



Hillman Township

County of Kanabec
State of Minnesota

ZONING ORDINANCE

August 25, 1981

Amended October 18, 1994

07/22/08 DRAFT

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ARTICLE 1.

PURPOSE

- 1.1 An ordinance establishing zoning regulations for Hillman Township, Kanabec County, Minnesota, in accordance with the provisions of Minnesota Statutes, §462.351 - §462.364, and all acts amendatory thereof, to promote the health, safety, convenience, and general welfare while preserving the existing rural lifestyle of the inhabitants of Hillman Township by regulating therein the Township uses of land, and the density of dwellings and thereby encourage the most appropriate use of land, and to recognize and preserve the economy and natural environmental values of all lands within Hillman Township.

ARTICLE 2

TITLE

- 2.1 This ordinance may be cited and referred to as the Hillman Township Zoning Ordinance.

ARTICLE 3

DEFINITIONS

3.1 As used in this ordinance, the words, terms, and phrases defined in this article shall have the meaning given herein, unless otherwise specifically defined, or unless the context clearly requires otherwise. Further, throughout the text of this ordinance, unless the context clearly requires otherwise, the present tense includes the future tense, the singular number shall include the plural and the plural shall include the singular; the word "shall" is mandatory, and the word "may" is permissive; the word "used" or "occupied" includes the words "intended, designed, or arranged to be used or occupied"; the word "lot" includes the words "plots" or "parcel"; for regulatory purposes the word "structure" shall include the term "use" and vice versa.

3.1.1. **BUILDABLE AREA** - The portion of a lot remaining after the exclusion of required setbacks, lowlands or wetland areas and unbuildable soils or topography.

3.1.2. **BUILDING LINE** - A line measured across the width of a lot at a point where a structure is placed in accordance with the minimum setback requirements of this ordinance.

3.1.3. **COMPREHENSIVE GROWTH MANAGEMENT PLAN** - The policies, statements, goals and interrelated plans for private and public land and water use, transportation's, and community facilities including recommendations for plan execution.

3.1.4. **COUNTY** - County of Kanabec, State of Minnesota

3.1.5. **CONDITIONAL USE** - A conditional use constitutes a use which would not be appropriate generally or without restriction throughout a zoning district, but which, if controlled as to number, area, location, or relation to neighborhood would not be injurious to the public health, safety or general welfare.

3.1.6. **DISPOSAL OF WASTE MATERIALS** - Minnesota Statutes and Minnesota Pollution Control Agency's Rules and Regulations shall govern the disposal of petroleum-contaminated soils, sewage sludge, medical waste, hazardous wastes in the township.

3.1.7. **DWELLING** - A seasonal or permanent building or portion thereof, designated exclusively for residential occupancy, including one-family and two-family and dwellings, but not including hotels, multiple family dwellings, motels, and boarding houses.

3.1.8 **DWELLING - MULTIPLE (Apartment)** - A building designed with three or more dwelling units exclusively for occupancy by three or more families living independently of each other but sharing hallways, main entrances and exits and as defined by M.S. §462.357 and its successors.

3.1.9. **DWELLING - SINGLE FAMILY** - A detached dwelling unit designed for occupancy of one family and as defined by M.S. §462.357 and its successors.

3.1.10. **FARM** - Parcel of land which the owner and or operator makes all or a portion of his living by the uses stated in Article 5.

3.1.11. **FROST FREE FOOTINGS** - must be constructed of masonry, concrete, or treated wood and must extend below the frost line which is 5 feet. Floating slabs are considered frost-free and therefore do not need to be below the frost line of 5 feet.

3.1.12. **HOME OCCUPATION** - It is the purpose of this subdivision to provide for the use of the home as a place for the operation of a business or profession, either as a conditional use or permitted use, provided the occupation is clearly secondary to the principal use of the home as a residence.

3.1.13. **LOT** - Any parcel of land subject to the provisions of this ordinance, and capable of being described with such definiteness that its location and boundaries may be established.

3.1.14. **LOT, OF RECORD** - A lot of which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder, or a lot described by metes and bounds, the description of which has been recorded in the office of the county Recorder.

3.1.15. **LOT FRONTAGE** - That portion of a lot (linear feet) which abuts and is contiguous to a public right-of-way used for the movement of automobiles.

3.1.16. **LOT WIDTH** - Shall be the distance between the side lot lines, measured at the building line.

3.1.17. **MANUFACTURED HOME** - A trailer coach, any mobile home, house trailer, or similar unit, which may be used as a seasonal, recreational, or permanent dwelling.

3.1.18. **NONCONFORMITY** - Any legal use, structure, or parcel of land already in existence, recorded, or authorized before the adoption of this ordinance that would not have been permitted to become established under the terms of the ordinance when first enacted and as amended if the ordinance is amended if the ordinance had been in effect prior to the date that it was established, recorded, or authorized.

3.1.19. **ORDINARY HIGH WATER MARK** - A mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

3.1.20. **PLANNING COMMISSION** - The planning agency of the Township appointed by the Town Board.

3.1.21. **QUARTER OF QUARTER SECTION** - A tract of land that is one quarter of a mile square and contains forty (40) acres, more or less, according to the U.S. Government system of land surveying.

3.1.22. **SETBACK** - The minimum horizontal distance between a structure and the ordinary high water mark, right-of-way, front, side or rear lot line.

3.1.23. **SHORELAND** - All lands located within the following distances from the ordinary

high water mark of any lake, or river or stream which drains more than two square miles.

- 3.1.23.1 One thousand (1,000) feet from the ordinary high water mark of a lake, pond or flowage;
- 3.1.23.2 Three hundred (300) feet from the ordinary high water mark of a river or stream or the landward extent of a flood plain.

3.1.24. **TOWN BOARD** - The Town Board of Supervisors for the Township of Hillman, County of Kanabec, State of Minnesota.

3.2.25. **TOWNSHIP** - The Township of Hillman, County of Kanabec, State of Minnesota

3.1.26. **VARIANCE** The waiving action of the literal provisions of the Zoning Ordinance in instances where their strict enforcement would cause undue hardship because of physical circumstances unique to the individual property under consideration.

3.1.27. **ZONING ADMINISTRATOR** - A person appointed by the Town Board to enforce the Zoning Ordinance.

3.1.28. **ZONING MAP** -The areas comprising the zoning district(s) and boundaries of said district(s), as shown upon the map attached hereto and made a part of this ordinance, being designated as Township of Hillman, official zoning map, with all proper notations, references, and other information shown thereon.

ARTICLE 4

INTERPRETATION

- 4.1. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by Minnesota Statutes.

4.2. Interpretation of Boundaries

4.2.1. Except as otherwise set forth under the provisions of this ordinance, where a district is bounded by a street, highway, alley, river, stream, or city limit, the center line of such feature shall be the boundary.

4.2.2. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.

4.2.3. Where the actual street or property layout is at variance with that shown on the official zoning map, or in other circumstances not covered by the provisions of this ordinance, the Zoning Administrator shall interpret the district boundaries. Appeal of the Zoning Administrator's decision can be made to the Township Board of Adjustment.

ARTICLE 5

ESTABLISHMENT OF DISTRICTS AND REGULATIONS

5.1 AGRICULTURAL DISTRICT

5.1.1 PURPOSE - The Agricultural District is intended to provide a district that will allow the Township to be retained in agricultural-rural uses. Anyone building on Agricultural District must accept the rural environment as it is found as defined in the Hillman Township Comprehensive Growth Management Plan under Community Goals and Land Use Goals.

