ARTICLE 5
SUPPLEMENTAL USE REGULATIONS

5.01 Purpose

The Supplemental Use Regulations set forth additional standards for certain uses located within the various zoning districts. These regulations recognize that certain use types have characteristics that require additional controls in order to protect public health, safety, and welfare. These regulations complement the use regulations contained in Article Four of this Regulation and are cross-referenced in Table 4.1. Permitted Uses By Zoning District.

5.02 Supplemental Use Regulations Agricultural Uses

Nothing in these provisions shall relieve any property owner or user from satisfying any condition or requirement associated with a previous approval, special permit, variance, development permit, or other permit issued under any local, State, or Federal regulation or statute.

A. Crop Production in Non-Agricultural Districts: Crop production is a permitted interim use in any zoning district.

B. Horticulture and Crop Production - Retail Sales: Retail operation of garden centers or roadside stands associated with a primary agricultural use may be permitted in the AG District, subject to the following requirements:

1. Garden Centers:

   a. A garden center is a building or premises used for the retail sale of plant materials or items useful in the growing or display of lawns, gardens, and plants.

   b. Garden centers must conform to all site development regulations for the zoning district.

   c. Any garden center adjacent to a residential district must maintain a 20-foot landscaped buffer, consistent with the standards established in Sections 8-4 and 8-5.

2. Roadside Stands:

   a. A roadside stand is a facility used on a temporary or seasonal basis for the retail sale of produce grown largely on adjacent or surrounding agricultural lands.
b. A roadside stand may be located within a required front yard but no closer than 40 feet to the edge of a traveled roadway.

c. A roadside stand may operate for a maximum of 180 days in any one year.

C. Commercial Feedlot:

No new commercial feedlots shall be established within the zoning jurisdiction of Douglas County.

D. Animal Production in the RR District

Breeding and raising of small animals and fowl, such as birds, rabbits, chinchilla, and hamsters is permitted in the RR District, provided that any building housing such animals shall be at least 50 feet from any property line. Any such activity must be located entirely within a rear yard.

Within the RR District, any lot may have a fenced one acre area dedicated to the confinement of one horse, llama, or other equine and/or hoofed animal and its immature offspring. Such a lot may have one additional animal for each additional two acres of lot area, up to a maximum total of ten animals. No stable shall be located closer than 50 feet to any dwelling unit on the site or 50 feet to any property line.

5.03 Supplemental Use Regulations: Residential Uses

A. Single-Family Attached: Where permitted, the minimum side yard opposite the common wall shall be equal to twice the normal required side yard.

B. Two-Family Residential:

1. The second dwelling unit shall be located to the rear of the site and shall be separated from the front dwelling unit by a minimum of 25 feet.

2. The second dwelling unit shall be served by a driveway at least ten feet in width, leading from a public street adjacent to the lot.

3. Both structures shall meet all other setback requirements of the zoning district.

C. Mobile Home Residential in the MH District

Mobile Home Parks and mobile home residential use are permitted in the MH District. Such use may be configured in a Mobile Home Park or Mobile Home Subdivision. Following the effective date of this Regulation, no mobile home shall be located outside of a Mobile Home Park or Mobile Home Subdivision. A Mobile Home Park is subject to compliance with the following regulations:
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Certification

a. A certification of compliance with all regulations and regulations regarding mobile home licensing, zoning, health, plumbing, electrical, building, fire protection and any other applicable requirements shall be required of all Mobile Home Parks.

b. The Building Official is authorized to perform an annual inspection of any Mobile Home Park to ensure compliance with these regulations.

These regulations do not address the structural integrity of any units within a Mobile Home Park. Compliance with these regulations does not represent county warrant of the structural integrity of any structure or unit in such a facility.

2. Permitted Uses

Permitted Uses in the MH District are set forth in Table 4-1.

3. Permitted Accessory Uses

The following uses of land, buildings and structures shall be permitted within this district provided they are recognized as accessory to the performance of use permitted in Table 4-1.

a. Open or enclosed swimming pools.

b. Recreation or community use.

c. Occupancy of lots for recreational vehicles, travel trailers, camping trailers, motor homes and park trailers. Such units to be allowed for use as a residence when connected to the proper utilities for up to six (6) months unless extended on time only by the Building Official for up to an additional six (6) months.

d. Other accessory structures permitted in Residential Zoning Districts.

4. Special Use Exceptions

Business offices shall be permitted in this district if management of the manufactured mobile home park is the primary function of the office. Other uses may be permitted in accordance with an approved plan.
5. Special Use Permit

A special use permit may be granted by the county board upon receipt of a recommendation from the Zoning Coordinator for placement of mobile homes within this district based upon appearance, wiring which meets the National Electrical Code as of the date of manufacture, unit must be structurally stable, and meet the minimum accepted living conditions and further shall be attached to the appropriate utilities such as gas, electricity, water and sewer.

6. Minimum and Maximum Site Area

A Mobile Home Park shall be considered to be one zoned lot. The Minimum area for a Mobile Home Planned Park shall be two acres.

7. Minimum Yard Requirements

Yards of twenty (20) feet shall be maintained between each separate structure in this district. All other yards shall be maintained as stated in the approved plan.

8. Special Provisions:

Any person requesting change of a zone to an MH District for the purpose of developing a Mobile Home Planned Park shall submit a proper request for change in zone together with the following documents:

a. Plan of the proposed planned park showing all utility, street and facility improvements, dimensions of all lots and building sites, proposed size of each lot or site, and location with relation to existing abutting streets and facilities.

b. Proposed constitution, articles of incorporation and/or bylaws of an association of homeowners or renters within the proposed planned park which documents will, at a minimum, deal with pet control and garbage and trash control.

c. Detailed drawings of proposed moorings and tiedowns and utility hookups of manufactured mobile homes where applicable.

d. Drawings and plans for individual storage buildings, office and community facilities proposed for any planned park area for manufactured mobile homes.

