect the public health, safety and general welfare of the community and its people through the establishment of minimum regulations governing development and use. This Ordinance shall divide the City into use districts and establish regulations in regard to location, erection, construction, reconstruction, alteration , and use of structures and land. Such regulations are established to protect such use areas; to promote orderly development and redevelopment; to prevent congestion in the public right-of-way; to prevent overcrowding of land and undue concentration of structures by regulating land, buildings, yards and density of population; to provide for compatibility of land use; to provide for administration of this Ordinance; to provide for amendments; to prescribe penalties for violation of such regulations; and to define powers and duties of the City Staff, the Board of Adjustment and Appeals , the Planning Commission, and the City Council in relation to the Zoning Ordinance.

This Shoreland Ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 105, Minnesota Regulations, Parts 6120.2500-6120.3900 , and the planning and zoning enabling legislation in Minnesota Statutes, Chapter 462.

The uncontrolled use of shorelands in the City of Dellwood, Minnesota affects the public health, safety and general welfare not only by contributing to pollution of public waters, but all by impairing the local tax base. Therefore, it is in the best

interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City of Dellwood.

C. Jurisdiction.

This Ordinance shall apply throughout the entire City of Dellwood.

D. Rules

The language set forth in the text of this Ordinance shall be interpreted in accordance with the following rules of construction:

1. The singular numbers includes the plural, and the plural, the singular.
2. The present tense includes the past and future tenses, and the future the present.
3. The word "shall" is mandatory while the word "may" is permissive. 4. The masculine gender includes the feminine and the neuter.
5. All distances , unless otherwise specified, shall be measured horizontally.
6. Whenever the word or term defined hereinafter appears in the text of this Ordinance, its meaning shall be construed as set forth in such definition thereof.

E. Application and Interpretation

1. In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of public health, safety and welfare .
2. Where the conditions imposed by any provision of this Ordinance are either more or less restrictive than comparable conditions imposed by any applicable law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.
3. No structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose nor in any manner which is not in conformity with the provisions of this Ordinance.
4. Except as herein provided, no building, structure or premises shall hereafter be used or occupied and no building permit shall be granted that does not conform to the requirements of this Ordinance.
5. Compliance. The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filing of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this Ordinance and other applicable regulations .
6. Enforcement. The City of Dellwood is responsible for the administration and enforcements of this Ordinance. Any violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this Ordinance can occur regardless of whether or not a permit is required for a regulated activity pursuant to this Ordinance. Each day a violation occurs or continues constitutes a separate violation.
7. Severability. If any section, clause, prov1s1on, or portion of this Ordinance is adjudged unconstitutional or invalid by a Court of competent jurisdiction , the remainder of this Ordinance shall not be affected thereby.

F. Definitions

The following words or terms, wherever they occur in this Ordinance are defined as hereinafter stated below or as provides in the Minnesota Uniform Building Code.

1. Accessory Structure or Facility. Accessory structure or facility means any building or improvement subordinate to the principal use.
2. Accessory Dwelling Unit. A dwelling unit located in an accessory building or a main building.
3. Agricultural. An area which is used for the purpose of growing produce including crops, fruit trees, shrubs , plants and flowers, vegetables, and the like provided such produce is intended solely for the use of residents on the property or sale away from the property.
4. Alterations. As applied to a building or a structure, means a change or rearrangement in the structural parts or in the existing facilities;

or an enlargement whether by extending on a side or by increasing in height; or the moving from one location or position to another.

5. Animals, Domestic Pets. Dogs, cats, birds and similar animals, commonly kept in a residence.

6. Animals, Domestic Farm. Cattle, hogs, horses, sheep, goats, chickens and other commonly known farm animals.

(7. Basement. Usually the lowest portion of a building; either partly or entirely below grade. Earth shelter houses that meet all other requirements of the Building Code shall not be considered basements.

8. Bluff. Bluff means a topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- a. part or all of the feature is located in a shoreland area.
- b. The slope rises at least 25 feet above the ordinary high water level of the waterbody.
- c. the grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- d. the slope must drain toward the waterbody.

An area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff.

9. Bluff Impact Zone. Bluff Impact Zone means a bluff and land located within 20 feet from the top of a bluff.

10. Boathouse. Boathouse means a structure designed and used solely for the storage of boats and boating equipment.

11. Building, Detached. A building having no party wall in common with another building.

12. Building Height. Building Height means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof (chimney excluded).

13. Building Line. Building Line means the line of that face of the building nearest to the line of the lot, or to the ordinary high water mark.

The following shall not be considered encroachments into setback requirements: Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features, cornices, soffits, eaves, gutters, and the like provided they do not extend more than two feet into any required setback. Projections for chimneys may not exceed nine (9) feet in width.

14. Club, Private. A private club or a non-profit association of persons who are bona fide members paying annual dues.

15. Commercial Use. Commercial Use means the principal use of land or buildings for the sale, lease, rental or trade of products, goods and services.

16. Commissioner . Commissioner means the Commissioner of the Department of Natural Resources.

17. Conditional Use. Conditional Use means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon finding that certain conditions as detailed in the Zoning Ordinances exist, the use or development conforms to the comprehensive land use plan of the community , and the use is compatible with the existing neighborhood.

18. Deck. Deck means a horizontal, unenclosed platform with or without attached railings, seats, trellises or other features , attached or functionally related to a principal use or site and at any point extending more than three feet above ground.

19. Dwelling Site. Dwelling Site means a designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

20. Dwelling Unit. Dwelling Unit means any structure or portion of a structure, or other shelter designed as short or long terms living quarters for one or more persons.

21. Easement. A limited right to or for the use of land for a specifically stated purpose such as, but not limited to, roads, utilities and drainage facilities.

22. Essential Services. The erection, construction , alteration, or maintenance by public utilities or municipal departments or other governmental bodies, of gas, electrical, communication, transmission systems, including wires, conduits, cables and other equipment and accessories in conjunction therewith , reasonably necessary for the furnishing of utility services.

23. Extractive Use. Extractive Use means the use of land for surface or subsurface removal of sand, gravel, rock, industrial material, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, Section 93.44 and 93.51 .

24. Family. An individual, or two (2) or more persons each related by blood, marriage, adoption, or foster care arrangement living together as in a single housekeeping unit, or group of not more than four (4) persons not so related, maintaining a common householder, exclusive of servants.

25. Final Plat. A drawing or map of any approved subdivision, meeting all requirements of the Subdivision Ordinance, in such form as required by the City for purposes of recording.
26. Flood Plain and Floodway. The areas adjoining a watercourse which have been or hereafter may be covered by regional flood.
27. Forest Land Conversion. Forest Land Conversion means the clear cutting of forested lands to prepare for a new land use other than reestablished of a subsequent forest stand.
28. Garage - Private. An accessory building or accessory portion of the principal building which is intended for use to store the vehicles of the family or families' resident upon the premises, and in which no habitation, business service, or industry is carried on, and in which no sanitary sewer facilities are located.
29. Garage - Detached. A garage which does not have a wall in common with the principal dwelling.
30. Guest House; Guest Cottage. A structure used as a dwelling unit which may contain sleeping spaces and/or kitchen and bathroom facilities in addition to those located in the primary dwelling unit on a lot.
31. Grading. Changing the natural or existing topography of the land.
32. Hardship for Variance Purposes. Where the variance request seeks a "Use" variance, that is, to allow for a use of the property which is not permitted by ordinance or any other applicable law or regulation, the landowner must demonstrate that the standards set forth in Minn. Statutes Chapter 462.357 Subd. 6(2), as amended, have been met.

Where the request involves an "Area" variance (examples: minimum lot size, required lot line setbacks, building height, density, etc.) the landowner must demonstrate that the request is in harmony with the general purposes and intent of this ordinance and that strict enforcement of this ordinance will cause practical difficulties or particular hardship to the landowner. Economic considerations alone may not justify the granting of a variance.
(Ref. Rowell vs. Moorhead, 446 NW 2nd 917; Kismet Investors, vs. Benton County, 617 NW 2nd 85).

33. Height of Building. Height of Building means the vertical distance between the highest adjoining ground level at the building or ten feet above the lowest ground level, whichever is lower, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof (chimney excluded).
34. Home Occupation. Any gainful occupation or profession engaged in by the occupant of a dwelling at or from the dwelling unit.
35. Impervious Surface. Hard cover by roof tops, roads, parking areas, driveways, and/or other land alteration of a similar nature, rendering the land in such a condition that precipitation runs off rapidly with no or little infiltration.
36. Intensive Vegetation Clearing. Intensive Vegetation Clearing means the complete removal of trees or shrubs in a contiguous patch, strip, row or block.
37. Kennel. Any place where four (4) or more of any single type of domestic pets, over four (4) months of age are owned, boarded, bred or kept.
38. Lot. Lot means a parcel of land designated by plan, metes and bounds, registered land survey, auditors plat, or other accepted means.
39. Lot Area. The area of a horizontal plane within the lot lines lying above the ordinary high water mark.
40. Lot Depth. The shortest horizontal distance between the front lot line and rear lot line measured from a ninety (90) degree angle from the street right-of-way within the lot boundaries.
41. Lot-Frontage. The front of a lot shall be, for purposes of complying with this Ordinance, the boundary abutting a public right-of-way or access road having the least width.
42. Lot-Line. A property boundary line of any lot held in single or separate ownership; except that where any portion of the lot extends into the abutting street, the lot line shall be deemed to be the street right-of way. Where any portion of a lot adjoins a lake, the lot line shall be deemed to be the normal high water mark.
43. Lot of Record. The lot which is part of a subdivision, the plat of which has been recorded in the Office of the Recorder of Washington County, or a lot described by metes and bounds; the deed to which has been recorded in the Office of the Recorder of Washington County.
44. Lot - Width. The horizontal distance between the lot lines of a lot measured at the setback line.
45. Nonconformity. Nonconformity means any legal use, structure or parcel of land already in existence, recorded, or authorized before the adoption of official controls or amendments thereto that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded or authorized.
46. Ordinary High Water Level. Ordinary high water level means the boundary of public waters and wetlands and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominately aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel.
47. Obstruction. Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, bridge, conduit, pole, culvert, building, wire, fill, other structure or matter in, along, across or projecting into surface waters or wetlands.
48. Owner. Includes all persons interested in a property as fee simple owner, life estate holder, encumbrancer or otherwise.
49. Parking Space. An area, enclosed in the main building, in an accessory building, or unenclosed, sufficient in size to store one (1) standard automobile, which has adequate access to a public street, alley or access road and permitting satisfactory egress

and ingress for an automobile.

50. Plat. A map, plan or layout of a subdivision indicating the location and boundaries of individual properties.

51. Principal Use. The main use of land or buildings as distinguished from subordinate or accessory uses. A "principal use" may be either permitted or conditional.

52. Public Waters. Public Waters means any waters as defined by Minnesota Statutes, Section 103G.005. The classes of public waters in Dellwood are general development lakes. All of the river classes have been identified as being recreationally significant on a statewide basis.

53. Sensitive Resource Management. Sensitive Resource Management means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding or occurrence of flora or fauna in need of special protection.

54. Setback. Setback means the minimum horizontal distance between a structure, septic sewer system, water well, or other facility and the ordinary high water level, a property line, sewage treatment system, roadway, street, highway or other specified facility .

55. Sewage. Any water carrying domestic waste, of any residence, private club, agriculture establishment whether treated or untreated, and includes the liquid wastes produced by bathing, laundry and culinary operations, and from toilets and floor drains. Raw sewage is sewage which has not been subjected to any treatment process.

56. Sewage Disposal System. A system other than a public or community system, which receives sewage from one or more establishments. (Unless otherwise indicated, the word "system" as it appears in this Ordinance means "Individual Sewage Disposal System".)

57. Sewage Treatment System. Sewage Treatment System means a septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Chapter 7080 Minnesota Rules.

58. Sewer System. Sewer System means pipelines or conduits, pumping stations, and force main, and all other constructions, devices, appliances or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

59. Shore Impact Zone. Shore Impact Zone means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback .

60. Significant Historic Site. "Significant Historic Site" means any archaeological site, standing structure , or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota State archaeologist or the director of the Minnesota Historical

(Society. All unplatted cemeteries are automatically considered to be significant historic sites.

61. Steep Slope. Steep Slope means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of these regulations. Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

62. Story. That portion of a building included between the upper surface of a floor and upper surface of floor next above. A basement shall not be counted as a story.

63. Street. A public thoroughfare which affords the principal means of access to abutting property.

64. Street - Private. A street or roadway intended for the purpose of ingress and egress which has not been formally accepted by the City as a public street, but has been approved for use as a privately-owned street subject to conditions which may be imposed by the City.

65. Structure . Anything which is built, constructed or erected,
an edifice or building of any kind; whether temporary or permanent in character (includes decks, pools, tennis courts, recreational facilities and patios) the term structure includes private septic sewage systems and all components thereof, wells and underground tanks. Buried irrigation systems and buried fences used to restrain household pets are excluded from the definition.