5.1.2 PERMITTED USES - The following uses shall be permitted within the Agricultural District:

5.1.2.1 Agricultural activities, including farm buildings and farm dwellings.

5.1.2.2 Farm Production.

5.1.2.2.1 Farm livestock and livestock products, domestic animals kept for use on the farm or raised for sale or profit, including dairy and beef cattle, swine, sheep, goats, horses.

5.1.2.2.2 Other animals than farm livestock, for their pelts and food.

5.1.2.2.3 Domestically raised fowl for food and pleasure, including chickens, turkeys, ducks, geese and game birds.

5.1.2.2.4 Bees for honey and pollination purposes.

5.1.2.2.5 Field and specialty crops, including field corn, milo, sorghum, sunflowers, soybeans, wheat, oats, rye, barley, hay and grass.

5.1.2.2.6 Fruit including apples, plums, apricots, peaches, grapes, cherries, and berries.

5.1.2.2.7 Nursery stock and tree farms.

5.1.2.3 Feedlots as defined in Minnesota Statutes that meet the Minnesota Pollution Control Agency Rules and Regulations governing the maintenance and operation of animal feedlots.

5.1.2.4 Home occupations.

5.1.2.4.1 Permitted home occupations. - Home occupations which do not generate a noticeable increase in traffic, does not involve employees not residing in the home, does not require additional parking, or does not require the use of an additional building shall be considered permitted home occupations. Such home occupations include but are not limited to architects, artists, clergymen, clothing alterations, and domestic crafts.

5.1.2.4.2 Home occupations requiring a conditional use permit. - Home occupations which have the potential for generating a noticeable increase in traffic requiring additional parking, involving employees not residing in the home or utilizing an additional building will require a conditional use permit. Such home occupations include but are not limited to barber shops, beauty salons, repair shops, clothing shops and kennels.

5.1.2.5 The harvesting of timber.

5.1.2.6 Single family dwellings subject to the following regulations:

- 5.1.2.6.1 No more than two (2) dwellings per quarter of a quarter section will be allowed, including any dwelling existing on the date of enactment of this Ordinance, unless part of a lot of record as recorded in the County Recorder's Office as of the original date of enactment of this Ordinance in which case development of lot is allowed.
- 5.1.2.6.2 Lot area. A lot area of not less than two acres for each dwelling unit is required.
- 5.1.2.6.3 Lot Width. A lot width of not less than two hundred feet at the building line is required for each dwelling unit.
- 5.1.2.6.4 There shall be a minimum set back from all structures to the center of roads as follows:
 - 5.1.2.6.4.1 State Highways = 130 feet
 - 5.1.2.6.4.2 All other roads and streets = 100 feet
- 5.1.2.6.5 There shall be a minimum set back from all structures of not less than thirty (30) feet to any property line.
- 5.1.2.6.6 Dwelling units shall be allowed only on lots that have legal access to a public road.
- 5.1.2.6.7 No building shall be constructed within a one hundred (100) year flood plain.
- 5.1.2.6.8 Not more than one (1) dwelling shall be located on a lot. Approved temporary residences are exempt from this rule.
- 5.1.2.6.9 A temporary residence during construction of a permanent dwelling or for health reasons is allowed. A temporary residence permit may be issued for a dwelling to be placed or constructed on the same lot as the permanent dwelling for a twelve (12) month period which may be renewable for additional twelve (12) month periods providing the following conditions are met.
 - 5.1.2.6.9.1 In the case of constructing a permanent dwelling; Before a temporary residence permit can be issued, a dwelling site permit for the permanent dwelling must have been issued. At the end of the twelve (12) months, if an additional twelve (12) month temporary residence permit has not been obtained, the temporary residence shall be removed from the lot.
 - 5.1.2.6.9.2 In case of health reasons; Before a temporary residence permit can be issued, a medical report and recommendation must be submitted by a physician demonstrating the need for a closely supervised independent living arrangement. At the time when the health reasons no longer exists to support the temporary residence, the temporary residence permit shall expire and it shall be removed from the lot.

5.1.2.6.9.3 When issuing or renewing a temporary residence permit, the Town Board may place additional and reasonable conditions upon the permit to further carry out the purposes and the intent of this ordinance. The failure to comply with these conditions will result in the revocation of said permit. When a condition has changed wherein the purposes and conditions of this section are no longer met, the temporary residence may remain through the term of the permit and any temporary residential building must be removed from the lot within ninety (90) days following the expiration date of the permit. An extension of the ninety (90) day limitation may be obtained from the township for hardship reasons.

5.1.3. SIGNS: The intent of this Section shall be to regulate signs of a commercial nature intended to be viewed from any vehicular or pedestrian right-of-way. This Section shall not regulate official traffic or government signs; signs not intended to be viewed from a public right-of-way; window displays; product dispensers and point of purchase displays; scoreboards on athletic fields; flags of any nation, government or noncommercial organization; gravestones; barber poles; religious symbols; commemorative plaques or the display of street numbers.

5.1.3.1. Definitions

5.1.3.1.1 *Abandoned Sign* – A sign which no longer identifies or advertises a bona fide business, lessor, service, product, or activity, and/or for which no legal owner can be found.

5.1.3.1.2. *Flashing sign* – A sign which contains an intermittent or sequential flashing light source used primarily to attract attention. This does not include signs which, through reflection or other means, creates an illusion of flashing or intermittent light.

5.1.3.1.3. *Political sign* – A temporary sign used in connection with a local, state, or national election or referendum.

5.1.3.1.4. *Sign* – Any device, structure, fixture, or placard using graphic symbols, and/or written copy for the primary purpose of identifying, providing directions, or advertising any establishment, product, goods, or services.

5.1.3.2. PERFORMANCE STANDARDS

5.1.3.2.1. The following signs or characteristics of signs shall not be allowed:

- A. Any sign that resembles, imitates or approximates the shape, size, form or color of railroad or traffic signs, signals, or devices.

- B. Any sign which is located so as to interfere with the visibility or effectiveness of any official traffic sign or signal, or with driver vision at any access point or intersection.
- C. Any sign that is erected, relocated or maintained so as to prevent free ingress or egress from any door, window, or fire escape, and no sign shall be attached to a standpipe or fire escape.
- D. Flashing signs or any sign that emits sounds.
- E. Abandoned signs.

5.1.5. **CONDITIONAL USES** - The following uses may be allowed in the Agricultural District, subject to the provisions of the Conditional Use Section:

- 5.1.5.1 Commercial outdoor recreation
- 5.1.5.2 Organized group camps.
- 5.1.5.3 Local township administration and service buildings.
- 5.1.5.4 Extraction of minerals and gravel.
- 5.1.5.5 Commercial and industrial uses.
- 5.1.5.6 Churches.
- 5.1.5.7 Non-profit organizations
- 5.1.5.8 Other residential and commercial uses determined by the Planning Commission to be of the same general character as the principal uses above and found not to be detrimental to the general public health and welfare.

5.2. **SHORELAND MANAGEMENT REGULATIONS**

5.2.1 All requirements of the Kanabec County Shoreland Management Regulations shall apply to the Shoreland areas of Hillman Township.

ARTICLE 6

MANUFACTURED HOMES

6.1 PURPOSE.

- 6.1.1 The purpose of this Section is to establish, in the interest of the safety, health and general welfare of its citizens, the standards, use and occupancy of manufactured homes placed within the Township.