9. Final zoning changes will not be granted until preliminary plans are approved and all submitted documents are again submitted in final form on reproducible mylar. Approval of the submitted final documents will be passed by regulation and such approved documents will become a permanent record and part of the

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zoning regulations for this district. Any deviation from the submitted and approved final documents without due amendment by the County Board shall be a violation of these regulations.

10. Height Limitation

The maximum height of any structure from ground level at the street side shall not exceed 35 feet.

D. Retirement Residence

Maximum Floor Area Ratio is 0.5 for buildings up to and including three stories. The number of living units and occupants is determined by floor area ratio rather than site area per unit regulators. For example, the maximum gross floor area of a retirement residence on a 100,000 square foot site is 50,000 square feet.

Any action that would result in occupancy of the project by persons less than retirement age requires approval of a Special Use Permit by the County Board following a recommendation by the Planning Commission.

5.04 Supplemental Use Regulations: Civic Uses

A. Clubs: Clubs located adjacent to residential uses shall maintain a buffer yard of not less than fifteen feet along the common boundary with such residential use.

B. Day Care: Day Care facilities are permitted by Special Use permit in the GI General Industrial Zoning District only if incidental to a permitted primary use.

1. Day Care Centers (General)

a. Each traditional day care center (general) must be validly licensed by either the State of Nebraska or the appropriate governmental agency.

b. Each facility shall provide a minimum of 50 square feet of outdoor play area per child, fully enclosed by fence or wall that is at least 42 inches but not more than 72 inches in height. Play areas shall be easily accessible from the main facility and be free of hazards, including potential traffic hazards.

c. Special Use Permit applications for General Day Care Centers shall specify the number and projected ages of children to be cared for at the facility, and the number of projected full- and part-time staff.
C. Group Care Facilities and Group Homes

Each group care facility or group home must be validly licensed by either the State of Nebraska or the appropriate governmental subdivision.

5.05 Supplemental Use Regulations: Commercial Uses

A. Auto Repair, Equipment Repair, Body Repair and Travel Center, Truck Stop, RV Storage, and Repair
   1. Where permitted in commercial districts, all repair activities must take place within a completely enclosed building. Outdoor storage is permitted only where incidental to Auto Repair and Body Repair, provided that such storage is completely screened so as not to be visible from residential areas or public rights-of-way. Screening is subject to provisions of Article 9.
   2. Any spray painting must take place within structures designed for that purpose and approved by the Zoning Coordinator.
   3. All entrances and exits serving a gasoline or Diesel service station, convenience store offering fuel sales, or automobile repair shop shall be at least 150 feet from a school, public park, religious assembly use, hospital, or residential use, as measured along any public street. Such access shall be at least 40 feet away from the right-of-way line of any intersection.
   4. All fuel pumps shall be set back at least fifteen feet from any street line.

B. Auto Washing Facilities
   1. Each conveyor operated auto washing facility shall provide 100 feet of stacking capacity per washing lane on the approach side of the washing structure and stacking space for two vehicles on the exit side.
   2. Each self-service auto washing facility shall provide stacking space for three automobiles per bay on the approach side and one space per bay on the exit side of the building.

C. Automobile, RV, and Equipment Rental and Sales
   1. All outdoor display areas for rental and sales facilities shall be hard-surfaced.
2. Body repair services are permitted as an accessory use to automobile rental and sales facilities, provided that such repair services shall not exceed 25% of the gross floor area of the building.

D. Campgrounds

1. Minimum Size: Each campground established after the effective date of this title shall have a minimum size of one acre.

2. Setbacks: All campgrounds shall maintain a 50-foot front yard setback and a 25-foot bufferyard from all other property lines.

3. Each campground must maintain water supply, sewage disposal, and water and toilet facilities in compliance with all County regulations; or, alternatively, be limited to use by self-contained campers, providing their own on-board water and disposal systems.

E. Convenience Storage

When permitted, convenience storage facilities shall be subject to the following additional requirements:

1. The minimum size of a convenience storage facility shall be two acres.

2. Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.

3. All driveways within the facility shall provide a paved surface with a minimum width of 25 feet.

4. All storage must be within enclosed buildings and shall not include the storage of hazardous materials.

5. No storage buildings may open into required front yards.

6. Facilities must maintain landscaped bufferyards of 35 feet adjacent to any public right-of-way and 20 feet adjacent to other property lines, unless greater setbacks are required by Article 9.

F. Construction Sales and Service

Retail home improvement stores and centers may include outdoor storage of materials and must comply with the following conditions:

1. Architectural design and materials shall be consistent with the current or projected character of the surrounding area.
2. All outside storage or display of merchandise or other materials or equipment shall be screened from view at eye level from a public street or adjacent property.

3. All storage buildings with overhead doors, drive openings, or open bays and all loading areas shall be fully screened from view at eye level from a public street or adjacent property.

4. Minimum screening shall be consistent with screening standards set forth in Article 9.

5. All areas not occupied by buildings or landscaping shall be paved with concrete or asphalt, or surfaced with gravel or similar treatment to reduce dust.

G. Kennels

1. The minimum lot size shall be two acres.

2. No building or dog runs shall be located nearer than 100 feet from any property line and 500 feet to the property line of any residential use or district.