66. Subdivision. The division of any parcel of land into two (2) or more parcels.

67. Toe of the Bluff. Toe of the bluff means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

68. Top of the Bluff. Top of the Bluff means the higher point of a 50- foot segment with an average slope exceeding 18 percent.

69. Use. The purpose of activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained, and shall include performance of such activity as defined by the performance standards of the Ordinance.

70. Variance. "Variance" means any modification or variation of official controls where it is determined that, by reason of exceptional circumstances , the strict enforcement of the official controls would cause unnecessary hardship. (see definition of Hardship above).

71. Water Oriented Accessory Structure. Water oriented accessory structure means a small, above ground building or other improvement, except stairways, fences, docks and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos , screen houses, fish houses, pump houses, and detached decks. No such structure shall be designed or used for habitation and shall not contain sanitary sewer facilities.

72. Wetland. Wetland means all types 3, 4 and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 Edition) not included within the definition of Public Waters , that are 2.5 acres or more.

73. Yard . The open space on a lot or parcel of land which is unobstructed by a structure of any kind, except as expressly permitted in this Ordinance.

74. Yard - Front. A yard extending across the front of the lot between the inner side yard lines and lying between the front line of the lot abutting the public right-of-way and the nearest line of the building.

75. Yard - Rear. A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the building.

76. Yard - Side. A yard between the side line of the lot and the nearest line of the building extending from the front line of the lot to the rear yard.

SECTION 152.2 ZONING DISTRICTS

A. Zoning Districts - Purpose.

The purpose of this section of the zoning ordinance is to establish the Zoning Districts and the general development of performance standards. The standards are intended and designed to assume compatibility of uses and to prevent deterioration and decay; and to enhance the health and safety and general welfare of the residents of the community.

B. Zoning District Application

1. The boundary line of the districts listed in this Ordinance are hereby established as shown on that certain map entitled Zoning District Map of Dellwood, Minnesota, which map is properly approved and filed with the City Clerk. The Zoning District Map and all notations, references and other information shown thereon shall have the same force and effect as if fully set forth herein and is hereby made a part of this Ordinance by reference and incorporated herein as fully as if set forth herein in length. The Shoreland Management District overlays the entire City.

2. Annexed Land. All lands which may hereafter become part of the City of Dellwood through annexation shall be automatically classified as "F/E", Farm /Residential Estate District until otherwise changed by the amendment procedures as prescribed in this Ordinance.

3. Land Divided by Zoning District Line. Where a lot in single ownership at the time of the adoption of this Ordinance is divided by a district boundary line as established in this Section and as shown on the Zoning Map the uses authorized thereon and the other requirements apply to the least restricted portion of such lot under this Ordinance shall be considered as extending to the entire lot.

C. Zoning District Boundaries.

1. Zoning district boundary lines as indicated in the zoning map follow lot lines, roads, railroad right-of-way lines, the center of water courses or the corporate limit lines, all as they exist upon the effective date of this Ordinance. If the district boundary lines do not follow any of the above described lines, the district boundary lines are established as indicated in the zoning map.

2. Appeals from the Planning Commission's determination and questions of doubt concerning the exact location of a zoning district boundary line shall be heard by the City Council serving as the Board of Adjustment and Appeals.

D. Establishment of Districts.

The following zoning districts are hereby established within the City of Dellwood:

SMD Shoreland Management District
F/E Farm/Residential District (5 acre minimum)
PRO Planned Residential Development District (3 acre average) R1 Residential - Single Family District (1 acre minimum)
R2 Residential - Single Family District (2 acre minimum) PC Private Club District
CD Commercial District FE/Agricultural/WO-Winery District

E. Shoreland Management District

This District is superimposed upon all other districts, and includes all land located within the City of Dellwood. Development within this District is governed by the provisions of this Ordinance.

F. Farm Estate District

This District is to provide for the retention of open space, the conduct of agricultural use and the development of estate type residential activity. The minimum lot size in this District is five (5) acres above the high water mark of any adjoining lake.

G. Planned Residential Development District

The District is to provide for and encourage flexibility in layout and site planning, a more efficient use of land and public facilities, the development of residential areas in keeping with ecological and environmental consideration , including wetlands, shorelands, ground and surface water quality and on-site sewage disposal and drainage factors. Development within the PRO District is governed by Section 152.3 (F) of this Ordinance.

H. Residential Single-Family District R-1

The minimum lot area in this district is one (1) acre.

I. Residential Single-Family District R-2

The minimum lot area in this district is two (2) acres.

J. Private Club District

This district is to provide for the use as a private club and shall not be subdivided. Private Clubs operating in the City are required to have a Conditional Use Permit.

K. Commercial District

Pine Tree Apple Orchard:

Pine Tree Apple Orchard is classified as a commercial enterprise allowed within the City as having been in operation prior to the adoption of the Zoning Ordinance.

L. FE/Agricultural/Winery District:

The approximate 14 acres lying North of Highway 96, described below, are rezoned from a Farm Estate classification to Farm Estate/Agricultural/Winery District zoning classification for purposes of the production, bottling, storage and sale of wine and related products to the public. Operation of a winery shall be subject to a Use Permit issued by the City. Uses in this District are restricted to five acre minimum residential lot sizes, agricultural uses and operation of a winery.

Description:

That part of the East *Yi* of the NW of the NW of Section 17, Township 30, Range 21, which lies North of Dellwood Road North, also known as State Trunk Highway 96.

SECTION 152.3 SUBDIVISION/PLATTING PROVISIONS

A. Land suitability.

Each lot created through subdivision, including planned residential developments authorized under the zoning ordinance, must be suitable in its natural state for the proposed use with minimal alteration. suitability analysis by the local unit of government shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potentials steep topography, inadequate water supply or sewage treatment capabilities near-shore aquatic conditions unsuitable for water-based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community. All subdivisions must comply with the requirements of the Dellwood Subdivision Ordinance.

B. Consistency with other controls.

Subdivisions must conform to all official controls of this community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose.

Each lot must meet the requirements of the Dellwood Zoning and Sewer Ordinances .

C. Information Requirements.

Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following :

(1) topographic contours at ten foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;

(2) the surface water features required in Minnesota Statutes section 505.02 , Subd. 1, to be shown on plats, obtained from United State Geological Survey quadrangle topographic maps or more accurate sources;

(3) adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;

(4) information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;

(5) location of 100-year flood plain areas and floodway districts from existing adopted maps or data; and

(6) a line or contour representing the ordinary high water level and the minimum building setback distances from the lake or stream.

D. Dedications.

When a land or easement dedication is a condition of subdivision approvals the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.

E. Platting.

All subdivisions shall be processed in accordance with the Dellwood Subdivision ordinance. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted unless the lot was approved as part of a formal subdivision or as a minor subdivision, or a variance has been granted.

F. PLANNED RESIDENTIAL DEVELOPMENT DISTRICT

1. Area Requirements and Subdivision in PRO

A. The minimum acreage required for application of and qualification for a PRO shall be twenty (20) acres of land above the high water mark of any adjoining lake.

B. With the PRO Department, the combined area of individual lots shall not be less than three (3) acres multiplied by the total number of lots in the development. Roadways and common areas shall not be included in the computation.

C. The minimum area of each individual lot in the PRO development shall be determined by the City based upon suitable information submitted by the Developer, including overall site plan, topography, soil conditions, drainage and sewage disposal plans, water table, and other relevant factors which the City may require. Within the PRO, no individual lot may be less than 2 acres in area. Any lot approved under a PRO shall not be deemed a non-conforming lot under any section in this Ordinance.

2. Special Provisions.

A. Utilities.

In any PRO, all utilities, including telephone , electricity, gas and telecable shall be installed underground.

B. Streets.

All City streets are to be built to the specifications and standards on file in the City office.

3. Application Review and Processing.

A. The owner of any tract of land in the F/E-PRD zoning district may apply to and the application shall be processed by the City for development if it meets all of the requirements. The application shall be accompanied by the number of copies specified by the Building and Zoning Coordinator of the following:

1) All data required on a Preliminary Plat in compliance with the City Subdivision Ordinances.

2) Schematic drawings and/or maps of the proposed development area, containing general topographical features at two (2) foot contour intervals and data, location and extent of wetlands (lakes, streams, swamps, etc) existing drainage patterns and ponding areas. The drawings and/or maps shall clearly show and describe in detail what manner and to what extent the existing topographical features, drainage patterns and ponding areas will be altered or otherwise affected by the proposed development.

3) The nature of applicant's financial interest in the land to be developed and the proposed methods and long term financing of the project.

4) Copies of resolutions or other evidence of approval or contingent approval of the proposed development by the Rice Creek Watershed District, the White Bear Conservation District and the Department of Natural Resources of the State of Minnesota, and other applicable review bodies.

5) An Abstractor's Certificate showing the names and addresses of all owners of property within 350 feet of the proposed Planned Residential Development.

6) The proposed geographical and chronological staging plans for the proposed development.

7) A feasibility study by a registered engineer showing adequate plans for the disposal of sanitary waste including soil tests and prescribed by the zoning and / or sewer Ordinance of the City.

B. Upon receipt of preliminary plan plat approval, subject to any modifications required by the City Council, the applicant may file a request for final plan approval at any time within six (6) months thereafter . The application for final plan approval shall contain the Final Plat and the Site Plan and shall show all modifications incorporated into the proposed development subsequent to the Preliminary Plan and Application.

C. The Final Plat shall show individual lot soil and percolation tests that prove the lot will support an on-site sewage disposal system and a structure .

D. No Final Plat shall be reviewed or considered unless it is based on an approved Preliminary Plan.

E. The Final Pat and recommendations of the Planning Commission shall be filed with the Clerk within sixty (60) days after the filing of the application and shall be considered by the City Council at the next regular meeting of the Council.

F. Upon approval by the City Council, the City Clerk shall issue a permit for the PRO area, setting forth in detail the terms and conditions upon which development will be allowed. A copy of the permit shall be attached to the Final Plat recorded and filed as a deed restriction against the

property with the Washington County Recorder.

G. No building permits shall be issued until PRO permit is filed as a deed restriction and the Final Plan Plat recorded and unless all proposed construction is in total compliance with the final plan as approved by the City Council.

SECTION 152.4 SHORELAND CLASSIFICATION SYSTEM

A. Shoreland Classification System.

The public waters of the City of Dellwood have been classified below consistent with the criteria found in Minnesota Regulations, Part 6120.3300, and the Protected Waters Inventory Map for Washington County, Minnesota.

The Shoreland area for the waterbodies includes the entire City of Dellwood. LAKES:

- A. Protected Waters Natural Environment Lakes Pine Tree Lake
Echo Lake

Inventory I.D.# 82-112P
82-129W

- B. Protected Waters Recreational Development Lakes Long Lake

Inventory I.D.# 82-130P

- C. Protected Waters General Development Lakes White Bear Lake

Inventory I.D.# 82-176 P

WATER BASINS:

Unnamed (in NW of Section 17) Unnamed (in SW of Section 6) Unnamed (in SW of Section 17)

82-320W
82-326W
82-338W

8. Land Use District Descriptions :

The only land use allowed in the City of Dellwood is single family residential, except as may be permitted by variance or special use permit. Land uses for lakes and other water basins are limited to single family residential dwellings, golf courses, agricultural cropland and pasture, parks, open space and wildlife preserve.

C. Lot and Area Width Standards.

The lot area and lot width standards for residential lots created after the date of enactment of this Ordinance for the lake and river/stream classifications are the following:

(Unsewered Lakes.

a. Natural Environment:

b. Recreational Development:

AREA
2 acres

AREA
2 acres

WIDTH
200 feet

WIDTH
150 feet

c. General Development:

AREA
1 acre

AREA
2 acres

WIDTH

R-1 Zoning District

R-2 Zoning District

150 feet

WIDTH
150 feet

d. Water Basins.

R-1 Zoning District

R-2 Zoning District

AREA
1 acre

AREA
2 acres

WIDTH
150 feet

WIDTH
150 feet

Residential Subdivisions with dwelling unit densities exceeding those in the tables can only be allowed if designed and approved as Planned Residential Development under this Ordinance. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line.

**SECTION 152.5
PLACEMENT, DESIGN AND HEIGHT OF STRUCTURES**

A. Placement of Structures on Lots.

When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of the proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows :

- 1. Structure and On-site Sewage System Setbacks (in feet) from Ordinary High Water Level.

SETBACKS

Structures Sewage Treatment

**System
From Top of
Bluff**

**Pine Tree Lake Long Lake
White Bear Lake Water Basins**

**200 feet
150 feet
75 feet
75 feet
150 feet
100 feet
75 feet
75 feet**

**30 feet
30 feet
30 feet
30 feet**

One water-oriented accessory structure designed in accordance with Section 152 F(56) of this ordinance may be set back a minimum distance of ten (10) feet from the ordinary high water level.