6.2 DEFINITIONS.

- 6.2.1 Manufactured homes shall be classified as New, Pre-Code, State Code, or HUD Code.
- 6.2.2 NEW: A new manufactured home, compliant to HUD 3280 construction standards, manufactured for sale to a purchaser. The "purchaser" means the first person purchasing a manufactured home in good faith for purpose other than resale.
- 6.2.3 PRE-CODE: A manufactured home built prior to July 1, 1972.
- 6.2.4 STATE CODE: Built between July 1, 1972 and June 14, 1976.
- 6.2.5 HUD CODE: Built after July 14, 1976 in accordance with HUD CRF3280 construction standards.

6.3 GENERAL PROVISIONS.

- 6.3.1 All manufactured homes placed within the Township shall be installed and placed in compliance with Minnesota Statutes Chapters 327.31 through 327.35, as may be amended from time to time, and the Minnesota Department of Administration Manufactured Home Rules Chapter 1350, as may be amended from time to time.
- 6.3.2 All manufactured home owners shall have a valid title, or prove the ability to obtain a valid title for the manufactured home, at the time of permit application.

6.4 NEW MANUFACTURED HOMES.

- 6.4.1 All new manufactured homes (with a HUD label), constructed to conform to HUD CRF 3280 standards, shall be considered approved and certified for placement within the Township.

6.5 HUD CODE MANUFACTURED HOMES.

- 6.5.1 All manufactured homes built after July 14, 1976 shall be constructed to conform to HUD CRF 3280 standards prior to placement within the Township. Verification of compliance to HUD Code building requirements for used manufactured units must be obtained from a Minnesota Certified Building Official and presented when applying for a site permit. The inspection must be within six (6) months of the date of application for the site permit.

6.6 STATE CODE MANUFACTURED HOMES.

6.6.1 All manufactured homes built between July 1, 1972 and June 14, 1976 shall comply with Minnesota State Code and bear a Minnesota Construction Label or, if built elsewhere, verification of construction compliance to ANSI A119. Units shall bear a construction label on the exterior of the home as verification of construction and inspection for compliance to ANSI A119 standards during original construction from the state of original construction before placement within the Township. Verification of state code building requirements for used manufactured units must be obtained from a Minnesota Certified Building Official and presented when applying for a site permit. The inspection must be within six (6) months of the date of application for the site permit.

6.7 PRE-CODE MANUFACTURED HOMES.

6.7.1 No manufactured homes built before July 1, 1972 shall be allowed to be placed within the Township. Existing pre-code manufactured homes will be allowed to stay as a legal, nonconforming structure.

6.8 INTERPRETATION.

6.8.1 If any conflict arises during the enforcement of this article, or more than one interpretation is possible, the interpretation that is the most restrictive shall apply.

6.9 APPEALS

6.9.1 All appeals shall be governed by Minnesota Manufactured Home Rules Chapter 1350.590.

6.10 STATUTES AND RULES ADOPTED BY REFERENCE.

6.10 HUD Code 1380 construction standards, Minnesota State Code construction standards for manufactured homes and Minnesota Statutes 327, 327B, and Minnesota Manufacturing Home Rules Chapter 1350, 1360, 1361, and 1341, as may be amended from time to time, are hereby incorporated by reference.

ARTICLE 7

ENVIRONMENTAL REVIEW PROCEDURES

7.1 The purpose of the Environmental Review Program Section is to provide for the preparation and review of Environmental Assessment Worksheets (EAW), Environmental Impact Statements (EIS), and other environmental documents required under Minnesota Rules, Parts 4410.0200 - 4410.7800 as amended, to implement the Environmental Review Program.

7.2. REVIEW PROCEDURES AND ADMINISTRATION

- 7.2.1. The Zoning Administrator shall be responsible for the administration of the Environmental Review Program.
- 7.2.2. When environmental documents are required for an EAW or EIS, the applicant for the permit will supply all unprivileged data or information reasonably requested by the Township that the applicant has in his possession or to which he has reasonable access in a manner prescribed by the Zoning Administrator.
- 7.2.3. When reviewing an EAW or EIS, the Zoning Administrator and the Planning Commission may suggest design alterations before issuing permits.
- 7.2.4. After an EAW is prepared, the Zoning Administrator shall forward a copy to the Minnesota Environmental Quality Board. The Planning Commission shall then review EAW and recommend to the Town Board whether or not it should require the preparation of an EIS. The Town Board shall require an EIS when it finds that an action is major and has potential for significant environmental effects.

7.3. ENFORCEMENT.

- 7.3.1. No permit shall be issued for a project for which environmental documents are required until the entire environmental review procedures as established by this Ordinance are completed.
- 7.3.2. No work shall commence and any work in progress on any project for which environmental documents are required shall cease until the environmental review procedures established in this Ordinance are fully complied with.

7.4 COST OF PREPARATION AND REVIEW.

- 7.4.1. No permit for an action for which an EAW or EIS is required shall be issued until all costs of preparation and review are paid by the applicant; all information required is supplied, the environmental review process has been completed as provided in this Article. Costs will be paid before incurred by either:
 - 7.4.1.1. a. Pre-payment, or
 - 7.4.1.2. Escrowing 150% of the estimated costs

- 7.4.2. The amount of the deposit may be increased by the Planning Commission if on consideration of the issues presented in the application the Planning Commission determines that the fees and expenses incurred by the Township in reviewing and acting upon application will exceed the initial deposit. Failure to pay additional funds in a timely manner shall be reason for extension of the review period.

ARTICLE 8

ADMINISTRATION

8.1 DESIGNATION: The Town Board shall appoint a Zoning Administrator, whose duty it shall be to administer and enforce the provisions of this Ordinance. His administrative functions shall include, but not be limited to, the duty to:

8.1.1 Provide necessary forms and applications relating to Land Use Permits:

8.1.1.1 Application for Land Use Permit.

8.1.1.2 Application for Conditional Use Permit.

8.1.1.3 Application for Variance to Zoning Ordinance.

8.1.1.4 EAW.

8.1.1.5. Other forms and applications as may be needed to administer the Hillman Township Zoning Ordinance.

8.1.2 Issue Land Use permits upon demonstration of the applicant's compliance with the provisions of this Ordinance.

8.1.3 Issue any authorized permits.

8.1.4 Answer permit requests within the time limits set by law.

8.1.5 Identify and record information relative to nonconformity's.

8.1.6 Provide assistance in zoning changes and amendments to the Ordinance text or map.

8.1.7 Maintain files of applications, permits, and other relevant documents.

8.1.8 Make an annual report of his activities to the Town Board.

8.2 LAND USE PERMIT: Land use permits shall be issued in accordance with the following provisions:

8.2.1 It shall be unlawful to proceed with the construction, placement, or enlargement of the exterior dimension of any building or structure without first obtaining a Land Use Permit. Unenclosed decks do not require a permit.

8.2.2 Request for a Land Use Permit shall be filed with the Zoning Administrator on an official application form. Applications to the Zoning Administrator shall be accompanied by maps or drawings showing accurately the locations, size and shape of the lot(s) involved, and of any proposed buildings or additions to existing

buildings including the relation to abutting streets, lakes, or streams, and the existing and proposed use of each structure and lot and such additional information deemed necessary for the proper review and enforcement of this Ordinance and any other applicable zoning ordinances. One copy shall be retained by the Zoning Administrator and one copy shall be returned to the owner when such plans have been approved.

8.2.3. The Zoning Administrator shall issue the Land Use Permit only when the plans comply with this Ordinance and other applicable Township Ordinances.

8.2.4 Any permit shall be valid for eighteen (18) months from date of issue. If construction has not been started within 18 months, the permit expires. A new application shall be required for any subsequent construction.