3. All kennel facilities shall be screened around such facilities or at property lines to prevent distracting or exciting animals. Screening shall be of a type provided by Article 9, establishing landscape and screening standards.

H. Restricted (Adult Entertainment) Businesses

Adult entertainment businesses shall be subject to the following restrictions, and no person shall cause or permit the establishment of any adult entertainment business contrary to said restrictions:

1. No adult entertainment business shall be open for business between the hours of twelve midnight and six a.m.

2. A new adult entertainment business shall not be allowed within 1,000 feet of an existing adult entertainment business.

3. A new adult entertainment business shall not be located within 500 feet of any residentially zoned district or 1,000 feet of a preexisting school, public park, or place of worship.

4. The provisions of this chapter shall apply to any adult entertainment businesses in existence at the time the regulation codified in this chapter takes effect. All nonconformance shall come into compliance on or before January 1, 2008 and no such nonconforming use shall be permitted to expand in size or scope and the rights granted in this chapter shall terminate upon cessation of business, sale or transfer of ownership of the adult entertainment business.
5. Measurement of distances. For the purpose of this chapter, measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult entertainment business to the point on the property line of such other business, school, church, public park or areas zoned for residential use which is closest to the said main entrance of such adult entertainment business.

6. No adult entertainment business shall be conducted in any manner that permits the observation of models or any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult entertainment business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the premises which is prohibited by this code or any laws of the state or the United States.

7. No part of the interior of the adult entertainment business shall be visible from any pedestrian sidewalk, walkway, street, or other public or semipublic area.

8. An adult entertainment business shall post a sign at the entrance of the premises, which shall state the nature of the business and shall state that no one under the age of eighteen years is allowed on the premises. The sign shall comply with the County’s sign regulations. This section shall not be construed to prohibit the owner from establishing an older age limitation for coming on the premises.

9. Nuisance Operation: Any adult entertainment business operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is declared to be unlawful and a public nuisance, and the county attorney may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, proceeding or proceedings, for the abatement, removal or enjoinder thereof, in the manner prescribed by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such establishment and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment business contrary to the provisions of this chapter.

5.06 Supplemental Use Regulations: Industrial Use

A. Resource Extraction

Resource extraction, where permitted, is subject to the following requirements that supersede any other articles of this zoning regulation:

1. Land for resource extraction is typically procured many years in advance of the actual mining operation and therefore specific site plan requirements of the
special use permit may not be appropriate at the time of the application for the special use permit. Some special use permit process requirements may apply initially to only a portion of the area requested to be included under the special use permit.

2. Time limitations, pursuant to section 13.04.G.1 are not applicable to resource extraction.

3. Tree replacement, pursuant to section 9.12, is typically not feasible in a resource extraction operation, although trees should be reestablished if such reestablishment is consistent with the proposed end use.

4. It is understood that a plant site may need to be relocated within permitted resource extraction areas. Such relocation shall be allowable under the special use permit but shall require the application/issuance of appropriate building permits as applicable.

5. Visual screening of the resource extraction operation is not required with the understanding that the material stockpiles and other resource extraction equipment are generally not able to be screened completely.

6. Notification and publication requirements for special use permits for resource extraction shall be pursuant to section 13.04 except that the notification distance shall be 300 feet.

B. Salvage Services

1. Screening:
   a. The perimeter of each new facility shall be fully enclosed by opaque, free-standing fencing or screen walls. Minimum height of this enclosure shall be ten feet. Any such enclosure shall be constructed behind required landscaped bufferyards.
   
   b. Each existing salvage services facility shall be screened as provided above within one year of the effective date of this Regulation.

2. Storage of materials within any salvage services facility may not be higher than the height of the surrounding screen fence or wall.

3. No Salvage Services use may be established within 300 feet of the nearest property line of a residential or public use zoning district.
5.07 Performance Standards in Industrial Districts

A. The following performance standards apply to all industrial uses permitted within an industrial zoning district:

1. Physical Appearance: All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored outside. Normal daily inorganic wastes may be stored outside in containers, provided that such containers are not visible from the street.

   Exception: Resource extraction, subject to the provisions of a special use permit, would not be required to have all operations within an enclosed building.

2. Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts: No operation in the LI district shall generate sound levels in excess of 65 dB(A) between the hours of 7:00 am and 10:00 pm, and 55 dB(A) between the hours of 10:00 pm and 7:00 am, measured at the boundary of a residential district. All noises shall be muffled so as not to be objectionable because of intermittence, beat frequency, or shrillness.

3. Air Contaminants: No material may be discharged into the air from any source in such quantity as to cause injury, detriment, nuisance, or annoyance to any
considerable number of people or to the public in general; or to endanger the health, comfort, or safety of any considerable number of people or to the public in general; or to damage other businesses, vegetation, or property.

4. Odor: The emission of odors determined by the Douglas County Health Department to be obnoxious to most people shall be prohibited. Such odors shall be measured at the property line of the operation.

5. Gases: No release of noxious or poisonous gases shall be permitted except as provided in this section. Measurements shall not exceed 5 parts per million for sulfur dioxide or carbon monoxide or 1 part per million for hydrogen sulfide taken at the property line of the operation.

6. Vibration: All machines shall be mounted to minimize vibration. No measurable vibration shall occur at the property line of the operation, which exceeds a displacement of 0.003 inch.

7. Glare and Heat: All glare generated by a use shall be shielded or directed so as not to be visible at the property line of the operation. No heat may be generated from an operation that raises the air temperature at the property line of the operation by more than five degrees Fahrenheit above the ambient air temperature.