- 2. Additional Structure Setbacks . The following additional structure setbacks apply, regardless of the classification of the waterbody :

Setback From: Setback (in feet)

**Right-of-way line of federal, state 40
or county highway or public Street.**

- 3. Shore Impact Zones. Structures and accessory facilities, except stairways and landings, must not be placed within shore impact zones.

B. Building Requirements

The following shall apply to all Districts:

1. All buildings shall be placed so that they will not obstruct future streets which may be constructed by the City in conformity with existing streets and according to the system and standards employed by the City.

2. Lawfully existing structures on the effective date of this Ordinance which do not conform to the provisions of the foregoing may be continued but shall not thereafter be changed so as to increase or enlarge the non conformity. If at any time the non-conforming structure or use is destroyed, removed, abandoned, or declared to be unsafe or to constitute a nuisance by the City, any repair or replacement thereof shall conform to the provisions of this Ordinance.

3. Usable Floor Space (Residential)

Exclusive of porches, breezeways, garages and basements, usable floor space shall not be less than:

a. One (1) story building - one thousand five hundred (1500) square feet.

b. One and one-half (1-1.2) story building - one thousand two hundred (1200) square feet on the ground level and a total minimum floor space of two thousand (2000) square feet.

c. Two (2) story building - one thousand (1000) square feet on the ground level and a total minimum floor space of two thousand (2000) square feet.

4. Lot Width Requirements :

See Section 152.4C, above.

District R-1 and R-2, minimum of 120 feet. District F/E and PRD, minimum of 150 feet.

5. Front Yard Depth

In all districts, each dwelling hereafter erected shall have a minimum front yard depth of forty feet and/or be equal in depth to be compatible with the depth of the front yard of the lots immediately adjacent thereto on either side, as established by the structures located thereon.

6. Rear Yard Depth

In all districts, the minimum requirement for rear yard depth is forty (40) feet.

7. Side Yard Requirements.

In all districts, the minimum side yard requirements is thirty (30) feet.

8. Corner Lot Side Yard Requirement.

Where the rear yard boundary line is a corner lot is part of the side yard boundary line of an adjoining residential lot, a distance equal to and requirements imposed upon a required front yard shall also be applicable to the corner lot adjacent to the side street.

9. Lot Coverage.

Maximum lot coverage by impervious surfaces is 30% in all Districts except F/E for which it is 10% of lot area.

C. Design Criteria for Structures.

1. High Water Elevations. Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood proofed must be determined as follows :

(a) for lakes, by placing the lowest floor at a level at least three feet above the highest known water level, or three feet above the ordinary high water level, whichever is higher;

(b) water-oriented accessory structures may have the lowest floor placed lower than the elevation determined in this item if the structure is constructed of flood-resistant materials to the elevation, electrical and mechanical equipment is placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind-driven waves and debris.

D. Water-oriented Accessory Structures.

Each lot may have one water oriented accessory structure not meeting the normal structure setback of this ordinance if this water oriented accessory structure complies with the following provisions:

(1) the structure or facility must not exceed ten feet in height, exclusive of safety rails, and cannot occupy an area greater than 250 square feet. Detached decks must not exceed 8 feet above grade at any point;

(2) the setback of the structure or facility from the ordinary high water level must be at least ten feet;

(3) the structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;

(4) the roof may be used as a deck with safety rails, but must not be enclosed or used as a storage area;

(5) the structure or facility must not be designed or used for human

(habitation and must not contain water supply or sewage treatment facilities; and

(6) as an alternative for general development and recreational development waterbodies, water-oriented accessory structures used solely

for water-craft storage, and including storage of related boating and water oriented sporting equipments may occupy an area up to 400 square feet provided the maximum width of the structure is 20 feet as measured parallel to the configuration of the shoreline.

E. Stairways, Lifts and landings.

1. Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

- (a) Stairways and lifts must not exceed four feet in width on residential lots.
- (b) landings for stairways and lifts on residential lots must not exceed 32 square feet in area.
- (c) canopies or roofs are not allowed on stairways, lifts or landings;
- (d) stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;
- (e) stairways, lifts and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and
- (f) facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas, provided that the dimensional performance standards of subitems (1) to (5) are complied with in addition to the requirements of Minnesota Regulations Chapter 1340.

F. Placement and Design of Roads, Driveways, and Parking Areas.

- 1. Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.
- 2. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within shore impact or bluff impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts
- 3. Access Driveways: Each residential lot site shall have an access to a public roadway, either directly or by way of a recorded easement agreement. An exception can be made for a private street which has been approved as such by the City Council. Access Driveways to City streets shall require a Permit from the City. Permit fees shall be established by Resolution of the City Council.
- 4. Access Driveways to State Highways shall require a Permit from the State of Minnesota. Access Driveways to County roads or Highways shall require a Permit from Washington County.
- 5. Access Driveways to the City streets shall not be located closer than 10 feet from any side or rear lot line except for driveways which are shared by adjoining properties. The location of the access driveway shall be controlled and limited, if reasonably necessary, in the interests of public safety and efficient traffic flow.
- 6. More than one driveway access to a City street may be permitted by a Conditional Use Permit issued by the City.
- 7. Every driveway access to a public roadway shall be designed, constructed, and maintained to a width and base material depth to support access by emergency police, fire and rescue vehicles. All developed lots or parcels shall have direct adequate physical access to an existing public roadway, or by way of a private easement access drive over adjacent land, which easement complies with the requirements of the Ordinance.
- 8. The location, type and size of a culvert under the driveway shall be determined by the City Building Inspector.

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- 9. Private watercraft access ramps, approach roads, and access (related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subpart are met. The grading and filling provisions of this ordinance must be met.

G. Significant Historic Sites.

No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.

H. Steep Slopes.

The City must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

I. Shoreland Alterations.

Alterations of vegetation and topography will be regulated to prevent erosions into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.

J. Vegetation Alterations.

1. Vegetation alternation necessary for the construction of roads and parking areas regulated by this Ordinance are exempt from the vegetation alteration standards that follow.

2. Removal or alteration of vegetation except for agricultural uses is allowed subject to the following standards:

a) Intensive vegetation clearing within the shore impact zones and on steep slopes is not allowed.

b) In shore impact zones and on steep slopes limited clearing of trees and shrubs and cutting, pruning and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water oriented accessory structures or facilities, provided that:

1) the screening of structures, vehicles and other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced ;

2) the above provisions are not applicable to the removal of trees, limbs or branches that are dead, diseased or pose safety hazards.

SECTION 152.6

(PERMITTED USES IN ZONING DISTRICTS

A. F/E District

1. Agriculture, including farm dwellings, domestic farm animals and agricultural related buildings and structures subject to Minnesota Pollution Control Standards but not including commercial feed lots or other commercial operations.

2. One Family detached dwellings, together with attached or detached private garage.

3. Essential services.

B. PRO, R1 and R2 Districts.

1. Single Family detached dwellings together with attached or detached private garage.

2. Essential services.

C. PC District - PRIVATE CLUB

1. Private non-profit clubs that restrict the use to members and their guests and the service and food and beverage in compliance with applicable Federal, State and Municipal Ordinances. Conditional Use Permit is required.

2. Golf courses, tennis courts, swimming pools, and sailing related facilities for the members and their guests.

3. Buildings and equipment necessary for the maintenance of the recreational facilities.

4. Parking areas that are in compliance with this Ordinance.

5. Signing that does not adversely impact adjoining property.

D. GARAGES.

Garages are allowed in all Districts subject to the following:

1) Attached garage means a garage design which shares one or more common walls with the principal dwelling.

2) The maximum allowable total garage space is limited to 1200 square feet as measured by all interior wall space.

3) The maximum height of an attached garage shall not exceed the height of the principal dwelling, and shall otherwise conform to the current requirements of the Zoning Ordinance and Shoreland Ordinance.

4) The maximum height of a detached garage shall not exceed twenty five (25) feet measured from the highest adjoining ground level at the building line, or then (10) feet above the lowest adjoining ground level at the building line, whichever is lower, to the highest point of the roof line. Minor architectural features and projections such as belfries, cupolas, etc. shall be excluded from the measurement.

5) Detached garages shall not be designed, built or used for purposes of living quarters, temporary or permanent.

6) The square footage of "tuck-under" garages, that is, garage space which is located beneath an attached garage will not be included in the computation of maximum total allowable garage space.

E. Permitted Accessory Uses In All Districts.

1. Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed. (refer to the City Code).
2. Living quarters of persons employed on the premises.
3. Accessory Buildings and uses are permitted provided that no more than one accessory building may be constructed or placed upon any land in the R1 and R2 Districts for purposes of household storage and/or workshop. No plumbing facilities are allowed in accessory buildings. Additional or larger accessory buildings may be allowed only under a Conditional Use Permit. An accessory building may not exceed 150 square feet in area nor 10 feet in height from grade level.

Accessory Dwelling Units, as defined in the Zoning Ordinance are allowed only in the F/E District under a Conditional Use Permit.

4. Non-commercial greenhouses and conservatories.
5. Swimming pools, tennis courts and other recreational facilities which are operated for the enjoyment and convenience of the residents of the principal use and their guests. Pools and tennis courts are structures and must meet structural setbacks.
6. Signs. Signs are allowed in all Districts subject to the provisions of the City Code, as amended.

F. Conditional Uses In All Districts

(Requires a Conditional Use Permit based upon procedures set forth and regulated by this Ordinance).

1. Home occupations providing that:
 - a. The occupation is conducted by an occupant of the dwelling and no other than persons residing on the premises shall be employed.
 - b. The activity is conducted within the principal building only and is incidental and secondary to the residential use of the premises.
 - c. No more than one room is dedicated to the occupation.
 - d. No mechanical equipment is employed which is not customarily found in a dwelling.
 - e. There are no retail sales, manufacturing or repair operation involved.
 - f. There is no stock in trade kept or sold.
 - g. The activity does not require either internal or external alteration of the dwelling.
 - h. There is no exterior storage, display or signing.
 - i. No more than one (1) car for off-street parking is generated at any one point in time.
 - j. The provisions of this Ordinance are considered and satisfactorily met.
2. Governmental and public utility buildings and structures necessary for the health, safety and welfare of the community, provided that:
 - a. Conformity with the surrounding neighborhood is maintained.
 - b. Equipment is completely enclosed within a permanent structure with no outside storage.
 - c. Adequate screening and landscaping is provided to buffer adjoining residential activity.
 - d. The provisions of this Ordinance are considered and satisfactorily met.
3. Accessory dwelling units and pool houses provided that:
 - a. Occupancy of a accessory dwelling unit is limited to employees of a family, related to residents of the principal building. Accessory Dwelling Units are allowed in F/E District only, and then only on the condition that the use and occupancy thereof is restricted to (1) the immediate family or person actually engaged in the

course of employment on the property, or (2) occasional bona fide temporary guests of the principal residents of the property. Bona-fide guest shall mean persons who have principal residence elsewhere .

b. Detached pool houses and structures erected in connection with a swimming pool or spa are allowed as a Conditional Use subject to the provisions of 153 and 154 of the City Code.

4. Stables and/or kennels, provided that:

a. Animals are the property of the property resident and intended for the private use of the residents, his family or guests.

b. Conformance with Minnesota Pollution Control Agency Standards is achieved and maintained.

c. The provisions of this Ordinance are considered and satisfactorily met.

5. Fences are allowed in all Districts subject to the provisions of the City Code, Chapter 93, and Section 152.9 (B) of this Ordinance.

G. Excavation, Grading and Filling Operations.

1. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standard in this Section must be incorporated into the issuance of permits for construction of structures , sewage treatment systems, and driveways .

2. A grading and filling permit will be required for:

(a) the movement of more than ten (10) cubic yards of material on steep slopes or within shore impact zones; and

(b) the movement of more than 50 cubic yards of material outside of steep slopes and shore impact zones

3. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:

(a) Grading or filling in any wetland must be evaluated to determine how extensively the proposed activity would effect the following functional qualities of the wetland*:

(1) sediment and pollutant trapping and retention;

(2) storage of surface runoff to prevent or reduce flood damage;

(3) fish and wildlife habitat;

(4) recreational use;

(5) shoreline or bank stabilization ; and

(6) noteworthiness, including special qualities such as historic significance , critical habitat for endangered plants and animals, or others.