8.3 Permits issued here under may be revoked for cause, including but not limited to mistakes or misrepresentations of fact, issuance in violation of the provisions of this Ordinance, or in violation of any other applicable law or ordinance and for violation of the terms and conditions of the permit.

8.4 Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

8.4.1 the nonconformity or occupancy is discontinued for a period of more than one year; or

8.4.2 any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no land use permit has been applied for within 180 days of when the property is damaged.

Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

ARTICLE 9

PLANNING COMMISSION

9.1 There is herewith created a Planning Commission consisting of members appointed by the Hillman Town Board.

9.2 POWERS: The Planning Commission shall have and exercise the following powers;

- 9.2.1 To adopt rules of procedure governing the transaction of its business.
- 9.2.2 To cooperate with the Zoning Administrator and Town Board recommending to the Board for adoption a Comprehensive Plan and recommendations for plan execution in the form of official controls and other measures and amendments thereto.
- 9.2.3 To conduct such hearings as may be required by law and by the provisions of this Ordinance, and in connection therewith to make findings and recommendation which shall be transmitted to the Town Board for final decision.

9.3 VACANCIES: Vacancies occurring on the Planning Commission shall be promptly filled by the Town Board and any member so appointed shall serve the balance of the preceding member's term and shall thereafter be subject to appointment in the manner herein above set forth.

- 9.3.1 All members shall be appointed for a term of three years. Provided that each member shall serve until successor is duly appointed by the Town Board.
- 9.3.2 Members of the Planning Commission may be paid compensation in an amount determined by the Town Board and may be paid necessary expense in the performance of official duties.

ARTICLE 10

VARIANCES

10.1 The Township Planning Commission shall act as the Board of Adjustment and hear all requests for variances from these rules. Members shall be appointed by the Town Board, provided that no elected officer of the Township nor any employee of the Town Board shall serve as a member of the Board of Adjustment.

10.2 Members of the Board of Adjustment may be paid compensation in an amount determined by the Town Board and may be paid their necessary expenses in the performance of official duties.

10.3 Powers: All decisions from the Board of Adjustment are recommendations to the Town Board. The Town Board has final decision authority in matters of variances. The Board of Adjustment shall have and exercise the following powers:

- 10.3.1 To adopt rules of procedure governing the transaction of its business.
- 10.3.2 To hear and recommend to the Town Board appeals from and review any order requirement, decision or determination made by any administrative official charged with enforcing the provisions of this ordinance.
- 10.3.3 To recommend the issuance of variances from the terms of any official control, including restrictions placed on any nonconformity. Variances shall be permitted only when they are in harmony with the general purposes and intent of the provisions of this Ordinance, in cases where there are practical difficulties or particular hardship in carrying out the strict letter of this Ordinance, and when the terms of the variance are consistent with the Comprehensive Plan. "Hardship" as used in connection with the granting of a variance means that the property in questions cannot be put to a reasonable use if used under the provisions allowed by the Zoning Ordinance; the plight of the landowner is due to circumstances unique to his property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship. No variance may be granted which would allow any land use that is prohibited in the zoning district in which the property is located. The Board of Adjustment may recommend conditions in the granting of variances to insure compliance and protect adjacent properties and the public interest. The applicant for a variance which in the opinion of the Town Board may result in a material adverse effect on the environment may be requested by the board to demonstrate the nature and extent of the effect and submit an Environmental Assessment Worksheet as provided by the Minnesota Environmental Policy Act.

10.4 Variance Application Procedure:

- 10.4.1 Application for a variance shall be made to the Zoning Administrator who shall promptly refer it to the Board of Adjustment. The application shall contain the information required for an application of a variance, along with such other data and information as the Board of Adjustment may deem necessary to properly evaluate the application. Additionally, should the Board be of the opinion that issuance of a variance may result in a material adverse effect on the environment, the applicant may be requested by the Board to demonstrate the nature and effect of the extent.
- 10.4.2 The Board of Adjustment shall review the application and shall report its recommendation to the Town Board. Recommendations shall include an accurate description of the proposed variance, a description of the property upon which the variance is sought to be located, along with any other recommendations or proposed conditions of the Board of Adjustment.
- 10.4.3 The variance request shall be answered within the time limits set by law.

ARTICLE 11

CONDITIONAL USE PERMITS

11.1 PROCEDURE:

11.1.1 Application for a conditional use permit shall be made to the Zoning Administrator who shall promptly refer it to the Planning Commission. The application shall contain the information required for an application for a land use permit, including all of the following:

11.1.1.1 A location map showing the general location of the proposed conditional use within the Township.

11.1.1.2 A map showing the principal land use within 350 feet of the parcel for which application is being made.

11.1.1.2 Site plan showing parcel and building dimensions. Locate all wetlands.

11.1.1.3 Location of all buildings and their square footage.

11.1.1.4 Streets, curb cuts, driveways, access roads, parking spaces and off street loading areas. Estimate traffic generation.

11.1.1.5 Type of business or activity and proposed number of employees.

11.1.1.6 Proposed sidewalks and landscaping and lighting plans.

11.1.1.7 Any other information deemed necessary by the Zoning Administrator or Planning Commission.

11.1.1.8. After determining that the application has been properly filed and is complete, The Zoning Administrator shall refer said application, along with all related information, to the Township Planning Commission for consideration.

11.1.2 The Planning Commission shall review the application and report its recommendation to the Town Board. Recommendations shall include an accurate description of the proposed conditional use, a description of the property upon which the conditional use is sought to be located, along with any other recommendations or proposed conditions of the Planning Commission.

11.1.3 The Board shall hold a public hearing on the application. Notice of the time, place and purpose of the hearing shall be given by publication in a newspaper of general circulation in the township, at least ten (10) days before the hearing. Additionally, written notice of public hearing shall be sent to all property owners of record within five hundred (500) feet of the subject property.

11.2 **STANDARDS AND CRITERIA:** A conditional use permit shall be granted by a majority vote of the Town Board upon written findings of fact that the following conditions have been complied with. Approval may be subject to such further restrictions and conditions as the Town Board may deem necessary to protect the public interest, including but not limited to matters relating to appearance, lighting, hours of operations, and performance characteristics. When appropriate, restrictive covenants may be required regarding such matters.

- 11.2.1 That the proposed development is likely to be compatible with development permitted under the general provisions of this Ordinance on substantially all and in the vicinity of the proposed development.
- 11.2.2 That the conditional use will not be injurious to the use and enjoyment of the environment, or detrimental to the rightful use and enjoyment of other property in the immediate vicinity.
- 11.2.3 That the proposed use is consistent with the overall Comprehensive Plan and with the spirit and intent of the provisions of the Ordinance.

11.3 DENIAL: In the event that the Town Board denies an application for a Conditional Use, the factual basis and reasons for the denial shall be set forth in written finds of fact.

11.4 DURATION; TERMINATION: Unless restricted by a permit condition, a conditional use permit shall remain in effect for so long as the conditions agreed upon are observed, Where a conditional use does not continue in conformity with the conditions of the original approval, the permit shall be terminated by the Board, provided that no permit shall be revoked unless the permittee has first been granted a public hearing.

ARTICLE 12

LAND DIVISIONS

12.1. All land divisions shall be done in accordance with the Kanabec County Subdivision Platting Ordinance in addition to any Township requirements.

12.1.2 Requests for township approval of minor subdivisions pursuant to the Kanabec County Exemption Certificate process will not be allowed if the division creates more than two lots in a Quarter of Quarter Section. The resulting lots must meet the minimum lot size specified in Article 5. The Zoning Administrator, or in their absence the Town Board Chairperson, is authorized to approve and sign minor subdivisions pursuant to the Kanabec County Exemption Certificate process.