8. Storage of Chemical Products: If allowed by Special Use Permit, any above or below ground storage of liquid petroleum products or chemicals of a flammable or noxious nature shall not exceed 150,000 gallons when stored on one lot less than one acre. Such storage shall not exceed 25,000 gallons in any one tank. Storage of liquid petroleum products or chemicals of a flammable or noxious nature in excess of 25,000 gallons shall be located at least 50 feet from any structure intended for human habitation and at least 200 feet from any Residential, Office, or Commercial zoning district.

5.08 Supplemental Use Regulations: Miscellaneous Uses

A. Landfills

This regulation creates standards of operation for the disposal of municipal solid waste in a Municipal Solid Waste Landfill.

1. Definitions

   Please refer to Article 2 Definitions for general definitions and NDEQ Title 132 Regulations for specific definitions.
2. Permits

It shall be unlawful for any person to use any land, premises or property within the County for the disposal of any garbage or refuse without first making application for and securing a special use permit to do so. The permit shall be issued by the Board.

The application for a special use permit to operate a sanitary landfill shall be filed with the Permits and Inspection Division and shall contain a description and plat of the land on which the disposal of municipal solid waste is proposed, a description of the sequence and plan of operation, type and capacity of equipment to be used for operations, plans for fire, nuisance and vermin control, existing and proposed roadways and easements, existing topography and water courses, together with a diagram and written statement explaining the proposed location and extent of earthwork and fill operations, proposed measures to monitor ground water and to control storm drainage and landfill gas, and estimated daily or weekly volume of municipal solid waste to be placed in the landfill.

The special use permit to operate a municipal solid waste landfill may be granted by the Board only after the following conditions have been met:

a. That the permittee and his agents, will comply with all of the terms, conditions, provisions, requirements and specifications contained in these regulations.

b. That the permittee and his agents, will faithfully operate the municipal solid waste landfill for which the permit is issued in accordance with the provisions of these regulations.

c. That the permittee and his agents, will save harmless the County from any expense incurred through the failure of the permittee, and/or his agents, to operate and maintain the municipal solid waste landfill as required by these regulations including any expense incurred by the County for correcting any condition or violation of these regulations by the County’s own labor and equipment should the NDEQ or U.S. EPA determine it is necessary for the County to correct any unsanitary condition or conditions violative of these regulations or from any damages growing out of the negligence of the permittee or his agents.

3. Health Department

It shall be unlawful for any person to operate a municipal solid waste landfill unless he holds a valid permit issued by the Health Department. The permit issued by the Health Department shall be in addition to permits required by the NDEQ. Application is to be made on forms provided by the Health Department.

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4. Fees

The annual permit fee as established by the Board for a permit to operate a municipal solid waste landfill shall be payable to the Health Department.

5. Unauthorized Disposal

The dumping of municipal solid waste in open dumps or in unlicensed landfill operations which do not meet the conditions of this regulation is prohibited.

6. Regulations

The following rules for municipal solid waste landfill operation, closure and post-closure criteria are hereby adopted and made an integral part of this regulation:

NDEQ, Title 132 – Integrated Solid Waste Management Regulations, Chapter 3

7. Enforcement – Permit Suspension And Revocation

The officer responsible for the enforcement of the provisions of this regulation shall be the Health Director or designee. The Health Director shall provide adequate inspections of the municipal solid waste landfill sites to determine satisfactory compliance with regulations promulgated hereunder.

It is the responsibility of the Health Director to provide inspectors who possess proper and current training with regard to inspections of municipal solid waste landfills.

It shall be the duty of the operator of a municipal solid waste landfill to give the Health Director free access to the landfill site for the purpose of making such inspections as are necessary to determine compliance with the requirements of this regulation. The Health Director shall notify in writing, any permit holder who is violating the provisions of this regulation of the specific manner in which the regulation is being violated. The notice provided for herein shall be deemed sufficiently serviced by delivery of a copy thereof personally to the operating permit holder, by leaving a copy thereof at the usual place of business of the operating permit holder, or by certified U.S. Postal delivery. Unless said violation is corrected within a reasonable time after notice is received in writing to the permit holder by the Health Director, the Health Director shall notify the County Board of Commissioners and Director of Environmental Services in writing stating the non-compliance or violation of any of the provisions of this regulation. In the event the permit holder refuses to correct the violations within seventy-two (72) hours after notice in writing by the Health Director to the County Board of Commissioners and Director of Environmental Services, the
cost to the County of correcting such conditions in privately owned municipal solid waste landfills shall be assessed against the permit holder who shall be required to pay all costs and expenses of the County in correcting said conditions. The County Board of Commissioners may, after the permit holder is given an opportunity for a hearing, revoke the operating permit for the violation of any of the provisions of this ordinance.

8. Permit Reinstatement

Whenever any municipal solid waste landfill operating permit provided for in this regulation has been revoked, the holder may, at any time, file a written application for reinstatement with the Health Director, together with a signed statement that all violations of the provisions of this regulation have been corrected. The Health Director shall make a reinspection of the landfill site and if he finds that all violations have in fact been corrected, the Health Director shall notify the County Board of Commissioners and Director of Environmental Services in writing. The County Board of Commissioners may reinstate the operating permit after a reinstatement fee is paid to the Douglas County Health Department.

9. Penalty For Violations

Any person who violates any of the provisions of this Regulation shall be guilty of a Class III misdemeanor according to Nebraska Revised Statutes Sec. 23-174. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense.

10. Severability

If any section, clause, provision, or part or portion of any section, clause or provision of this regulation or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or application of any other section, clause, provision or part or portion of this regulation.