*This evaluation must also include a detennination of whether the wetland alteration bei ng proposed requires permit s, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Departm ent of Natural Resources, or the United States Anny Corps of Engineers. The applicant will be so advised.

b. Alterations must be designed and conducted in a manner that

(ensures only the smallest amount of bare ground is exposed for the shortest period of time possible;

c. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation cover must be established as soon as possible;

d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;

e. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service;

f. Fill or excavated material must not be placed in a manner that creates an unstable slope;

g. Plans to place fill or excavated material on steep slopes must be reviewed by qualified

professionals for continued slope stability and must not create finished slopes of 30% or greater;

- h. Fill or excavated material must not be placed in shore impact zones;
- i. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minnesota Statutes, Section 105.42;
- j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
- k. Placement of natural rock riprap including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet.
 - l. Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the Minnesota Department of Natural Resources has approved the

(proposed connection to public waters.

4. Excavation, Grading and Filling of natural materials done in conjunction with construction or replacement of a building structure or septic system, for which a permit has been approved, is allowed without a Conditional Use Permit, under the following conditions:

a. Excavation material is taken from one area lying within 75 feet of the building structure or system for which a permit has been issued.

b. A finished grade plan has been submitted and approved which in the opinion of the City Building Inspector will not adversely affect the adjacent land or existing drainage patterns.

5. Excavation, grading or filling which takes place beyond the 75 foot area may be done by issuance of a Grading and Filling Permit by the City. Application for Permit may be made by the owner of the property or his authorized agent, designated in writing.

Application shall be accompanied by a non-refundable fee as established by the City together with a finished grad plan which will not adversely affect adjoining properties or the existing drainage patterns.

The Building Inspector may recommend approval of the grading/filling permit upon such conditions as may be appropriate to regulate the manner and times in which operations may take place, erosion control and access of equipment from public roadways.

6. Excavation, grading and filling operations for the purpose of land reclamation requires a Condition Use Permit.

7. The depositing of fill material, brought in from an outside source, for the purpose of elevating the grade to accommodate construction of a building, structure, or system shall be deemed to be land reclamation.

8. Application for a Conditional Use Permit shall be governed by this Ordinance. The Application shall be submitted by the owner of the property or his authorized agent designed in writing, accompanied by the fee established by the City and a finished grade plan. Conditions may be imposed governing the use of public roads for hauling operations , the days and hours during which hauling and grading operations may take place, load restrictions, and a road damage security deposit as established by the City.

H. Antennas and Towers

Antennas and Towers are allowed in all Districts subject to the provisions of Chapter 155 of the City Code.

SECTION 152.7 STORMWATER MANAGEMENT IN ALL DISTRICTS

The following general and specific standards shall apply:

A. General Standards:

1. When possible, existing natural drainageways , wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.

2. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potentials and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

3. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways , and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials and facilities.

B. Specific Standards :

1. Impervious surface coverage of lots must not exceed 30% of the lot area.

2. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts

3. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge .

C. Agriculture Use Standards.

1. General cultivation farming , grazing, nurseries, horticulture, truck farming, sod farming , and wild crop harvesting are permitted uses if steep slopes and shore bluff impact zones are maintained in permanent vegetation or operated under approved conservation plan (Resource Management Systems) consistent with the field office technical guides of

(the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high water level.

2. Animal Feed Lots are not permitted and none exist in the City.

D. Forest Management Standards.

Harvesting of timber is not permitted in the City.

Forest Land Conversion is not permitted within the City without a Variance.

E. Extractive Uses.

Extractive Use operations are not permitted within the City and none exist in the City.

SECTION 152.8 SANITARY PROVISIONS.

A. Water Supply. Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health, Minnesota Pollution Control Agency and the requirements of Dellwood Ordinances.

Private wells must be located, constructed, maintained, and sealed in accordance with or in a more thorough manner than the Water Well Construction Code of the Minnesota Department of Health.

B. Sewage Treatment. Any premises used for human occupancy must be provided with an adequate method of sewage treatment.

1. Publicly-owned sewer systems must be used where available.

2. All private sewage treatment systems must meet or exceed the Minnesota Pollution Control Agency's standard for individual sewage treatment systems contained in Ordinance Number 51 of the Dellwood Sewer Ordinance.

3. On-Site sewage treatment systems must be set back from the ordinary high water level in accordance with the table in Section 152.804 of this Ordinance.

C. All proposed sites for individual sewage treatment systems shall be evaluated . It shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations.

(1) Evaluation Criteria:

- (a) depth to the highest known or calculated ground water table or bedrock;
- (b) Soil conditions, properties, and permeability;
- (c) Slope;
- (d) The existence of lowlands, local surface depressions and rock outcrops.

D. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with this Ordinance, and the Dellwood Sewer Ordinance.

SECTION 152.9

(PARKING AND FENCING REQUIREMENTS

A. Off Street Parking Requirements

1. Purpose.

The purpose of off street parking spaces in these zoning regulations is to alleviate or prevent congestion of the public right-of-way by establishing minimum requirements.

2. Off Street Parking Regulations.

The regulations and requirements set forth herein shall apply in all zoning districts of the City.

3. Site Plan.

All applications for a building permit must be accompanied by a site plan drawn to scale showing the size, location, number, surface material and drainage route of all off street parking areas and drives. This application shall be submitted to the Zoning Coordinator for review and approval.

4. Parking Spaces Required

a. Residential - four (4) spaces per unit.

b. Private clubs serving food and/or drinks, golf courses - ten

(10) parking spaces per hole or parking spaces shall be equal in number to 50% of the total seating capacity of the Club.

5. Off street parking facilities shall be utilized solely for the parking of licensed and operable passenger automobiles. Under no circumstances shall off-street parking facilities be used for the storage of commercial vehicles or equipment. All types of recreational vehicles parked on property more than thirty (30) days per calendar year must be concealed from all roads and adjacent residences by screening .

6. Curb Cuts

Curb cuts are allowed only by written permit from the City. Curb cut opening shall be a minimum of eight (8) feet in width and shall be located no closer than ten (10) feet from the side yard property line or as directed by the Zoning Coordinator or the Highway Department.

7. Surfacing

All areas intended to be utilized for parking space and driveways shall be surfaced with dustless all-weather material capable of carrying a wheel load of 4,000 pounds.

(8. Repair and Service

No motor repair or service of any kind shall be permitted in conjunction with parking or driveway facilities.

9. Off Street Loading Spaces

Off street loading spaces must be located on the lot to be served and shall be screen by a wall or fence no less than eight (8) feet in height.

10. Lighting

Any lighting used to illuminate off street parking or loading area shall be directed away from adjoining residential and public streets.

11. Glare

All lighting shall be arranged as to deflect light away of any adjoining residential use or from the public street.

12. Smoke, Dust and Odors

Smoke, dust and odors will be in compliance with and regulated by the State of Minnesota Pollution Control Standards.

13. Exterior Storage. Exterior Storage of Vehicles, recreational

equipment and other personal property is governed by Chapter 95 of the City Code.

14. Parking is also regulated by Chapter 71 of the City Code.

B. FENCE REQUIREMENTS

1. Fences. Fences are allowed in all Districts subject to the provisions of the City Code Chapter 93. No fencing other than a split rail or similar type fence which does not obstruct view shall be permitted within the required set back from the ordinary high water mark.

2. Corner Fencing and Screening

No fencing other than a split rail or similar fence which does not obstruct view and maintains 75% opening or screening (plant material) not to exceed 12 inches in height shall be permitted within 25 feet of any corner formed by the intersection of street property lines or the right-of-way of a railway intersecting a street. The twenty five (25) feet referred to above shall be in the form of a triangle with two (2) sides formed by the property lines and the third side formed by a straight line connecting the 2 twenty five foot points on both sides of the corner.

3. Required Fencing, Screening and Landscaping

(The fencing and screening required by this Ordinance shall be consistent with the definitions.

a. A minimum five (5) foot fence is required around all swimming pools (See Ordinance Number 14)

b. Adequate screening is required for all public utility buildings and governmental buildings to provide a buffer to adjoining residential activity.

c. Refuse containers for non-residential use shall be covered and shall be screened by either a screening fence or green belt planting strip.

d. All areas where grading has occurred shall be landscaped within a period of one

year after such grading. Landscaping shall consist at a minimum of a finished grade and a soil retention cover generally used in landscaping .

SECTION 152.10

(NON-CONFORMING BUILDINGS, LOTS AND USES

A. Purpose.

It is the purpose of this subsection to provide for the regulation and orderly elimination of non-conforming lots, buildings, structures and uses, and to specify those requirements, circumstances and conditions under which non-conforming lots, buildings, structures and uses will be operated and maintained. The Zoning Ordinance establishes separate districts, each of which is an appropriate area for the location of uses which are permitted in that district. It is necessary and consistent with the establishment of these districts that existing non-conforming lots, buildings, structures and uses not be permitted to continue without reasonable restrictions and to provide for gradual elimination. The city may, by ordinance, variance or conditional use permit allow an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare or safety.

B. Non Conformities.

Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through non structural repair, and normal maintenance.

No non-conformity shall be enlarged, increased, expanded, extended or moved unless the resulting use is one permitted by the current Ordinance in effect at the time.

1) Structural alterations required by government resolutions shall be allowed only when any nonconforming use is destroyed accidentally to the extent of greater than 50% of its estimated market value, as indicated in the records of the county assessor at the time of damage. The City may impose reasonable conditions upon a zoning or building permit in order to mitigate any impact on adjacent property or water body. When a nonconforming structure with less than 50% of the required setback from the ordinary high water mark is destroyed to an extent greater than 50% of its estimated market value, as indicated in the records of the Washington County Assessor at the time of the damage, the structure setback may be increased in order to mitigate impact upon the adjacent property or water body.

3) Notwithstanding paragraph (a) the City shall regulate the repair, replacement, maintenance, improvement or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway .

4) Paragraphs (C) to (J) apply to lots of record in the office of the county recorder on the date of adoption of local controls that do not meet the requirements of the Ordinance. The City shall regulate the use of nonconforming lots of record and the repair, maintenance, improvement or expansions of nonconforming uses and structures.

C. Construction on Non-Conforming Lots.

1. A nonconforming single lot of record may be allowed as a building site without variances from lot size requirements, provided that:

- a) All structure and septic system setback distance requirements can be met;
- b) A Type I sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed, and
- c) The impervious surface coverage does not exceed 25% of the lot.

D. Contiguous Substandard Lots.

In a group of two or more contiguous lots or parcels of land of record under common ownership or controls, an individual lot or parcel cannot be considered as a separate parcel of land for the purpose of sale or development, unless it meets the following requirements:

- 1) the lot must meet all of the dimensional standards for lot width, area and setbacks of the Zoning and Shoreland Management Ordinance.
- 2) the lot must be suitable for the installation of a Type I sewerage treatment system consistent with Minnesota Rules chapter 7080 and local government controls.
- 3) impervious surface coverage must not exceed 25% of each lot; and
- 4) development of the lot must be consistent with the City's Comprehensive Plan.

E. Contiguous nonconforming lots of record under a common ownership may be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of the Dellwood Septic System Ordinance and Minnesota Rules, chapter 7080 and Minnesota Statute 115,55 as amended.

F. In evaluating all variances, zoning and building permit applications, or conditional use requests, the city shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation designed actions.

G. A portion of a nonconforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot dimensions and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

H. All uses unless otherwise designated by official zoning controls are single family residential dwelling.

I. The City Sewer Inspector must inspect the lot site plans, and sewage treatment system design plans, and shall provide a written report to the City stating whether the proposed use will not have an adverse effect on the public health, safety or welfare.

J. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water mark level if all of the following criteria are met:

- 1) The structure existed on the date the structure setbacks were established.
- 2) A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure.
- 3) The deck encroachment toward the ordinary high water level does not exceed 15% of the existing setback of the structure from the ordinary high water level or does not encroach closer than 50 feet, whichever is more restrictive; and
- 4) The deck is constructed primarily of wood, and is not roofed or screened.

(K. Dwelling Unit Restrictions

1. No basement, garage, tent or accessory building not so designated shall at any time be used as an independent residence or dwelling unit temporarily or permanently.
2. Basements may be used as living quarters and rooms as a portion of residential dwellings.
3. Tents, playhouses or similar structures may be used for play or recreational purposes when used by the residents of the dwelling located on the property.

L. Unbuildable Lots.

A lot or parcel of land which because of the nature of the soils and/or topography of the land render it unsuitable for an on-site septic system, shall not be deemed a buildable lot. Use of any such lot or parcel for residential purposes may be made only upon issuance of a variance by the City under the procedures set forth in this Ordinance.

M. Nonconforming Sewage Treatment Systems .

1. A sewage treatment system not meeting the requirements of this ordinance must be upgraded or replaced any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.

2. the governing body of the City of Dellwood has by formal resolution notified the commissioner of its program to identify nonconforming sewage treatment systems. The City of Dellwood will require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time which will not exceed 2 years. Sewage systems installed according to all applicable local shoreland management standards in effect at the time of installation may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minnesota Pollution Control Agency's Chapter 7080 for design of on site sewage treatment systems, shall be considered nonconforming.