12.1.3 Requests for township approval of subdivisions pursuant to the Kanabec County Subdivision Plat process will be treated as follows:

12.1.3.1 The Planning Commission will review all proposed plats and make recommendations for Town Board action.

12.1.5.2 The Planning Commission shall consider the proposed plat from the point of view of all standards and purposes of the Comprehensive Land Use

12.1.5.3 Plat proposals which would result in building lots of greater density than two dwellings per Quarter of Quarter Section are not consistent with the Hillman Township Comprehensive Land Use Plan. Lots must meet minimum lot size specified in Article V.

ARTICLE 13

TOWERS AND WIND ENERGY CONVERSION SYSTEMS

13.1: INTENT AND PURPOSE These are the standards for the proper placement and design of tower facilities in order to ensure their compatibility with surrounding aesthetics and development. These regulations are intended to:

- 13.1.1. Facilitate the provision of telecommunications services and facilities including commercial wireless telecommunication services in Hillman Township;
- 13.1.2. Minimize adverse visual effects of towers through careful design and siting standards;
- 13.1.3. Avoid potential damage to adjacent properties from tower or antenna failure and weather-related occurrences through structural standards, careful siting, and setback requirements;

13.2: APPLICABILITY

- 13.2.1 It shall be unlawful for any person to erect, construct, or place any new Tower facility or Wind Energy Conversion System without first receiving appropriate permits from the Hillman Township Zoning Administrator. Tower Facilities and Wind Energy Conversion Systems must comply with all local, county, state and federal regulations. It shall be unlawful to alter, modify, transform, add to, or change in any way, an existing tower structure or wind energy conversion system without first receiving permits from the Hillman Township Zoning Administrator. Addition of transmission lines shall not require a permit.
- 13.2.2 The provisions contained herein shall not govern any privately owned tower, or the installation of any antenna that is under seventy (70) feet in height and either operated by a federally licensed amateur radio station operator or is used exclusively as a receive only antenna.

13.3: DEFINITIONS

- 13.3.1 Antenna: Any structure or device used for the purpose of collecting or radiating electromagnetic waves including but not limited to directional antennas such as panels, microwave dishes, satellite dishes, and omni-directional antennas such as whip antennas.
- 13.3.2 Commercial Wind Energy Conversion System: Any WECS designed and operated at a capacity greater than incidental excess of the amount needed for basic residential use, and/or the purpose of such energy generation is intended for commercial sale.
- 13.3.3 Lowest Extension of WECS Blades: The lowest point of the arc created by the rotation of the WECS rotor.

- 13.3.4. Tower: Any pole, wire, structure or combination thereof, including support lines, cables, wires, braces and masts intended primarily for the purpose of mounting antenna or to serve as an antenna, or for the placement of a wind energy conversion system.
- 13.3.5. Tower Facility(ies): A tower and its appurtenant devices including, but not limited to antennae, buildings, fences, gates and related equipment.
- 13.3.6. Total Height: The distance between the ground level at the base of a structure and its tallest vertical extension including any attachment thereon.
- 13.3.8. Wind Energy Conversion System (WECS): An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and metrological towers, that operate by converting the kinetic energy of wind into electrical energy. The energy maybe used on-site or distributed into the electric grid.

13.4: LAND USE

All towers, not excluded in 13.2, require the granting of a conditional use permit after completion of the application requirements of this Regulation. If a conditional use permit is granted, a land use permit is required for the tower and supporting facilities. All towers must meet the setback distance requirements of the underlying zoning district.

13.5: TOWER DESIGN

13.5.1 Proposed or modified towers and antennas shall be certified by a qualified and licensed professional engineer.

13.5.2 No tower shall be lighted unless FAA rules require lighting. No strobe lights will be allowed.

13.6: TOWER SETBACKS Towers and all accessory structures or buildings shall conform to the following minimum setback requirements:

13.6.1 Towers shall be setback from all property lines an amount equal to the total height of the structure.

13.6.2 Guy wires for towers shall meet the structure setback of the underlying zoning district.

13.7 ABANDONED OR UNUSED TOWERS

Abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the Zoning Administrator.

13.8 SIGNS AND ADVERTISING

The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

13.9 APPLICATIONS REQUIREMENTS The Hillman Township Zoning Administrator may contract with an independent technical expert to review technical materials submitted by the applicant, and/or to determine if additional information is necessary. The tower facility applicant shall pay the cost of such review and/or independent analysis. In addition to the general requirements for conditional use permit applications; all applications for new towers must also include the following:

13.9.1 Site plans drawn to scale, specifying the location of the tower facility, support structures, transmission buildings and/or other accessory structures & uses, accesses, parking areas, fences, signs, lighting, landscaped areas and all adjacent land uses within 250 feet of the tower facility, including all support structures and security fencing.

13.9.2 A signed lease on behalf of a carrier that once the tower is constructed the carrier will be leasing the tower within one (1) year after completion.

13.9.3 Documentation shall be provided prior to the issuance of a land use permit demonstrating that the approved tower has been designed in compliance with a qualified engineer licensed by the State of Minnesota.

13.9.4 Documentation that the communications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the search ring of the service area.

13.9.5 Documentation shall also include a statement that any unused or abandoned tower shall be removed by the tower owner and/or applicant within 12 months of the tower being vacated. Said agreement shall be signed by the applicant and the property owner and shall be attached to and become a part of the permit.

13.10 TIME LIMIT ON TOWER CONSTRUCTION

Construction of an approved tower including all accessory structures, including footings and foundations, must be completed within one year following the date of the permit, extendable for another year by the Hillman Township Zoning Administrator.

13.11 EXISTING TOWER FACILITIES Tower facilities and antennas in all zoning districts and in existence prior to establishment of this ordinance that do not conform to or comply with this ordinance are subject to the following provision:

13.11.1 Towers may continue in use for the purpose now used and as now existing, but may not be replaced or structurally altered without complying in all respects with the provisions contained herein.

13.12 WIND ENERGY CONVERSION SYSTEMS, LAND USE

All WECS facilities must obtain a conditional use permit from the Hillman Township Planning Commission after completion of the application requirements of this Ordinance. If a conditional use permit is granted, a zoning (land use) permit is required for the WECS and supporting facilities.

13.13 WECS PERFORMANCE STANDARDS

All WECS facilities shall at a minimum conform to the following performance standards:

- 13.13.1 All WECS facilities shall either have a climbing apparatus located no closer than 12 feet to the ground or be un-climbable by design for the first 12 feet.
- 13.13.2 Efforts should be made to site WECS facilities to reduce the likelihood of blocking or reflecting television and other communication signals.
- 13.13.3 The safety of the design and construction of all Commercial WECS towers shall be certified by the manufacturer's engineering staff, by a Minnesota professional engineer, or by an individual with technical training on WECS. The standard for certification shall be good engineering practices.
- 13.13.4 All proposed WECS facilities shall be in compliance with any applicable airport zoning, and shall comply with Federal Aviation Administration notification requirements and any other FAA regulations.
- 13.13.5 The maximum height of the lowest extent of a WECS blade shall be 130 feet or thirty feet above any obstacles within 300 feet from the WECS tower, whichever is lower.
- 13.13.6 The minimum height of the lowest extent of a WECS blade shall be 30 feet above the ground.
- 13.13.7 WECS facilities shall have a minimum distance to the parcel and/or recorded easement boundary equal to the height of the tower.
- 13.13.8 All WECS facilities shall not create stray voltage that will adversely affect adjacent properties.