B. Wind Energy Conservation Systems (WECS)

The distance from all lot lines or any building or power line to any tower support base of a WECS shall be equal to the sum of the tower height and the diameter of the rotor plus fifty (50) feet, or shall meet the existing setback requirements of the underlying zoning district, whichever is greater. A reduction of this requirement may be granted as part of a Special Use Permit approval if the County Board, after recommendation by the Planning Commission, finds that the reduction is consistent with public health, safety, and welfare.
The distance between the tower support bases of any two WECS shall be the minimum of five rotor lengths, determined by the size of the largest rotor. A reduction of this requirement may be granted as part of a Special Use Permit approval if the County Board, after recommendation by the Planning Commission, finds that the reduction does not impede the operation of either WECS.

Any tower or rotor shall maintain a distance of at least 100 horizontal feet from any structure, power line, or antenna located on another property.

The WECS operation shall not interfere with radio, television, computer, or other electronic operations on adjacent properties.

A fence eight feet high with a locking gate shall be placed around any WECS tower base; or the tower climbing apparatus shall begin no lower than twelve feet above ground.

The height of the WECS may exceed the height restrictions of the base district by up to 50%. The bottom tip of any rotor must be at least 10 feet above any area accessible to pedestrians.

5.09 WIRELESS TELECOMMUNICATIONS FACILITIES

A. Purpose and Legislative Intent.
The Telecommunications Act of 1996 affirmed Douglas County’s authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. Douglas County finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the County’s land use policies, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Regulation is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of Douglas County.

B. Title.
This Regulation shall be known and cited as the Wireless Telecommunications Facilities Siting Regulation for Douglas County.

C. Severability,
   A) If any word, phrase, sentence, part, section, subsection, or other portion of this Regulation or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid

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for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Regulation, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

B) Any Special Use Permit issued under this Regulation shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the County.

D. Definitions.
For purposes of this Regulation, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. “Accessory Facility or Structure” means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

2. “Applicant” means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.

3. “Application” means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities.

4. “Antenna” means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

5. “Co-location” means the use of an existing Tower or structure to support Antennae for the provision of wireless services.

6. “Commercial Impracticability” or “Commercially Impracticable” means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.

7. “Completed Application” means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.

8. “Board” means the Douglas County Board of Commissioners.

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9. “FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency.

10. “FCC” means the Federal Communications Commission, or its duly designated and authorized successor agency.

11. “Height” means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightning protection device.

12. “Modification” or “Modify” means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

13. “NIER” means Non-Ionizing Electromagnetic Radiation

14. “Person” means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

15. “Personal Wireless Facility” See definition for ‘Wireless Telecommunications Facilities’

16. “Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PCS” shall have the same meaning as defined and used in the 1996 Telecommunications Act.

17. “Repairs and Maintenance” - means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

18. “Special Use Permit” means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Wireless Telecommunications Facilities as granted or issued by the County.

19. “Stealth” or “Stealth Technology” means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean
using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

20. “State” means the State of Nebraska.

21. “Telecommunications” means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.


23. “Telecommunications Structure” means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.

24. “Temporary” means, temporary in relation to all aspects and components of this Regulation, something intended to, or that does, exist for fewer than ninety (90) days.

25. “Tower” means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

26. “Wireless Telecommunications Facilities” means and includes a “Telecommunications Site” and “Personal Wireless Facility”. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

E. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Regulation, the County hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1) Requiring a Special Use Permit for any new, co-location or modification of a Wireless Telecommunications Facility;

2) Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
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3) Establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent;

4) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;

5) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;

6) That in granting a Special Use Permit, the County has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the County;

F. Exceptions from a Special Use Permit for Wireless Telecommunications Facilities.
   1) No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Regulation without having first obtained a Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those non-commercial exceptions noted in Section 7.

   2) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Regulation shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this Regulation.

   3) Any Repair and Maintenance of a Wireless Facility does not require the application for a Special Use Permit.

G. Exclusions. The following shall be exempt from this regulation:
   1) The County’s fire, police, department of transportation or other public service facilities owned and operated by the local government.

   2) Federal law enforcement agencies (amended June 30, 2009)

   3) Any facilities expressly exempt from the County’s siting, building and permitting authority.

   4) Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television
broadcast stations (TVB) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.

5) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.

6) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

H. Special Use Permit Application and Other Requirements.

1) All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Regulation. The County Planning Commission is the officially designated body of the County to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made. The Planning Commission is authorized to review, analyze, evaluate and make a recommendation to the Board with respect to granting or not granting or revoking special use permits for Wireless Telecommunications Facilities. The Board will make the decision with respect to granting or not granting or revoking special use permits for Wireless Telecommunications Facilities.

2) The County may reject applications not meeting the requirements stated herein or which are otherwise incomplete.

3) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the County, the Special Use Permit has been issued, and any appropriate building permit(s) has/have been issued.

4) Any and all representations made by the Applicant to the County on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the County.

5) An Application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

6) The Applicant must provide documentation to verify it has the right to proceed as proposed on the Telecommunications Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

7) The Applicant shall include a statement in writing:
a. That the applicant’s proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations;
b. That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.

8) Where a certification is called for in this Regulation, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.