(SECTION 152.11

ADMINISTRATION AND ENFORCEMENT

A. Zoning and Building Coordinator

The Zoning and Building Coordinator or his designated agent shall enforce this Ordinance and shall:

Issue Building Permits and make and keep records thereof.

Conduct inspections of buildings and use of land to determine compliance with the terms of this Ordinance.

Keep permanent records of this Ordinance, including maps, amendments, conditional uses, variances and applications.

B. Conditional Use Permits

Conditional uses may be allowed at the discretion of the City, provided that such uses will not adversely affect the general welfare, public health and safety. The City shall consider possible adverse effects of the proposed conditional use and what additional requirements may be necessary to reduce them.

C. Evaluation Criteria.

A thorough evaluation of the waterbody and the topographic , vegetation and soils condition on the site must be made to secure:

(1) the prevention of soil erosion or other possible pollution of public water, both during and after construction;

(2) the visibility of structures and other facilities as viewed from public waters is limited;

(3) the site is adequate for water supply and on-site sewage treatment; and

(4) the types, uses and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

(D. Conditions attached to conditional use permits.

The City Council, upon consideration of the criteria list above and the purposes of this ordinance shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

(1) increased setbacks from the ordinary high water level;

(2) limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and

(3) special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

E. Variances and Appeals.

1. The City Council shall act as a Board of Adjustment and Appeals . The Board shall have the powers set forth in Minnesota Statutes, Section 462.357 , subdivision 6 and Section 462 .359, subdivision 4, and as the same may be amended or revised.

Hearings of the Board of Adjustments and Appeals shall be held at the same time as the regular or duly held special meetings of the City Council, upon not less than ten (10) days notice to all interested parties. The Board shall keep a record of its proceedings which shall include the minutes of its meetings, its findings and the action taken on each matter heard by it. Decisions of the Board of Adjustments and Appeals shall be final , and no further appeal may be taken, subject to judicial review.

2. Variances may be granted from the literal provisions of this Ordinance in cases where strict enforcement would cause undue hardship when it has been demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance and the other ordinances of the City.

3. "Undue Hardship" as applicable to this Section shall have the meaning set forth in the Definitions of this Ordinance. The Variance, if granted, shall not alter the essential character of the locality. Economic considerations alone may not constitute an undue hardship if reasonable use of the property exists under the terms of this Ordinance. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes Section 116J.06, subdivision 2, when in harmony with this Ordinance. The Board may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.

4. Where the variance is sought from the strict application of area, width or yard requirements, the Commission shall further determine that all of the requirements of the sewer ordinance will be met to the satisfaction of the City Sewer Inspector. Upon receipt of a report from the Sewer Inspector that the proposed variance will not materially deviate from the requirements of the Sewer Ordinance, the Commission and/or Council may relax the strict application of the area, width, and yard requirements for good cause.

F. Application

All requests for Conditional Use Permits, variances, appeals and amendments shall be made by written application on forms supplied by the Clerk, accompanied by the fees and costs required by this Ordinance. The Clerk shall prescribe the number of copies the application and accompanying materials and date to be submitted by the applicant.

G. Planning Commission Hearing.

Except for an amendment initiated by the Planning Commission, all applications shall be referred to the Zoning and Building Coordinator and to the Planning Commission. The Commission shall consider the application at its first regular meeting held at least 15 days after the filing of the application. The Commission and/or Zoning and Building Coordinator may hire the services of an expert consultant , with the consent and at the expense of the applicant, in order to determine questions necessary to the consideration of the application. The Commission may also continue the consideration of the application from time to time in order to receive any additional information it may deem necessary. The Commission shall consider possible adverse effects of the proposed use, variance , amendment, or appeal and what additional requirements may be necessary to reduce such adverse effects. In considering the application, the Commission shall determine:

1. The relationship of the proposal to the Comprehensive Plan of the City.

2. The character of the geographical area involved, and the potential for depreciation of the neighboring properties.

3. The demonstrated need for the proposal.

4. Whether such proposal would encourage or lead to the need for additional municipal services such as roads, fire and police protection, or materially affect existing traffic patterns.

5. Where the variance sought is from the strict application of area, width or yard requirements, the Commission shall further determine that all of the requirements of the sewer ordinance will be met to the satisfaction of the City Sewer Inspector. Upon receipt of a report from the Sewer Inspector that the proposed variance will not materially deviate from the requirements of the sewer ordinance, the Commission (and/or Council) may relax the strict application of the area, width and yard requirements for good cause.

H. Public Hearing

The Planning Commission shall set and hold a public hearing upon such notice as may be required by law and any additional notice prescribed by the Commission. Copies of all notices of any public hearings to consider variances, amendments or conditional uses under local shoreland management controls must be sent to the Commissioner of the MN Dept. of Natural Resources or the designated representatives and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.

Failure of any property owners to receive notice shall not invalidate any proceeding. All persons desiring to be heard at such meeting may appear either in person or by Attorney for by letter addressed to the Commission.

I. Findings and Recommendations of Planning Commission.

Within thirty (30) days after the application has been fully heard and submitted, the Commission shall make its written findings and recommendations to the City Council, or the Council as a Board of Adjustment and Appeals. The Commission may approve or deny the application, or approve the application on such terms and conditions as it may deem necessary to preserve the intent of this Ordinance or other ordinances of the City.

J. Council Hearing

Upon receipt of the recommendation of the Planning Commission, the Council, acting as a Board of Adjustment and Appeals, shall consider the application at its next regular meeting. The recommendation of the Commission shall be entered as a permanent record of the Council meeting. When required by law, the Council shall hold a public hearing, upon such notice as may be determined by the Council, and in compliance with the laws of the State of Minnesota. The Council may continue any such meeting or hearing for the purpose of reviewing additional information or evidence. The Council shall make written findings and may approve or deny the application, or approve it upon such terms and conditions as it may deem necessary or proper. In acting upon the application,

the Council shall consider the recommendations of the Planning Commission, and shall determine whether the proposed use, variance or amendment will:

1. Unreasonably increase congestions in a public street.
2. Increase the danger of fire or the spread of fire.
3. Endanger the public health, safety or general welfare.
4. Unreasonably diminish or impair established property values with the neighborhood, or
5. In any way be contrary to the intent of the Ordinance and the Comprehensive Plan of the City.
6. Where the variance sought is from the strict adherence to lot area, width or yard requirements, the Council may give consideration to the fact that the lot or parcel in questions will meet all of the requirements of the Sewer Ordinance upon receipt of a report from the City Sewer Inspector and recommendation of the Planning Commission.

K. Copy to Commissioner of MN Dept. of Natural Resources.

A copy of the approved amendments and subdivision/plats, and final decisions granting variances or conditional uses under the Shoreland Management controls must be sent to the commissioner or the commissioner's designated representative within 10 days of the final action.

When a variance is approved after the Dept. of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance shall also include the board of adjustment's summary of the public record/testimony and the findings of fact and conclusions which supported the issuance of the variance.

L. Reconsideration .

The Council may not reconsider a similar application affecting substantially the same property proposal except upon a 4/5ths vote to reconsider.

M. Lapse

A Conditional Use Permit or Variance shall lapse and become null and void one year after its issuance unless all conditions required by the permit have been performed or are being complied with in all respects. The Council may extend the one-year time limitation upon written request of the applicant. If the property has not been used for the purposes described in the Conditional Use Permit or Variance, for a period of six months, the Council has the authority to revoke the Permit or Variance without further notice or hearing.

(N. Performance Bond.

Upon approval of a Conditional Use Permit or Variance, the City shall provided with a surety bond or cash deposit, or letter of credit or undertaking approved by the City Attorney, in an amount determined by the Council, prior to issuance of a Building Permit or initiation of work, to secure compliance with the conditions of the Permit or Variance and the codes and ordinances of the City. Said security shall be held by the City until it shall have determined that all things required of the Permit holder or Variance holder have been performed to the satisfaction of the City. Failure to comply with the terms and conditions of the Use Permit or Variance and/or the codes and ordinances of the City will result in forfeiture of the security.

ORDINANCE NUMBER 152.12

The Council of the City of Dellwood does ordain:

Section 152.5B of the Zoning/Shoreland Ordinance is amended to read as follows:

Section 152.SB

10. Maximum Height of Structures. All structures in the City's residential districts must not exceed 35 feet in height, chimney excluded, except as may be permitted by Variance or Conditional Use Permit.

Non-residential agricultural buildings in the F/E District may exceed 35 feet in height with a Conditional Use Permit.

Dated: September 2, 2014

Rob

Attest:

F

Joanne Frane

City Clerk/Administrator

(CHAPTER 153

SWIMMING POOL ORDINANCE

Section: 153.01

General Provisions and Definitions.

A. Swimming pools and spas are deemed to be accessory structures under the zoning code of the City of Dellwood and must comply with the building codes of the City.

B. A swimming pool is defined as any enclosure designed, intended, or used for the containment of water, whether constructed above or below ground having a capacity of 1000 gallons or more and depth of 18 inches or more at any point, used for swimming, wading or other recreational use.

C. A spa is defined as a unit primarily designed for therapeutic and/or recreational use, which is not drained, cleaned or refilled for each individual use, including "whirlpools" and "hot tubs".

The term "pool" when used in this Ordinance shall including swimming pools and spas.

153.02

Application and Retroactivity.

This Ordinance shall apply to all privately owned pools, whether existing or constructed in the future. However, owners of pools constructed prior to the effective date of this Ordinance shall have a reasonable time to comply with the provisions of this Ordinance, in no event to exceed six months from the effective date hereof.

In ground existing pools which do not meet the setback requirements of the Zoning Ordinance may be exempted from such requirements upon application to the City for a variance.

153.03

Administration and Permit.

A. No pool may be constructed, placed, installed, renovated, altered or enlarged unless a Permit therefore is first obtained from the City.

B. A separate permit, unless included in the pool permit, shall be required for any pump house, filter house, pool enclosure or other accessory structure erected or placed in conjunction with a pool. Such structures shall conform to all provisions of the Building Codes of the City. Safety fences will comply with the setback of the Zoning Ordinance except that in the alternative, the entire perimeter of the yard may be enclosed by a fence or other barrier which complies with the requirements of subdivision (C) of this Ordinance.

(C. Application for a pool/spa permit shall be made by the property owner on a form supplied by the City and shall be accompanied by plans and specifications of sufficient detail and scale to show:

- i) The proposed size and location of the pool and accessory structures and equipment to be used or installed in connection with the pool, including but not limited to, filter units, pumps, wiring, heating unit, backflush and drainage outlet and required fencing.
- ii) The location of other structures on the lot including utility lines, poles and easements, and septic sewer system.
- iii) A satisfactory drainage course.

153.04

Fee.

There shall be a Permit fee, the amount of which shall be established by City Council resolution, from time to time, to cover the cost of administration and inspection.

153.05

Variances .

The procedure and requirements for variances to this Ordinance are the same as those prescribed by the Zoning Ordinance.

153.06

Construction Standards.

A. Utility Lines: No person shall build, construct, situate or install a pool beneath any overhead utility lines or easement, or over any underground utility line or easement.

B. Setback Requirements: No pool may be located in any front yard. The side-yard and rear-yard requirements of the Zoning Ordinance shall apply to pools and accessory structures and equipment installed in connection with the pool including ground level pool decks.

No pool may be constructed or placed within 20 feet of any portion of any one-site septic sewer treatment system.

C. Safety Fencing: All outdoor pools must be completely enclosed by a permanent fence, wall, or other barrier of at least five feet in height, with pattern openings or spacing through which a sphere 4.5 inches in diameter cannot pass. The space between the bottom of the fence and the ground may not be greater than 4 inches at any point.

All gates or points of entry to the pool area shall be equipped with self-closing and self latching devices placed at the top of the gate or at a place otherwise inaccessible to small children. Fences and gates shall be constructed of non-corrosive material and the

(posts or supports shall be set in concrete bases or other suitable attachments which have been approved by the Building Inspector.

153.07

Temporary Fence: No person shall introduce or cause to be introduced any water to a depth of more than 18 inches into the deepest portion of any swimming pool newly constructed or being constructed until such time as the Building Inspector authorizes the filling of such pool with water. Such authorization shall be withheld until, as a minimum, the permittee has caused such pool to be completely enclosed by a swimming pool construction fence. Said construction fence shall:

- 1) Be of snow fence like or similar design and be securely anchored in place.
- 2) Be constructed with its base flush to the ground.
- 3) Be at least four (4) feet in height and have supportive posts placed no more than eight (8) feet apart.
- 4) Remain in place until a permanent fence completely encloses the swimming pool is installed.
- 5) The pool may not be used by any person until a permanent fence has been installed in compliance with Section 135.06 of this Ordinance. A permanent fence must be completely installed within 60 days of the date upon which construction of the pool was commenced .

153.08

Spa Fence: All outdoor spas shall have either a fence as described in this Section or a latchable cover. The cover should be constructed of a material impenetrable by toddlers and subject to inspection by the Building Inspector.