13.14 CONDITIONAL USE PERMIT

In addition to the general requirements for conditional use permit applications, all applications for new Commercial WECS towers must also include the following:

- 13.14.1 A scaled drawing showing the location of the proposed WECS including any auxiliary equipment.
- 13.14.2 Property lines and physical dimensions of the lot, including the location and size of any obstructions within 300 feet that would be pertinent in the consideration of the permit request.
- 13.14.3 Clearance distances between the farthest extension of the WECS blades to the property lines.
- 13.14.4 Locations, dimensions, and types of existing structures and uses on the lot, including the location of all above ground utility lines within a distance equivalent to the total height of the proposed WECS.

ARTICLE 14

RIGHT-OF-WAY MANAGEMENT

14.1 The primary objective of this ordinance is to protect the public's interest in its Right-of Ways. The Hillman Town Board finds that regulation, maintenance and administration of public Right-of-Ways, as set forth in the ordinance, is in the best interests of the health, safety and welfare of Hillman's citizens.

The ordinance seeks, among other things, to accomplish the following objectives:

14.1.1. Protect the public health, safety, welfare and convenience.

14.1.2. Ensure the structural integrity and quality of streets.

14.1.3. Minimize detours and bottlenecks on public streets do to lengthy and uncoordinated construction activity within public Right-of-Ways.

14.1.4. Make efficient use of the limited space below the public Right-of-Way to ensure both access by private utility and communications companies.

14.2 The following definitions apply to the terms indicated below and found throughout this Article. References hereafter to "sections" are unless otherwise specified references to sections in this Article. Defined terms remain defined terms whether or not capitalized.

14.2.1. "Applicant" means any Person requesting permission to excavate or obstruct a Right-of-Way.

14.2.2. "Construction Performance Bond" means a performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that Right-of-Way Excavation and Obstruction work is completed in accordance with the terms of the Right-of-Way Permit, or other applicable State law or local regulation.

14.2.3. "Delay Penalty" is the penalty imposed as a result of unreasonable delays in Right-of-Way construction.

14.2.4. "Emergency" means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore Service to a customer.

14.2.5. "Equipment" means any tangible asset used to install, repair, or maintain Facilities in any Right-of-Way.

14.2.6. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way.

- 14.2.7. "Facility or Facilities" means any tangible asset in the Right-of-Way required to provide Utility Service.
- 14.2.8. "Local Representative" means a local Person or Persons, or designee of such Person or Persons, authorized by a Registrant to accept Service and to make decisions for that Registrant regarding all matters within the scope of this Ordinance.
- 14.2.9. "Obstruct" means to place any tangible object in a Right-of-Way so as to hinder free and open passage over that or any part of the Right-of-Way.
- 14.2.10. "Permittee" means any Person to whom a permit to Excavate or Obstruct a Right-of-Way has been granted by the Township under this Ordinance.
- 14.2.11. "Person" means any natural or corporate Person, business association or other business entity including, but not limited to, a partnership of any kind, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- 14.2.12. "Probation" means the status of a Person that has been found in noncompliance with the conditions of this Ordinance.
- 14.2.13. "Probationary Period" means one year from the date that a Person has been notified in writing that they have been put on Probation.
- 14.2.14. "Registrant" means any Person who (1) has or seeks to have its Equipment or Facilities located in any Right-of-Way, or (2) in any way occupies or uses, or seeks to occupy or use, the Right-of-Way or place its Facilities in the Right-of-Way.
- 14.2.15. "Restore or Restoration" means the process by which a Right-of-Way is returned to the same condition and life expectancy that existed before excavation.
- 14.2.16. "Restoration Cost" means the amount of money paid to the Township by a Permittee to achieve the level of restoration described in 14.2.28.
- 14.2.17. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the Township has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the Township. A Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service.
- 14.2.18. "Right-of-Way Permit" means a permit for either excavation or obstruction in a Township Right-of-Way.
- 14.2.19. "Service" or "Utility Service" includes but is not limited to (1) those services

provided by a public utility as defined in Minn. Stat. § 216B.02, subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. § 300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minn. Stat. Chap. 238; and a (6) Telecommunication Right-of-Way User as defined in 14.2.34.

14.2.20. "Supplementary Application" means an application made to Excavate or Obstruct more of the Right-of-Way than allowed by, or to extend, a permit that had already been issued.

14.2.21. "Telecommunication Rights-of-Way User" means a Person owning or controlling a Facility in the Right-of-Way, or seeking to own or control a Facility in the Right-of-Way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Ordinance, a cable communication system defined and regulated under Minn. Stat. Chap. 2381 and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not Telecommunications Right-of-Way Users for purposes of this Ordinance.

14.2.22. "Township" means the Township of Hillman, Minnesota its elected officials, officers, employees and agents.

14.2.23. "Unusable Facilities" means Facilities in the Right-of-Way which have remained unused for one year and for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the Facilities.

14.3. The Zoning Administrator is the principal Township official responsible for the administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The Zoning Administrator may delegate any or all of the duties hereunder.

14.4. Registration and Right-of-Way Occupancy.

14.4.1. Registration. Each Person who occupies, uses, or seeks to occupy or use, the Right-of-Way for purposes of placing, maintaining or repairing any Equipment or Facilities in the Right-of-Way, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Zoning Administrator. Registration will consist of providing application information and paying a registration fee.

14.4.2. Registration Prior to Work. No Person may construct, install, repair, remove, relocate, or perform any other work on, or use any Facilities or any part thereof in any Right-of-Way without first being registered with the Zoning Administrator.

14.5 Registration Information.

14.5.1. Information Required. The information provided to the Zoning Administrator at the time of registration shall include, but not be limited to:

14.5.1.1. Each of the following, if applicable; Registrant's name, Gopher One-Call registration certificate number, address, e-mail address, telephone and facsimile numbers.

14.5.1.2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. Current information regarding how to contact the Local Representative in an Emergency shall be provided at the time of registration.

14.5.1.3. A certificate of insurance or self-insurance:

14.5.1.3.1. Verifying that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the Zoning Administrator;

14.5.1.3.2. Verifying that the Registrant is insured against claims for Personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, and (ii) placement and use of Facilities in the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;

14.5.1.3.3. Naming the Township as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

14.5.1.3.4. Requiring that the Zoning Administrator be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;

14.5.1.3.5. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts sufficient to meet statutory limits of liability.

14.5.1.4. A copy of the Person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the Person is lawfully required to have such certificate from said Commission or other state or federal agency.

14.5.2. Notice of Changes. The Registrant shall keep all of the information listed above current at all times by providing to the Zoning Administrator information as to changes within fifteen (15) days following the date on which the Registrant has knowledge of any change.

14.6 Permit Requirement.

- 14.6.1. Permit Required. Except as otherwise provided in this Code, no Person may obstruct or excavate any Right-of-Way without first having obtained a Right-of-Way Permit from the Zoning Administrator to do so.
- 14.6.2. Permit Extensions. No Person may excavate or obstruct the Right-of-Way beyond the date or area specified in the permit unless such Person makes application for another Right-of-Way Permit before the expiration of the initial permit, and a new permit is granted.
- 14.6.3. Delay Penalty. Notwithstanding 14.7.4., the Township shall establish and impose a Delay Penalty for unreasonable delays in Right-of-Way excavation, obstruction, or Restoration. The Delay Penalty shall be established by the Township and amended when necessary by resolution.
- 14.6.4. Permit Display. Permits issued under this Ordinance shall be available at all times at the indicated work site and shall be available for inspection by the Zoning Administrator.