9) In addition to all other required information as stated in this Regulation, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.

a. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
b. Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, include an analysis of current and projected usage;
c. The Name, address and phone number of the person preparing the report;
d. The Name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different that the applicant, provide name and address of the tower owner;
e. The Postal address and tax map parcel number of the property;
f. The Zoning District or designation in which the property is situated;
g. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
h. The location of nearest residential structure;
i. The location, size and height of all existing and proposed structures on the property which is the subject of the Application; such property being defined as the underlying parcel of land and not just that which may or may not be the subject of a lease agreement;
j. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
k. The azimuth, size and center line height location of all proposed and existing antennae on the supporting structure;
l. The number, type and model of the Antenna(s) proposed with a copy of the specification sheet;
m. The make, model, type and manufacturer of the Tower and design plan stating the tower's capacity to accommodate multiple users;
n. A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

o. The frequency, modulation and class of service of radio or other transmitting equipment;

p. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

q. Signed documentation such as the “Checklist to Determine Whether a Facility is Categorically Excluded” to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;

r. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

s. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;

t. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design.

10) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

11) Application for New Tower

a. In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection.

b. In order to better inform the public, in the case of a new Telecommunication Tower, the applicant shall, prior to the public hearing on the application, hold a “balloon test”. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. The Applicant shall inform the County, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the
initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the application.

c. The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant’s Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

1) The foreseeable number of FCC licenses available for the area;
2) The kind of Wireless Telecommunications Facilities site and structure proposed;
3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
4) Available space on existing and approved Towers.

d. The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:

1) Respond within 60 days to a request for information from a potential shared-use Applicant;
2) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
3) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a Pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
4) Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit.

12) The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads.

13) If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower
Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

14) All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually intrusive reasonably possible, given the facts and circumstances involved and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the Wireless Telecommunications Facility.

15) If a new tower, a new antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:

   a. If a new tower or increasing the height of an existing structure is proposed, a computer generated “Zone of Visibility Map” at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.

   b. Pictorial representations of “before and after” (photo simulations) views from key viewpoints both inside and outside of the County as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.

   c. A written description of the visual impact of the proposed facility including as applicable the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

16) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility

17) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the County.

18) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
19) At a Telecommunications Site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. Further, all such Telecommunications Sites shall comply fully with the County Stormwater Management Regulation.

20) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

21) A holder of a Special Use Permit granted under this Regulation shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.

22) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the County’s consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

23) An Applicant shall submit to the County the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.

24) The holder of a Special Use Permit shall notify Douglas County any intended Modification of a Wireless Telecommunications Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility.

I. Location of Wireless Telecommunications Facilities.

1) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (7) being the lowest priority.

   a. On existing Towers or other structures on County owned properties;
   b. On existing Towers or other structures on other property in the County;
c. A new tower on County-owned properties;
d. A new tower on properties in areas zoned for Heavy Industrial use;
e. A new tower on properties in areas zoned for Mixed use;
f. A new tower on properties in areas zoned for Agricultural use;
g. A new tower on properties in areas zoned for Residential use;

2) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The Applicant seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

3) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the County why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.

4) Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

5) The Applicant shall submit a written report demonstrating the Applicant’s review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.

6) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an Application for any of the following reasons.

   a. Conflict with safety and safety-related codes and requirements;
   b. Conflict with the historic nature or character of a neighborhood or historical district;
   c. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
   d. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers;
   e. Conflicts with the provisions of this Regulation.

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J. Shared use of Wireless Telecommunications Facilities and other structures.
   1) The County, as opposed to the construction of a new Tower, shall prefer locating on existing
      Towers or other structures without increasing the height. The Applicant shall submit a
      comprehensive report inventorying existing Towers and other suitable structures within two
      (2) miles of the location of any proposed new Tower, unless the Applicant can show that
      some other distance is more reasonable and demonstrate conclusively why an exiting Tower
      or other suitable structure can not be used.

   2) An Applicant intending to locate on an existing Tower or other suitable structure shall be
      required to document the intent of the existing owner to permit its use by the Applicant.

   3) Such shared use shall consist only of the minimum Antenna array technologically required to
      provide service primarily and essentially within the County, to the extent practicable, unless
      good cause is shown.

K. Height of Telecommunications Tower(s).
   1) The Applicant shall submit documentation justifying the total height of any Tower, Facility
      and/or Antenna requested and the basis therefore. Documentation in the form of propagation
      studies must include all backup data used to perform at requested height and a minimum of
      ten (10') ft. lower height to allow verification of this height need. Such documentation will be
      analyzed in the context of the justification of the height needed to provide service primarily
      and essentially within the County, to the extent practicable, unless good cause is shown.

   2) No Tower constructed after the effective date of this Regulation, including allowing for all
      attachments, shall exceed that height which shall permit operation without required artificial
      lighting of any kind in accordance with municipal, County, State, and/or any Federal statute,
      law, local law, County code, rule or regulation.

   3) Under no circumstances shall a new Tower exceed 120 feet in height unless relief is granted
      pursuant to section 28 of this Regulation.

L. Visibility of Wireless Telecommunications Facilities.
   1) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as
      required by Law.

   2) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate
      color to harmonize with the surroundings and shall be maintained in accordance with the
      requirements of this Regulation.

   3) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as
      unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.
M. Security of Wireless Telecommunications Facilities.
All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

1) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

2) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

N. Signage.
Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

O. Lot Size and Setbacks.
All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

P. Retention of Expert Assistance and Reimbursement by Applicant.

1) The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.

2) An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including where applicable, the lease negotiation, the pre approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be $8,500.00. The placement of the $8,500 with the County shall precede the pre-application meeting. The County will maintain a separate
account in an organization within the general fund for all such funds. The County’s consultants/experts shall invoice the County for its services related to the Application. If at any time during the process this account has a balance less than $2,500.00, the Applicant shall immediately, upon notification by the County, replenish said account so that it has a balance of at least $5,000.00. Such additional funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in by the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be promptly refunded to the Applicant.

3) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

Q. Public Hearing and Notification Requirements.

1) Prior to the approval of an Application for a Special Use Permit for Wireless Telecommunications Facilities for a new tower, a public hearing shall be held by the County Planning Commission, notice of which shall be published in the official newspaper of the County no less than ten (10) calendar days prior to the scheduled date of the public hearing. In order that the County may notify nearby landowners, the Application in the case of a new tower in the AG zoning district shall contain the names and address of all landowners whose property is located within one (1) mile of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located. In the case of a new tower in any other (non-AG) zoning district the notification distance shall be fifteen hundred (1500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located. Following Planning Commission action on the Application (recommendation to approve or deny) a second public hearing will be scheduled before the Board.

2) Prior to the approval of an Application for a Special Use Permit for Wireless Telecommunications Facilities for a co-location or modification, a public hearing shall be held by the Board. Notification requirements for this public hearing shall be the same as noted in subsection 17 A) of this Regulation.

3) The County shall schedule the public hearing referred to in Subsections (A and B) of this section once it finds the Application is complete. The County, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

R. Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities.

1) The County will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for
the public’s interest and need to be involved, and the Applicant’s desire for a timely resolution.

2) The County may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.

3) After the public hearing and after formally considering the Application, the County may approve, approve with conditions, or deny a Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.

4) If the County approves the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the County’s action, and the Special use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the County, such as site plan or zoning approvals, shall be required by the County for the Wireless Telecommunications Facilities covered by the Special Use Permit.

5) If the County denies the Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the County’s action.

S. Extent and Parameters of Special Use Permit for Wireless Telecommunications Facilities.
The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

1) Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.

2) Such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Regulation after prior written notice to the holder of the Special Use Permit.

T. Application Fee.
At the time that a person submits an Application for a Special Use Permit for a new Tower, such person shall pay a non-refundable application fee of $5,000.00 to the County. If the Application is for a Special Use Permit for co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be $2,500.00.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other
form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least $75,000.00 for a tower facility and $25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Regulation and conditions of any Special Use Permit issued pursuant to this Regulation. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.

V. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder’s, renter’s, lessee’s or licensee’s placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

W. Liability Insurance.

1) A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below

   a. Commercial General Liability covering personal injuries, death and property damage: $1,000,000 per occurrence/$2,000,000 aggregate;
   b. Automobile Coverage: $1,000,000.00 per occurrence/ $2,000,000 aggregate;
   c. Workers Compensation and Disability: Statutory amounts

2) For a Wireless Telecommunications Facility on County property, the Commercial General liability insurance policy shall specifically include the County and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insureds.

3) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best’s rating of at least A.

4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty-(30) days prior written notice in advance of the cancellation of the insurance.

5) Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

6) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Special Use Permit, the holder of the
Special Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

X. Indemnification.

1) Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Regulation, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys’ fees, consultants’ fees, and expert witness fees are included in those costs that are recoverable by the County.

2) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities.

Y. Fines.

1) In the event of a violation of this Regulation or any Special Use Permit issued pursuant to this Regulation, the County may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the County, fines or penalties as set forth below.

2) The holder of a Special Use Permits failure to comply with provisions of this Regulation shall constitute a violation of this Regulation and shall subject the Applicant to the code enforcement provisions and procedures of the Douglas County Zoning and other Regulations.

3) Notwithstanding anything in this Regulation, the holder of the Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Regulation or any section of this Regulation. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Regulation, without limiting other remedies available to the County.

Z. Default and/or Revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this

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Regulation or of the Special Use Permit, then the County shall notify the holder of the Special Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 25 and if a violation is not corrected to the satisfaction of the County in a reasonable period of time the Special Use Permit is subject to revocation.

AA. Removal of Wireless Telecommunications Facilities.

1) Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.

   a. Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
   b. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
   c. Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization and the Special Permit may be revoked.

2) If the County makes such a determination as noted in subsection (A) of this section, then the County shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

3) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the County.

4) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the County may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Special Use Permit holder.
5) If, the County removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the County may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

6) Notwithstanding anything in this Section to the contrary, the County may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Special Use Permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the County. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the County may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

BB. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Regulation may request such at the pre-Application meeting, provided that the relief or exemption is contained in the submitted Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

CC. Periodic Regulatory Review by the County.

A. The County may at any time conduct a review and examination of this entire Regulation.

A. If after such a periodic review and examination of this Regulation, the County determines that one or more provisions of this Regulation should be amended, repealed, revised, clarified, or deleted, then the County may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the County, the County may repeal this entire Regulation at any time.

A. Notwithstanding the provisions of subsections (A) and (B) of this Section, the County may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Regulation.
DD. Adherence to State and/or Federal Rules and Regulations.

1) To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

2) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

EE. Conflict with Other Laws.
Where this Regulation differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, this Regulation shall apply.

FF. Effective Date.
This Regulation shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

GG. Authority.
This Local Regulation is enacted pursuant to applicable authority granted by the State and federal government.

5.10 Supplemental Use Regulations: Accessory Uses

A. Home Occupations:

Home occupations are permitted as an accessory use in residential units subject to the following conditions:

1. External Effects: No noise, odors, bright lights, storage or other external effects attributable to the home occupation shall be noticeable from any adjacent property or public right of way.
2. Employees: A home occupation may not employ individuals other than the residents of the dwelling unit.