153.09

Inspection: The City shall have the authority to inspect all pools at any reasonable time to determine that the provisions of this Ordinance have been met. The Building Inspector may recommend denial of a pool permit if adjoining properties may be adversely affected because of the drainage patterns.

153.10

MISCELLANEOUS PROVISIONS:

153.101 Nuisance: The conduct of the persons and operation of the pool and its equipment is the responsibility of the property owner or tenant, and such conduct of persons and operation of the pool shall be done in a manner so as to not create or cause a nuisance or to unreasonably affect the use and enjoyment of the adjacent property.

153.102 Lighting. Lights used in connection with a pool shall be designed and located so as to deflect light and glare away from adjacent property.

(153.103 Drainage. All backflushing water or pool drainage water shall be directed onto the property of the owner or onto approved drainage ways. Water shall not drain onto public street or adjacent private property.

153.104 Electrical. All electrical installations made in conjunction with the pool shall meet State and City requirements.

153.11

Violation and Penalties.

A violation of this Ordinance shall be a misdemeanor. Each day upon which a violation is permitted to exist shall constitute a separate violation which upon conviction thereof shall be punishable by fine, imprisonment, or both, as provided by the laws of the State of Minnesota.

(CHAPTER 154

POOL HOUSES

Section: 154.01

Detached pool houses and structures erected in connection with a swimming pool or spa are allowed as a Condition Use subject to the following conditions:

- a) The enclosed portion of the building may not exceed 240 square feet. The roof area may not exceed 576 square feet.
- b) The height of the building at its top most peak may not exceed 16 feet from grade level.
- c) The architectural style, color, roofing and facing material of the building shall be compatible with the main dwelling unit.
- d) No such structure may be designed or used as a place of human habitation at any time, or for the harboring or keeping of domestic pets or animals of any kind.
- e) The structure may contain plumbing facilities, a toilet, shower, storage area, and may accommodate the equipment used in connection with the pool or spa, including pumps, filters, water heater, pipes and wiring.
- f) The structure together with the roof overhangs shall meet the setback requirements of the zoning district.
- g) Attached cornices, canopies, and awnings shall be considered a part of the structure and must comply with the setback requirements.
- h) No such structure may be located in a front yard or corner side yard.

CHAPTER 155 ANTENNAS AND TOWERS

Section: 155.01 PURPOSE.

To accommodate the communication needs of residents and business while protecting the public health, safety and general welfare to the community. The Dellwood City Council finds that these regulations are necessary to:

- 1) Facilitate the provisions of the wireless telecommunications services to the residents and businesses of the City.
- 2) Require tower equipment to be screened from the view of persons located on properties contiguous to the site and or to be camouflaged in a manner to complement existing structures .
- 3) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements .
- 4) The following requirements shall be followed when selecting sites:
 - a. Structure location requirements for wireless communications equipment as permitted uses:
 - i) Sides and roofs of buildings or structures over two stories.
 - ii) Existing power or telephone pole corridors.
 - iii) Light poles or towers at outdoor recreational facilities.
 - iv) Parking lots may be used to locate monopoles where the structure replicates, incorporates or substantially blends with overall lighting standards and fixtures of the parking lot.
 - b. Land use areas for towers requiring conditional use permits:
 - i) Commercial.
 - ii) Golf Courses, when compatible with the nature of the course.
 - iii) Property owned by the city or under city control by easement or otherwise. .

155.02

Definitions. The following words and terms, when used in this section or ordinance shall have the following meaning unless the context clearly indicates otherwise:

- 1) Accessory Structure. A use or structure subordinate to the principal use of the land or building with a tower or antenna.
- (2) Antenna . Any structure or device used for the purpose of collecting or radiating electromagnetic waves , including but not limited to directional antennas , such as panels, microwave dishes and satellite dishes, and omni directional antennas, such as whips.
- 3) Personal Wireless Communication Services. Licensed commercial wireless communication services including cellular, personal communication services (PCS), enhanced specialized mobilized radio (ESMR), paging and similar services.
- 4) Public Utility. Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land line telephone service to the public. For this ordinance, commercial wireless telecommunication sources shall not be considered public utility uses.
- 5) Tower. Any pole, spire, or structure, or combination thereof, including supporting lines, cables, wires, braces or masts, intended primarily for the purpose of mounting an antenna, meteorological devise, or similar apparatus above grade.
- 6) UBC. Uniform Building Code. Published by the International Conference of Building Officials and adopted by the State of Minnesota to provide jurisdictions with building related standards and regulations.

155.03

Interpretation and Applicability.

1) It is not the intention of this Ordinance to interfere with, abrogate, or annul any covenant or other agreement between parties. However, where this ordinance imposes greater restrictions upon the use or premises for antennas or towers than are imposed or required by other ordinances, rules, regulations and permits, or by covenants or agreements, the provisions of this Ordinance shall govern.

2) This Ordinance does not apply to use or location of private, residential citizen band radio towers, amateur radio towers or television antennas.

155.04

Inspections and Violations.

1) All towers, antennas and supporting structures must obtain a building permit and are subject to inspection by the City Building Inspector to determine compliance with UBC construction standards. Deviations from the original construction for which the permit is obtained, other than antenna adjustments, is a misdemeanor.

2) Notice of violations will be sent by registered mail to the owner and the owner will have 30 days from the date of the notification to make repairs. The owner will notify the Building Inspector that the repairs have been made, and as soon as possible after that, the Building Inspector will make another inspection and the owner notified of the results.

155.05

Conditional Use Permit.

1) In reviewing an application for a conditional use permit for the construction of antennas, towers and accessory structures, the City Council shall consider:

- a) Standards in the City Code.
- b) Recommendations of the Planning Commission.
- c) Effect of the proposed use upon the health, safety, convenience and general welfare of residents or surrounding areas.
- d) Effect on property values.
- e) Effect on the proposed use on the comprehensive plan.

2) The applicant shall provide at the time of application sufficient information to show that construction and installation of the antenna or tower will meet or exceed the standards and requirements of the UBC.

3) Conditional Use Permits will not be required for:

- a) Repair or replacement or adjustment of the elements of an antenna array affixed to the tower or antenna, if the repair or replacement does not reduce the safety factor.
- b) Antenna mounted on sides or roof of an existing structure and on existing towers, power, light, or telephone poles as described in section 155.01 (4)

4) The initial fee to be paid for the conditional use permit shall be \$1,000.00 plus consultant's fees, or in such amount as may be established by resolution of the City Council.

5) The annual fee to be paid during the term of the conditional use permit shall be \$300.00 or such other amounts as may be established by the City.

155.06

Communication Towers in Residential Districts Prohibited.

No person, firm or corporation shall build or install a tower in a residential zone.

155.07

Communication Towers Proposed in Non-Residential Districts.

1) The applicant shall demonstrate by providing a coverage/interference analysis and capacity analysis, that location of the tower as proposed is necessary to meet the frequency reuse and spacing needs of the communication service system, and to provide adequate coverage and capacity to areas that cannot be adequately served by locating the towers on an existing structure.

(2) If no existing structure that meets the height requirements for the antennas is available for mounting the antennas, such antennas may be mounted on a tower not to exceed 75 feet in height.

3) Transmitting, receiving and switching requirements shall be in an existing structure whenever possible. If a new equipment building is necessary for transmitting receiving or switching, the owner or operator shall locate it at least 40 feet from any property line and shall landscape and screen it. The Planning Commission shall review such a building and the landscaping and screening.

155.08

Construction Requirements. Setback and Height Restrictions.

1) No part of any tower or antenna shall be constructed, located or maintained at any time, permanently or temporarily in or upon any required setback area for the district in which the antenna or tower is to be located.

2) All antennas, towers and accessory structures shall meet all applicable provisions of this Code and this Section.

3) Antennas and Towers shall meet the following requirements.

a) The antennas may be mounted on a single pole or monopole not to exceed seventh-five (75) feet in height. The poles shall be setback at least the height of the pole plus 25 feet from the property line.

b) Metal towers shall be constructed of, or treated with corrosive resistant material.

c) The use of guyed towers is prohibited.

d) Tower locations should provide the maximum amount of screening possible for off site views of the facility.

e) Existing on site vegetation shall be preserved to the maximum practical extent.

f) The installation shall be designed to be compatible with the underlying site plan. The owner or operator shall landscape the base of the tower and any accessory structures. Accessory structures and equipment buildings shall be designed to be architecturally compatible with the principal structures on the site. The Planning Commission shall review the design of any accessory structures , equipment buildings and site landscaping .

g) Towers shall be a light blue or gray or other color shown to reduce visibility. No advertising or identification visible off site shall be placed on the tower or buildings.

h) Antennas placed upon the tower shall comply with all state and federal regulations about non-ionizing radiation and other health hazards related to such facilities.

i) Wireless telephone antennas, where located on an existing structure shall not extend more than 15 feet above the structure to which they are attached.

j) Towers with antennas shall be designed to withstand a uniform wind loading as prescribed by the UBC.

k) Telecommunications equipment located on the side of existing structures or on a roof of a structure need not be screened.

l) Any proposed wireless communications service antenna or tower shall be designed, structurally, electrically, and in all respects to accommodate the applicant's antenna and for comparable antenna for as least 3 additional users. Towers must be designed to allow for future rearrangements of antenna upon the tower and to accept antenna mounted at varying height.

m) Prior to commencement of construction, applicant shall deposit security in the form of a performance bond, cash deposit, or letter of credit in an amount determined by the City to protect the City against the cost of damage to public property or facilities, and the cost of removal or abandoned or damaged towers .

155.09

Lights and other Attachments.

No antenna or tower shall have affixed or attached to it any lights, reflectors, flashers, daytime strobes or steady night time light or other illuminating devices except:

1. Those needed during time of repair or installation.
2. Those required by the Federal Aviation Agency , the Federal Communications Commission or the City.
3. For towers in parking lots, lights associated with the parking lot lighting.

In addition, no tower shall have constructed thereon, or attached thereto, in any way, any platforms, catwalk, crow's nest, or like structure, except during period of construction or repair.

155.10

Removal of Abandoned or Damaged Towers.

Any tower and/or antenna that is not used for one year shall be deemed abandoned and may be required to be removed in the same manner and pursuant to the same procedures as for dangerous or unsafe structures established by Minnesota Statutes, Section 463 .15 through 463 .26.

155.11

Co-Location of Personal Wireless Communication Service Equipment.

A proposal for a new personal wireless service tower shall not be approved unless it can be documented by the applicant to the satisfaction of the City Council that the telecommunication equipment planned for the proposed tower cannot be accommodated on an existing structure within a five (5) mile radius, transcending municipal borders, of the proposed tower due to one or more of the following:

- a) The planned equipment would exceed the structural capacity of the existing structure.
- b) The planned equipment would cause interference with other existing or planned equipment at the structure .
- c) Existing or approved structures and buildings within a five mile radius cannot or will not reasonably accommodate the planned equipment at a height necessary to function as required.

155.12

Interference with Public Safety Telecommunications.

All new or existing telecommunications service and equipment shall meet or exceed all Federal Communication (FCC) standards and regulations and shall not interfere with public safety telecommunications.

155.13

Additional Submittal Requirements.

Besides the information required elsewhere in this Code, building permit applications for towers shall include a report and plans from a qualified and registered engineer or other that:

- a) Describes the tower height and design including a cross section and elevation.
- b) Documents the height above grade for all potential mounting positions for co-located antennas and the minimal separation distances between antennas.

- c) Describes the tower's capacity , including the number and type of antennas that it can hold.
- d) Includes the engineer's stamp and registration number, if applicable.
- e) Includes all other information necessary for the City to evaluate the request.

(**155.14**

Variances.

The City Council may grant variances to the requirements of this Ordinance . All variances must follow the provisions of Minnesota Statute Chapter 462.

(**ORDINANCE NO. 155.15**

AN ORDINANCE FOR THE CITY OF DELLWOOD , MINNESOTA, ESTABLISHING REGULATIONS FOR THE LOCATION, INSTALLATION , OPERATION , MAINTENANCE AND REMOVAL OF WIND ENERGY CONVERSION SYSTEMS (WECS).

The City Council of the City of Dellwood, Washington County, Minnesota , does hereby ordain as follows:

SECTION 1. WIND ENERGY CONVERSION SYSTEMS (WECS):

A. Purpose.

The purpose of the Ordinance is to provide for the regulation of the location, construction , operation, maintenance and removal of Wind Energy Conversion Systems in Dellwood, subject to reasonable conditions that will protect the environment, public health, safety and welfare.