14.7. Permit Applications.

Application for a permit is made to the Zoning Administrator. Right-of-Way Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- 14.7.1. Registration with the Zoning Administrator pursuant to this Ordinance;
- 14.7.2. Submission of a completed permit application form, including all required attachments, and drawings showing the location and area of the proposed project and the location of all known existing and proposed Facilities. At a minimum, this will include:
 - 14.7.2.1. Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and Facilities, with the location based on offsets from property lines and distances from the centerline of the public right-of-way.
 - 14.7.2.2. the type and size of the Facility.
 - 14.7.2.3. a description showing aboveground appurtenances.
 - 14.7.2.4. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the drawing.
- 14.7.3. Payment of money due the Township for
 - 14.7.3.1. permit fees, estimated Restoration Costs and other Management Costs;
 - 14.7.3.2. prior Obstructions or Excavations;

14.7.3.3. any undisputed loss, damage, or expense suffered by the Township because of Applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the Township;

14.7.3.4. user fees, if applicable.

14.7.4. Payment of disputed amounts due the Township by posting security or depositing an escrow account an amount equal to at least 110% of the amount owing.

14.7.5. When a Permit is requested for purposes of installing additional Facilities, and the posting of a Construction Performance Bond for the additional Facilities is insufficient, the posting of an additional or larger Construction Performance Bond for the additional Facilities may be required.

14.7.6. Trade Secret Information. At the request of any Registrant, any information requested by the Township, which qualifies as a "trade-secret" under Minn. Stat. § 13.37 (b) shall be treated as trade secret information as detailed therein.

14.8 Issuance of permit; conditions.

14.8.1. Permit Issuance. If the Applicant has satisfied the requirements of this Ordinance, the Zoning Administrator shall issue a permit.

14.8.2. Conditions. The Zoning Administrator may impose reasonable conditions upon the issuance of the permit and the performance of the Applicant thereunder to protect the health, safety and welfare or when necessary to protect the Right-of-Way and its current use.

14.9. Permit Fees.

14.9.1. Permit Fees shall be established by the Township and shall be published in the fee schedule which the Township shall from time to time amend by resolution.

14.9.2. Payment of Permit Fees. No Permit shall be issued without payment of Permit Fees.

14.10. Right-of-Way Restoration.

14.10.1. Timing. The work to be done under a Right-of-Way Permit, and Restoration of the Right-of-Way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Section 14.15.

14.10.2. Restoration. The Township may choose either to have the Permittee restore the Right-of-Way or to have the Township Restore the Right-of-Way.

14.10.2.1. Township Restoration. If the Township restores the Right-of-Way, Permittee shall pay the costs thereof within thirty (30) days of billing.

14.10.2.2. Permittee Restoration. If the Permittee Restores the Right-of-Way, it shall at the time of application for an Excavation Permit post a Construction Performance Bond in an amount determined by the Township to be sufficient to cover the cost of Restoration. If, within 24 months after completion of the Restoration of the Right-of-Way, the Township determines that the Right-of-Way has been properly Restored, the surety on the Construction Performance Bond shall be released.

14.10.3. Standards. The Permittee shall perform Restoration according to the standards and with the materials specified or approved by the Township. The Township shall be guided by the following considerations:

14.10.3.1. The number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way.

14.10.3.2. The traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way;

14.10.3.3. The pre-excavation condition of the Right-of-Way; the remaining life expectancy of the Right-of-Way affected by the excavation;

14.10.3.4. Whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the Right-of-Way; and

14.10.3.5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.

14.10.4 Guarantees. By choosing to Restore the Right-of-Way itself, the Permittee guarantees its work and shall maintain it for 24 months following its completion. During this 36-month period it shall, upon notification from the Zoning Administrator, correct all restoration work to the extent necessary. Said work shall be completed within five (5) business days of the receipt of the notice from the Zoning Administrator, exclusive of weekends, legal holidays, periods during which work cannot be done because of circumstances beyond Permittees reasonable control or days when work is prohibited as unseasonable or unreasonable under Section 14.15.

14.10.5. Failure to Restore. If the Permittee fails to Restore the Right-of-Way in the manner and to the condition required by the Township, or fails to satisfactorily and timely complete all Restoration required by the Township, the Township at its option may do such work. In that event the Permittee shall pay to the Township, within thirty (30) days of billing, the cost of Restoring the Right-of-Way. If Permittee fails to pay as required, the Township may exercise its rights under the Construction Performance Bond.

14.11. Joint Applications.

- 14.11.1. Joint Application. Registrants may jointly apply for permits in the Right-of-Way at the same place and time.
- 14.11.3. Shared Fees. Registrants who apply for permits for the same Right-of-Way work may share in the payment of the Right-of-Way Fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

14.12. Other Obligations.

- 14.12.1. Compliance With Other Laws. Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the Township or other applicable rule, law or regulation. A Permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. §§ 216D.01-.09 ("One Call Excavation Notice System"). A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.
- 14.12.2. Prohibited Work. Except in an Emergency, and with the approval of the Zoning Administrator, no Right-of-Way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- 14.12.3. Interference with Right-of-Way. A Permittee shall not so obstruct a Right-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- 14.12.4. Traffic Warnings and Signage. When working in a Township Right-of-Way, the Applicant is required to erect proper signage and traffic control devices to warn the public that work is being performed in the Right-of-Way or that the Right-of-Way is obstructed. All signs and traffic warning devices shall be erected as prescribed by and in conformance with the Minnesota Manual on Uniform Traffic Devices.

14.13. Denial of permit.

The Zoning Administrator may deny a permit for failure to meet the requirements and conditions of this Ordinance or if the Zoning Administrator determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current use.

14.14. Inspection.

- 14.14.1. A person designated by the right-of-way user as a responsible employee

shall sign a completion certificate showing the completion date for the work performed, identifying the installer and designer of record, and certifying that work was completed according to the requirements of the local government unit.

14.14.2. "As built" drawings. If necessary due to changes from the work as projected when the permit was applied for, the permittee shall submit "as built" drawings or maps within six months of completing the work, showing any deviations from the plan that are greater than plus or minus two feet.

14.14.3. Site Inspection. Permittee shall make the work-site available to Township employees or agents and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

14.14.4. Authority of Zoning Administrator.

14.14.4.1. At the time of inspection the Zoning Administrator may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

14.14.4.2. The Zoning Administrator may issue an order to the Permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the Permittee shall present proof to the Zoning Administrator that the violation has been corrected. If such proof has not been presented within the required time, the Zoning Administrator may revoke the permit pursuant to Section 14.20.

14.15 Work Done Without a Permit.

14.15.1. Emergency Situations. Each Registrant shall immediately notify the Zoning Administrator of any event regarding its Facilities which it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. Within two business days after the occurrence of the Emergency the Registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the Emergency.

14.15.2. If the Zoning Administrator becomes aware of an Emergency regarding a Registrant's Facilities, the Zoning Administrator will attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the Zoning Administrator may take whatever action it deems necessary to respond to the Emergency, the cost of which shall be borne by the Registrant whose Facilities occasioned the Emergency.

14.15.3. Non-Emergency Situations. Except in an Emergency, any Person who, without first having obtained the necessary permit, obstructs or excavates a Right-of-

Way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this Ordinance, deposit with the Zoning Administrator the fees necessary to correct any damage to the Right-of-Way and comply with all other requirements of this Ordinance.

14.16. Supplementary Notification.

If the obstruction or excavation of the Right-of-Way begins later or ends sooner than the date given on the permit, Permittee shall notify the Zoning Administrator of the accurate information as soon as this information is known.