3. Service Traffic: Deliveries or service by commercial vehicles or trucks over ten tons licensed weight is prohibited.

4. The home occupation shall be clearly incidental to or secondary to the residential use of the premises.

5. There shall be no outside operation, storage, or display of materials or products.

6. One sign advertising the business is allowed, attached to the residence. Such sign shall not exceed one square foot in total area. Freestanding signs are not permitted.

7. Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.

5.11 Permitted Accessory Uses: Residential Uses

Residential uses may include the following accessory uses, activities, and structures on the same lot:

A. Private garages and parking for the residential use
B. Recreational activities and uses by residents.
C. Home occupations, subject to Article 5.10 a of these regulations.
D. Residential convenience services for multiple-family uses or mobile home parks.
E. Garage sales, provided that the frequency of such sales at any one location shall not exceed one during a continuous two month period or four sales during any twelve month period.

5.12 Permitted Accessory Uses: Civic Use Types

Guidance Services and Health Care use types are permitted in the GI General Industrial and HI Heavy Industrial zoning districts only as accessory uses to a primary industrial use.

5.13 Permitted Accessory Uses: Other Use Types

Other use types may include the following accessory uses, activities, and structures on the same lot:

A. Parking for the principal use.
B. Manufacturing or fabrication of products made for sale in a principal commercial use, provided that such manufacturing is totally contained within the structure housing the principal use.

C. Services operated for the sole benefit of employees of the principal use.

5.14 Permitted Accessory Uses: Agricultural Use Types

A. Garden centers and roadside stands, subject to the regulations set forth in Article 5.02.

B. Other uses and activities necessarily and customarily associated with the purpose and functions of agricultural uses.

5.15 Supplemental Use Regulations: Outdoor Storage

Outdoor storage is prohibited in all zoning districts except the GI General Industrial and HI Heavy Industrial zoning districts, except as provided in this section.

A. Agricultural Use Types: Outdoor storage is permitted only where incidental to agricultural uses.

B. Civic Use Types: Outdoor storage is permitted only where incidental to maintenance facilities.

C. Commercial Use Types

1. Outdoor storage is permitted only where incidental to Agricultural Sales and Service; Auto Rentals and Sales; Construction Sales; Equipment Sales and Service; Stables and Kennels; and Surplus Sales.

2. Outdoor storage is permitted where incidental to Body Repair, provided that such storage is completely screened at property lines by an opaque barrier, as set forth in Article 9. This provision shall apply to any Body Repair use established after the effective date of this Regulation.

D. Industrial and Miscellaneous Use Types:

1. Outdoor storage is permitted where it is incidental to Light Industry; General Industry; Heavy Industry; Resource Extraction; Salvage Services; Warehousing; and Construction Yards. Any such outdoor storage is subject to screening requirements set forth in Article 9.

2. Outdoor storage is permitted where incidental to landfills.
5.16 Supplemental Use Regulations: Temporary Uses

A. Purpose:

These provisions are intended to permit occasional, temporary uses and activities, when consistent with the objectives of the Zoning Regulation and compatible with surrounding uses. They are further intended to prevent temporary uses from assuming the character of permanent uses.

B. Temporary Use Types

The following temporary uses are permitted, subject to the regulations contained within these sections:

1. Model homes or apartments, if contained within the development to which they pertain.

2. Development sales offices. Such offices may remain in place until 90% of the lots or units within the development are sold and may not be located within a mobile home or manufactured home/structure.

3. Public assemblies, displays, and exhibits.

4. Commercial circuses, carnivals, fairs, festivals, or other transient events, provided that events are located on property owned by the sponsoring non-profit organization, or more intensive zoning district.

5. Outdoor art shows and exhibits.

6. Christmas tree or other holiday-related merchandise sales lots, provided that such facilities are not located in a residential zoning district.

7. Construction site offices, if located on the construction site itself.

8. Outdoor special sales, provided that such sales operate no more than three days in the same week and five days in the same month; and are located in commercial or industrial zoning districts.

9. Construction Batch Plants, provided that:

   a. No plant may be located within 600 feet of a developed residential use, park, or school.

   b. The facility is located no more than one road mile from its job site. The applicant shall provide a map of the proposed route to be used and the specific
construction job site. The Zoning Coordinator may extend this distance to two road miles, if such extension avoids use of local streets by plant-related vehicles.

c. Hours of operation do not exceed 12 hours per day.

d. The duration of the plant's operation does not exceed 180 days.

e. The Zoning Coordinator may revoke the temporary permit for any of the following violations:
   
   (1) Failure to operate the facility in accordance with the provisions of this section
   
   (2) A violation of any city, county, state, and/or federal law.
   
   (3) Denial of access to site to determine compliance with this section.
   
   (4) Unreasonable noise or disturbance to the surrounding neighborhood.

10. Additional temporary uses that the Building Official determines to be similar to the previously described uses in this section.

C. Required Conditions of All Temporary Uses:

1. Each site shall be left free of debris, litter, or other evidence of the use upon its completion or removal.

2. The Zoning Coordinator may establish other conditions which he/she deems necessary to ensure compatibility with surrounding land uses.

D. Permit Application and Issuance:

1. An application to conduct a temporary use shall be made to the Zoning Coordinator and shall include at a minimum a description of the proposed use; a diagram of its location; information regarding hours and duration of operation; and other information necessary to evaluate the application.

2. The Zoning Coordinator may authorize a temporary use only if he/she determines that:
   
   a. The use will not impair the normal operation of a present or future permanent use on the site.
   
   b. The use will be compatible with surrounding uses and will not adversely affect the public health, safety, and welfare.

3. The duration of the permit shall be explicitly stated on the permit.

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4. Decisions of the Zoning Coordinator may be appealed to the Board of Adjustment.