B. Definitions.

- 1. WECS - Wind Energy Conversion System:** An electrical generating facility comprised of one or more wind turbines and accessory facilities, including, but not limited to: power lines, transformers, substations and metrological towers, that operation by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.
- 2. WECS. Small (may be roof mounted):** A single system designed to supplement other electricity sources as an accessory use to existing buildings or facilities, wherei n the power generated is used primarily for on-site consumption. A small wind energy conversion system consists of a single wind turbine, a tower or roof mounted system, and associated control or conversion electronics, which has a total rated capacity of less than 50 kW.
- 3. Substation:** The apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utili ty's transmission lines.
- 4. Wind Power:** The conversion of wind energy into another form of energy
- 5. Wind Turbine:** A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.
- 6. Wind Turbine Height:** The distance measured from grade at the center of the tower to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.
- 7. Rotor Diameter:** The diameter of the circle described by the moving rotor blades.
- 8. Total Height:** The highest point, above ground level, reached by a rotor tip or any other part of the WECS.
- 9. Tower:** Towers include vertical structures that support the electrical generator, rotor blades, or meteorological equipment.

C. **Conditional Use:** Wind Energy Conversion Systems shall be allowed as a conditional use in the zoning districts listed below.

District	Small WECS (roof mounted)	Large WECS/Meteorolo- gical Tower
R-1 and R-2	Not Permitted	Not Permitted
F/E	Conditionally permitted	Conditionally Permitted
PRD	Conditionally permitted	Conditionally Permitted
Private Club	Conditionally permitted	Conditionally pemitlited

D. **Application Procedures:** Application for WECS shall be reviewed and processed in accordance with the conditional use permit procedures established in the Dellwood Zoning Ordinance. The following information is required in addition to the information required for a site plan or conditional use perm it appl ication:

- 1) The names of project applicant
- 2) The name of the property owner
- 3) The legal description and address of the property.
- 4) A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
- 5) Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.

6) Evidence that the applicant can obtain and maintain adequate liability insurance for the WECS and subject property.

7) Documentation of land ownership or legal control of the property

8) Location of wetlands, scenic, and natural areas (including bluffs) within 1320 feet of the proposed WECS. or natural areas within 500 feet of the proposed WECS.

9) FAA Permit Application

10) Location of all known Communications Towers within 2 miles of the proposed project. Provide proof that all the WECS will not interfere with emergency or other microwave transmissions.

11) A noise study, prepared by a qualified professional, that demonstrate that the WECS shall not emit noise in excess of the limits established by the Minnesota Pollution Control Agency.

12) A shadow flicker model that demonstrates that shadow flicker shall not fall on, or in, any existing residential structure.

13) Decommissioning Plan. Each WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable experience or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities, which shall be a cash deposit with the City, a Letter of Credit or a Surety Bond in an amount to be determined by the City.

14) Description of potential impacts on nearby WECS and wind resources on adjacent properties.

15) The Application shall be accompanied by evidence that the local utility company providing electric services to the City has been notified of the Application for a WECS and requested to submit written consents or objections directly to the City of Dellwood.

16) Payment of the Application Fee in an amount established by the City from time to time. The initial Application Fee is \$200.00. Applicant shall be responsible for payment of all expenses incurred by the City in processing the Application including legal and engineering consulting fees and costs, which are payable whether or not the Permit is approved.

E. Size and Height Regulations; Compliance:

I. Rotors:

- a. No WECS other than roof mounted small WECS shall have rotors that are longer than twenty-six (26) feet in diameter.
- b. The minimum height of the lowest extent of any WECS rotor shall be fifteen (15) feet above the ground.

2. Height:

- a. Freestanding wind turbine maximum height limits in all Districts is 100 feet.
- b. Roof mounted wind turbines must not exceed fifteen (15) feet above the height limited established for the principal or accessory structure, chimneys excluded.

3. Compliance with Regulations: All WECS shall comply with federal aviation administration notification requirements and any other applicable regulations.

(F. Installation and Design:

1. Towers:

- a. All WECS tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Minnesota State Building Code. Indication of compliance may be obtained from the manufacturer's engineering staff or a State licensed professional engineer.
- b. The compatibility of the tower structure with the rotors and other components of the WECS shall be certified by the manufacturer's engineering staff or by a State licensed professional engineer.
- c. WECS towers shall either have tower climbing apparatus located not closer than twelve feet (12') to the ground or be unclimbable by design for the first twelve feet (12')

2. Safety Wires: Safety wires shall be installed on the turnbuckles or guy wires of guyed WECS towers.

3. Over-Speed Controls: Every WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer's engineering staff or by a State licensed professional engineer.

4. Electrical Requirements:

- a. All electrical components of the WECS shall be in compliance with the applicable requirements of the National Electrical Code as currently adopted by the Minnesota State Building Code Division and shall be inspected by a qualified electrical inspector. The interconnection between the WECS and the electrical utility shall be in compliance with the most recent edition of the National Electrical Code. Certification will be supplied in writing that the WECS will automatically disconnect from the utility when there is no power output from the utility. This certification can be supplied by the manufacturer of the WECS.
- b. The interconnection of the WECS with the local electrical utility shall comply with all applicable Federal and State regulations. Every applicant for a WECS permit must notify his electrical utility in advance of his installation plans.
- c. Every battery storage unit associated with a WECS shall be in compliance with the National Electrical Code as currently adopted by the Minnesota State Building code Division and shall be inspected by a qualified licensed electrical inspector.
- d. The WECS, including the blades, shall be grounded and shielded to protect against natural lightning strikes in conformance with the National Electrical Code.
- e. No WECS shall have affixed or attached lights, reflectors, flashers or any other illumination, except for those devices required by the Federal Aviation Administration.

5. Structural Components:

- a. The safety of structural components of every WECS and the compatibility of the rotors with the towers of WECS shall be certified by a

State licensed engineer.

The safety of electrical components of every WECS shall be certified by a State registered electrical engineer or individual with sufficient technical training on WECS.

- b. The safety of all modifications to any WECS shall be certified by a State registered professional engineer. Certification of safety is required before the permit is granted for modifications made prior to installation. Certification of the safety of modifications made after the WECS is installed and the permit is granted is also required. Failure to have the safety of modifications certified after the permit has been granted shall result in revocation of the permit until certification has been obtained.

6. **Signs Required:** At least one sign shall be posted at the base of the WECS tower and shall contain the following information:

- a. Notice of no trespassing; and
- b. Warning of High Voltage.
- c. The identification of the manufacturer, owner and operator of the WECS, together with the address of each.

7. **The visual appearance of WECS shall at a minimum:**

- a. Be a non-obtrusive color such as white, off-white or gray; and
- b. Not display advertising (including flags, streamers or decorative items).

G. Siting:

1. The base of the tower of any WECS shall be set back from any property line a minimum of:

DISTRICT SMALL WECS LARGE WECS

R 1 & R2	<i>NIA</i>	<i>NIA</i>
PRO	<i>NIA</i>	<i>NIA</i>
FIE	1.1 times the WECS height	1000 feet
Private Club	1.1 times the WECS height	1000 feet

2. No part of a WECS shall be located within or over drainage, utility or other established easements.

3. No part of a WECS shall be located on or over property lines.

4. The base of a WECS or the guy wire anchors of a guyed WECS tower shall not be within any required minimum front, side or rear yard setback.

5. Clearance between a WECS and electrical lines shall be in compliance with the requirements outlined in the most recent edition of the National Electrical Code.

6. A wind turbine must not be within 500 feet from any conservation easements or public parks.

7. Siting on Top of Buildings. Every WECS sited on top of a building shall comply with applicable provisions of the Minnesota State Building Code.

Certification of compliance by a State licensed professional engineer is required. The WECS must be less than 10kW and not extend higher than 15 feet above the maximum height allowed for the structure the WECS is mounted on, chimneys excluded.

H. Nuisance Concerns:

1. Noise Control: Noise area classification. (NAC1, NAC2, etc.) established by the Minnesota Pollution Control Agency shall be used to evaluate and regulate noise from every WECS. The audible sound from a WECS will be measured at the property boundary line. Every owner of a WECS that is found to be in violation of Minnesota Pollution Control Agency's noise standards shall be required to perform mitigating measures.
2. Electrical or Radio Frequency Interference: All WECS and any components used in connection therewith, including electric generators, shall be designed, constructed and located in such a manner so as to not cause or create electrical or radio frequency interference with the reception of communication signals. All complaints received by the City with regard to electrical or radio frequency interference shall be directed to the Federal Communications Commissioner.
3. Communication Interference. Each WECS shall be sited in a location which will not result in the blocking or reflecting television or other communication signals. If signal interference occurs, both the WECS owner and the individual receiving interference shall immediately resolve the problem. If the problem cannot be eliminated or reduced to a reasonable level, the WECS shall be shut down.

I. Other Regulations.

1. **Supplying More Than One Structure:** A WECS that supplies energy to two (2) or more structures may be allowed as long as the proposed WECS complies with all applicable zoning regulations.

2. **Wind Access:** Adequate wind access is essential to the safe and efficient operation of a WECS, and the City encourages the use of private and restrictive covenants to protect wind access.

3. **Maintenance Requirements: Abandonment: Nuisance:**

a. It shall be a public nuisance if any of the following conditions exist:

1. A WECS is not maintained in operational condition and poses a potential safety hazard, or
2. A WECS is not maintained and operated in compliance with applicable zoning provisions and State and Federal laws, or

3. A WECS has not generated electricity for a period of six (6) consecutive months and the Wind Energy Facility Owner has failed to remove the WECS or make it operational within thirty (30) days after the City has given written notice to remove the WECS.

b. The City has the right to abate a public nuisance under the procedures set forth below. If adequate action to correct problems with the WECS is not taken within sixty (60) days, the City reserves the right to abate any hazardous situation and to pass the cost of abatement on to the owner or operator of the WECS.

c. Within the sixty (60) day period after notice has been given, the WECS owner or operator has the right to appeal to the

governing body of the City for additional time to correct the situation.

d. If the hazardous condition or violation of regulations is not remedied by the WECS owner or operator, the City reserves the right to revoke the WECS permit. After the permit has been revoked, a public hearing will be held on the need to remove the WECS. If the WECS is removed, the cost of doing so shall be passed on to the owner or operator of the WECS.

e. If the WECS has not been operating for six (6) consecutive months after installation, the WECS shall be considered abandoned. A public hearing will be held on the need to remove an abandoned WECS. If removal is deemed necessary, abandoned equipment and machinery shall be removed within thirty

(30) days of written notice to the owner or operator of the WECS. If the WECS is not removed within thirty (30) days, the City shall remove the equipment and machinery and pass the costs onto the owner or operator of the WECS.

4. Inspections: Each WECS shall be inspected yearly by the City Building Official, to verify that the WECS is operational and that all requirements of installation continue to be met. The property owner shall be responsible for payment to the City of an inspection fee in an amount to be established from time to time by the City Council. The initial fee shall be \$100.00 per inspection.

5. Interference: The WECS shall be designed, constructed and located in such a manner so as to not cause or create any interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all affected existing communication tower operators of the proposed WECS location upon application for permits. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation or law enforcement microwave transmissions.

6. Right of Entrance. By the acceptance of the Conditional Use Permit, the owner/operator grants permission to the City of Dellwood to enter the property to remove the WECS pursuant to the terms of the Conditional Use Permit and to assure compliance with other conditions set forth in the permit.

All wind turbines shall comply with all applicable state and federal regulatory standards, including the Uniform Building code as adopted by the State of Minnesota; National Electrical Code as adopted by the State of Minnesota; and Federal Aviation Administration (FAA)

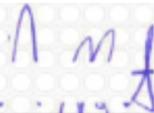
requirements; and Minnesota Pollution Control Agency (MPCA) / Environmental Protection Agency (EPA) regulation (hazardous waste, construction, storm water, etc. Violation of any provision of this Section is grounds for revocation of a Conditional Use Permit for a WECS. **Complaint Resolution:** The owner/operator of the WECS shall develop a process to resolve complaints from nearby residents. The process shall use an independent mediatory or arbitrator and include a time frame for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint. The cost thereof shall be paid by the owner/operator.

7. Liability Insurance Requirements . Before any Conditional Use Permit is issued, the owner/operator of the WECS shall file with the City a Certificate of Insurance certifying that the owner/operator has general liability insurance coverage with limits of not less than \$500,000.00 for large WECS and \$100,000.00 for small WECS, naming the City of Dellwood as an additional insured under the policy of insurance.

Each violation of this Ordinance shall constitute a Misdemeanor punishable according to law.

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its adoption and publication according to law.

ATTEST:


Robert Nuffort, Mayor

(F

Joanne Frane, City Clerk

(FLOODPLAIN MANAGEMENT ORDINANCE CHAPTER 156

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(SECTION 1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSE

1.1 Statutory Authorization. The Legislature of the State of Minnesota has, in Minnesota Statutes Chapters 1 03F and Chapter 462 delegated the authority to local governmental units to adopt regulations designed to minimize flood losses. Minnesota Statute, Chapter 1 03F further stipulates that communities subject to recurrent flooding must participate and maintain eligibility in the National Flood Insurance Program. Therefore the City of Dellwood, Minnesota does ordain as follows:

1.2 Statement of Purpose. The purpose of this Ordinance is to maintain the Community's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare .

1.3 Warning of Disclaimer of Liability. This Ordinance does not imply that areas outside of the Floodplain district or land uses permitted within such districts will be free from flooding and flood damages . This Ordinance shall not create liability on the part of the City of Dellwood or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decisions lawfully made thereunder .

1.4 National Flood Insurance Program Compliance . This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the Community's eligibility in the National Flood Insurance Program.

SECTION 2.0 GENERAL PROVISIONS

2.1 Adoption of Flood Insurance Study and Flood Insurance Rate Map. The Flood Insurance Study for City of Dellwood and the Flood Insurance Rate Map Panel for Washington County Minnesota and Incorporated Areas numbered 27163C03230E dated February 3, 2010 is hereby adopted by reference as the Official Floodplain Zoning District Map and made a part of this ordinance.

2.2 Lands to Which Ordinance Applies . This Ordinance shall apply to all lands designated as Floodplain within the jurisdiction of the City of Dellwood. Floodplain areas within the City of Dellwood shall encompass all areas designated as Zone A, Zone AE, Zone AO or Zone AH as shown on the Flood Insurance Rate Map adopted in Section 2.1 of this Ordinance.

2.3 Interpretation . The boundaries of the Floodplain district shall be determined by scaling distances on the Official Floodplain Zoning District Map. Where interpretation is needed as to the exact location of the boundaries of the Floodplain district, the Dellwood Building Inspector shall make the necessary interpretation based on the

(ground elevations that existed on the site at the time the community adopted its initial floodplain ordinance or the date of the first National Flood Insurance Program map that placed the site in the floodplain if earlier and the regional (1 00-year) flood profile, if available. If 100-year flood elevations are not available, the community shall: 1) Require a Floodplain evaluation consistent with Section 4.3 of this Ordinance to determine a 1 00-year flood elevation for the site; or 2) base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the Floodplain.

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

2.41 Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

2.42 Basement - means any area of a structure, including crawl spaces , having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

2.43 Flood Fringe - that portion of the Floodplain outside of the floodway .

2.44 Floodplain - the channel or beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood .

2.45 Floodway - the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining Floodplain that are reasonably required to carry or store the regional flood discharge .

2.46 Lowest Floor -the lowest floor of the lowest enclosed area (including basement).

2.47 Manufactured Home - A structure, transportable in one or more sections and designed to be used as a dwelling with or without a permanent foundation when connected to the plumbing, heating, air conditioning and electrical systems contained therein. Manufactured homes are not

allowed in the Floodplain area and none exist on the date of the enactment of this Ordinance.

2.48 Obstruction - any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, dredged spoil, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, stockpile of sand or gravel or other material, or matter in, along, across, or projecting into any channel, watercourse, lake bed, or regulatory Floodplain which may impede, retard, or change the direction of flow, either in itself or by catching or collecting debris carried by floodwater .

2.49 Recreational Vehicle -a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this Ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle .

2.50 Regional Flood - a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristics of what can be expected to occur on an average frequency in magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used on the Flood Insurance Rate Map.

2.51 Regulatory Flood Protection Elevation. The regulatory flood protection elevation shall be an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the Floodplain that result from designation of a floodway.

2.52 Structure - anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified in Section 12.1 of this Ordinance and other similar items .

2.53 Substantial Damage - means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.54 Substantial Improvement - within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this Ordinance, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59. 1.

2.6 Annexations. Newly annexed floodplain lands shall be immediately subject to the provisions of this Ordinance.

SECTION 3.0 CONFLICT WITH PRE-EXISTING ZONING REGULATIONS AND GENERAL COMPLIANCE

3.1 The Floodplain District as Overlay Zoning District. The Floodplain zoning district shall be considered an overlay zoning district to all existing land use regulations of the Community. The uses permitted in Sections 4.0 and 5.0 of this Ordinance shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this Ordinance shall apply in addition to other legally established regulations of the Community and where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall apply.

3.2 Compliance. No new structure or land shall hereafter be used and no structure shall be constructed, located, extended, converted, repaired, maintained, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance. Within the Floodway and Flood Fringe, all uses not listed as permitted uses in Section 4.0 shall be prohibited. In addition, a caution is provided here that:

3.21 Recreational vehicles are subject to the general provisions of this Ordinance. Recreational vehicles are also subject to the provisions of the Dellwood City code, chapter 71, 73 and 95.

3.22 Modifications , repair and maintenance, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this Ordinance and specifically Section 9.0; and

3.23 As-built elevations for elevated structures must be certified by elevation surveys as stated in Section 7.0 of this Ordinance.

SECTION 4.0 PERMITTED USES, STANDARDS, AND FLOODPLAIN EVALUATION CRITERIA

4.1 Permitted Uses in the Floodplain. The following uses of land are permitted uses in the Floodplain district:

4.11 Any use of land which does not involve a structure, a fence, an addition to the outside dimensions to an existing structure (including a fence) or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.

4.12 Any use of land involving the construction of new structures , a fence, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure (including a fence) or obstructions such as fill or

(storage of materials or equipment, provided these activities are located in the flood fringe portion of the Floodplain. These uses shall be subject to the development standards in Section 4.2 of this Ordinance and the Floodplain evaluation criteria in Section 4.3 of this Ordinance for determining floodway and flood fringe boundaries.

4.1.3 Recreational vehicles are regulated by Section 12.0 of this Ordinance.

4.2 Standards for Floodplain Permitted Uses.

4.21 Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation

for certain structures properly elevated on fill above the 100-year flood elevation - FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

4.22 Storage of Materials and Equipment:

- (a) The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
- (b) Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the regulatory flood protection elevation.

4.23 No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.

4.24 All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basement floor, is at or above the regulatory flood protection elevation. The finished fill elevation must be no lower than one foot below the regulatory flood protection elevation and shall extend at such elevation at least 15' beyond the limits of the structure constructed thereon.

4.25 All Uses. Uses that do not have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation to lands outside of the Floodplain shall not be permitted unless granted a variance by the Board of Adjustment. In granting a variance, the Board of Adjustment shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.

4.26 Commercial and manufacturing uses are not allowed in the floodplain.

4.27 On-site Sewage Treatment and Water Supply Systems : 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the State's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section.

4.28 Manufactured homes are not allowed in the floodplain.

4.3 Floodplain Evaluation

4.31 Upon receipt of an application for a permit for a use or other approval within the Floodplain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Zoning Administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe.

(a) A typical valley cross-section(s) showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.

(b) Plan (surface view) showing elevations or contours of the ground, pertinent structure, fill, or storage elevations, the size, location, and spatial arrangement of all proposed and existing structures on the site, and the location and elevations of streets.

(c) Photographs showing existing land uses, vegetation upstream and downstream, and soil types.

(d) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development.

4.32 The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural

Resources' Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:

(a) Estimate the peak discharge of the regional flood.

(b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.

(c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than .5' shall be required if, as a result of the additional stage increase flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.

4.33 The Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Governing Body. The Governing Body must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary or deny the permit application.

The Governing Body, prior to official action, may submit the application and all supporting data and analyses to the Federal Emergency Management Agency, the Department of Natural Resources or the Planning Commission for review and comment. Once the Floodway and Flood Fringe District Boundaries have been determined, the Governing Body shall refer the matter back to the Zoning Administrator who shall process the permit application consistent with the applicable provisions of this Ordinance.

SECTION 5.0 UTILITIES, RAILROADS, ROADS AND BRIDGES IN THE FLOODPLAIN DISTRICT

All utilities and transportation facilities, including railroad tracks, roads and bridges, shall be constructed in accordance with state Floodplain management standards contained in Minnesota Rules 1983 Parts 6120.5000 - 6120.6200.

SECTION 6.0 SUBDIVISIONS

6.1 No land shall be subdivided where the site is determined to be unsuitable by the Dellwood City Building Inspector for reason of flooding, inadequate drainage, water supply or sewage treatment facilities. The Dellwood City Building Inspector shall review the subdivision proposal to insure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.

6.2 In the Floodplain district, applicants for subdivision approval shall provide the information required in Section 4.31 of this Ordinance. The City Building Inspector shall evaluate the proposed subdivision or development in accordance with the standards established in Sections 4.2, 4.3 and 5.0 of this Ordinance.

6.3 For all subdivisions in the Floodplain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.

6.4 Removal of Special Flood Hazard Area Designation: The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100- year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

SECTION 7.0 ADMINISTRATION

7.1 Permit Required. A Permit issued by the Dellwood City Clerk shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building or structure or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system, prior to the change or extension of a nonconforming use, prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source, and prior to the placement of fill, excavation of materials or the storage of materials or equipment within the Floodplain.

7.2 State and Federal Permits. Prior to granting a permit or processing an application for a variance, the Dellwood City Clerk shall determine that the applicant has obtained all necessary state and federal permits.

7.3 Certification of Lowest Floor Elevations. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered

land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this Ordinance. The Dellwood City Clerk shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations or additions to existing structures in the Floodplain district.

7.4 Notifications for Watercourse Alterations. The Zoning Administrator shall notify, in riverine situations, adjacent communities and the Commissioner of the Department of Natural Resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public

waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the Commissioner of Natural Resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

7.5 Notification to FEMA When Physical Changes Increase or Decrease the 100- year Flood Elevation. As soon as is practicable, but not later than six (6) months after

the date such supporting information becomes available, the Zoning Administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

SECTION 8.0 VARIANCES

8.1 A variance means a modification of a specific permitted development standard required in an official control including this Ordinance to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, practical difficulty or unique circumstance as defined and elaborated upon in a community's respective planning and zoning enabling legislation and this Ordinance.

8.2 The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or

circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this Ordinance, any other zoning regulations of the Community, and the criteria specified in the respective enabling legislation which justified the granting of the variance. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

8.21 Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

8.22 Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

8.23 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

8.3 Variances from the provisions of this Ordinance may be authorized where the Board of Adjustment has determined the variance will not be

contrary to the public interest and the spirit and intent of this Ordinance. No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the regulatory flood protection elevation. Variances may be used to modify permissible methods of flood protection.

8.4 The Board of Adjustment shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing. A copy of all decisions granting a variance shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

8.5 Appeals. Appeals from any decision of the Board of Adjustment may be made, and as specified in this Community's Official Controls and also Minnesota Statutes.

8.6 Flood Insurance Notice and Record Keeping. The zoning administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. This Community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

SECTION 9.0 NONCONFORMITIES

A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions. Historic structures, as defined in Section 2.54(b) of this Ordinance, shall be subject to the provisions of Sections 9.1-9.4 of this Ordinance.

9.1 No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

9.2 A structural alteration within the inside dimensions of a nonconforming use or structure is permissible provided it utilizes flood resistant materials so as not to result in increasing the flood damage potential of that use or structure. A structural addition to a structure must be elevated to the regulatory flood protection elevation in accordance with Section 4.25 of this Ordinance.

9.3 (Reserved)

9.4 If any nonconforming use of a structure or land or nonconforming structure is substantially damaged, as defined by Section 2.53 of this Ordinance, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The City of Dellwood may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this Ordinance.

9.5 If a substantial improvement occurs, as defined in Section 2.54 of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Section 4.0 of this Ordinance for new structures, depending upon whether the structure is in the floodway or flood fringe, respectively.

SECTION 10.0 PENALTIES FOR VIOLATION

A violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variance) shall constitute a misdemeanor.

10.1 In responding to a suspected ordinance violation, the Zoning Administrator and the Community may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The Community must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

10.2 When an ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources' and Federal Emergency Management Agency Regional Office along with the Community's plan of action to correct the violation to the degree possible.

10.3 The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other Official Controls and the nature and extent of the suspected violation of these controls. If the structure and/or use is under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or approval is granted by the Community. If the construction or development is already completed, then the Zoning Administrator may either (1) issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or (2) notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30-days.

10.4 If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition that existed prior to the violation of this Ordinance.

SECTION 11.0 AMENDMENTS

All amendments to this ordinance, including revisions to the Official Floodplain Zoning District Map, shall be submitted to and approved by the Commissioner of Natural Resources prior to adoption. The Floodplain designation on the Official Floodplain Zoning District Map shall not be removed unless the area is filled to an elevation at or above the regulatory flood protection elevation and is contiguous to lands outside of the Floodplain. Changes in the Official Zoning Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the ordinance amendment or technical study under consideration.

SECTION 12.0 TRAVEL TRAILERS / TRAVEL VEHICLES.

Travel trailers, motor homes, and recreational vehicles are subject to the provisions of the Dellwood City Code. They are not allowed in the floodplain areas, and none exist on the date of the enactment of this Ordinance.