14.17 Revocation of Permits.

14.17.1. Substantial Breach. The Township reserves its right, as provided herein, to revoke any Right-of-Way Permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by Permittee shall include, but shall not be limited to, the following:

14.17.1.1. The violation of any material provision of the Right-of-Way Permit;

14.17.1.2. An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Township or its citizens;

14.17.1.3. Any material misrepresentation of fact in the application for a Right-of-Way Permit;

14.17.1.4. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the Permittee's control; or

14.17.1.5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an Order issued pursuant to Section 14.18.

14.17.2. Written Notice of Breach. If the Zoning Administrator determines that the Permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the Zoning Administrator shall make a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit and subject the Permittee to costs and expenses incurred by the Township as a result of this breach including attorneys fees and restoration costs. A substantial breach, as stated above, will allow the Zoning Administrator to place additional or revised conditions on the permit to mitigate and remedy the breach.

14.17.3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the Zoning Administrator

with a plan, acceptable to the Zoning Administrator, that will cure the breach. Permittee's failure to so contact the Zoning Administrator, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to so contact the Zoning Administrator, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall automatically place the Permittee on Probation for one (1) full year.

- 14.17.4. Reimbursement of Township Costs. In the event of a there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit, the Zoning Administrator may institute appropriate actions or proceedings, including requesting injunctive relief to prevent, restrain, correct or abate such violations. The Permittee will pay all restoration costs and all reasonable professional fees incurred by the Township as a result of Township efforts to enforce the terms of this Ordinance within thirty (30) days after receipt of a bill for such costs from the Township. Said fees include attorney's fees, engineer's fees, and any other professional fees incurred by the Township in attempting to enforce the terms of this Ordinance. The Permittee will also pay all attorney's and professional fees incurred by the Township in the event an action is brought upon the construction bond or other surety furnished by the Permittee as required herein. Permittee shall allow the Township to specially assess Permittee's property for any and all costs incurred by the Township in enforcing any of the terms of this agreement should Permittee's construction bond prove insufficient or should Permittee fail to maintain said construction bond in the amount required. Should the Township assess Permittee's property for said costs, Permittee agrees not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minnesota Statute 429.081.

14.18 Location of Facilities.

- 14.18.1. Corridors. The Township may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of Facilities that is or, pursuant to current technology, the Township expects will someday be located within the Right-of-Way. All permits issued by the Zoning Administrator involving the installation or replacement of Facilities shall designate the proper corridor for the Facilities at issue.
- 14.18.2. Any Registrant who has Facilities in the Right-of-Way in a position at variance with the corridors established by the Township shall, no later than at the time of the next reconstruction or excavation of the area where the Facilities are located, move the Facilities to the assigned position within the Right-of-Way, unless this requirement is waived by the Zoning Administrator for good cause shown, upon consideration of such factors as the remaining economic life of the Facilities, public safety, customer Service needs and hardship to the Registrant.
- 14.18.3. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the Zoning Administrator shall have the power to prohibit or limit the placement of new or additional Facilities

within the Right-of-Way. In making such decisions, the Zoning Administrator shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular Utility Service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing Facilities in the Right-of-Way, and future Township plans for public improvements and development projects that have been determined to be in the public interest.

14.19. Relocation of Facilities.

A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the Zoning Administrator for good cause requests such removal and relocation, and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The Zoning Administrator may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future Township use of the Right-of-Way, (ii) a public improvement undertaken by the Township, (iii) an economic development project in which the Township has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the Person therefor.

14.20. Pre-Excavation Facility and Facilities Location.

In addition to complying with the requirements of Minn. Stat. §§ 216D.01-.09 ("One Call Excavation Notice System") before the start date of any Right-of-Way excavation, each Registrant who has Facilities or Equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said Facilities. Any Registrant whose Facilities is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its Facilities and the best procedure for excavation.

14.21. Damage to Other Facilities.

When the Township does work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant's Facilities to protect it, the Zoning Administrator shall notify the Local Representative as early as is reasonably possible. The costs associated therewith will be billed to that Registrant and must be paid within thirty (30) days from the date of billing.

Each Registrant shall be responsible for the cost of repairing any Facilities in the Right-of-Way which it or its Facilities damages. Each Registrant shall be responsible for the cost of repairing any

damage to the Facilities of another Registrant caused during the Township's response to an Emergency occasioned by that Registrant's Facilities.

Registrant shall assume full financial responsibility for any damage which may occur to public property including but not limited to streets, street sub-base, base, bituminous surface, curb, utility system including but not limited to watermain, sanitary sewer or storm sewer when said damage occurs as a result of the activity which takes place in the Right-of-Way. The Registrant further agrees to pay all costs required to repair the streets, utility systems and other public property damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place in the Right-of-Way.

Registrant agrees to clean the streets on a daily basis if required by the Township. Registrant further agrees that any damage to public property occurring as a result of construction activity in the Right-of-Way will be repaired immediately if deemed to be an emergency by the Township. Registrant further agrees that any damage to public property as a result of construction activity in the Right-of-Way will be repaired within 14 days if not deemed to be an emergency by the Township.

If Registrant fails to so clean the streets or repair or maintain said public property, the Township may undertake making or causing it to be cleaned up, repaired or maintained. When the Township undertakes such activity, the Registrant shall reimburse the Township for all of its expenses within thirty (30) days of its billing to the Registrant. If the Registrant fails to pay said bill within thirty (30) days, then the Township may draw from the construction bond, specially assess such costs against the Registrant's property and/or take necessary legal action to recover such costs. The Township shall be entitled to attorneys fees and expenses incurred by the Township as a result of such legal action. Registrant knowingly and voluntarily waives all rights to appeal said special assessments under Minnesota Statutes section 429.081.

14.22 Right-of-Way Vacation.

14.22.1. Reservation of Right. If the Township vacates a Right-of-Way which contains the Facilities of a Registrant, and if the vacation does not require the relocation of Registrant's or Permittee's Facilities, the Township shall reserve, to and for itself and all Registrants having Facilities in the vacated Right-of-Way, the right to install, maintain and operate any Facilities in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

14.22.2. Relocation of Facilities. If the vacation requires the relocation of Registrant's or Permittee's Facilities; and (i) if the vacation proceedings are initiated by the Registrant or Permittee, the Registrant or Permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the Township, the Registrant or Permittee must pay the relocation costs unless otherwise agreed to by the Township and the Registrant or Permittee; or (iii) if the vacation proceedings are initiated by a Person or Persons other than the Registrant or Permittee, such other Person or Persons must pay the relocation costs.

14.23. Indemnification and Liability. By registering with the Zoning Administrator, or by accepting a permit under this Ordinance, a Registrant or Permittee agrees as follows:

- 14.23.1. Limitation of Liability. By reason of the acceptance of a registration or the grant of a Right-of-Way Permit, the Township does not assume any liability (i) for injuries to Persons, damage to property, or loss of Service claims by parties other than the Registrant or the Township, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.
- 14.23.2. Indemnification. A Registrant or Permittee shall indemnify, keep, and hold the Township, its representatives, officers, employees or assigns free and harmless from any and all liability on account of injury to Persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of Registrant's or Permittee's Facilities located in the Right-of-Way. The Township shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance. The Township shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the Registrant or Permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the Township after receiving notice of the Registrant's or Permittee's determination.
- 14.23.3. Defense. If a suit is brought against the Township under circumstances where the Registrant or Permittee is required to indemnify, the Registrant or Permittee, at its sole cost and expense, shall defend the Township in the suit if written notice of the suit is promptly given to the Registrant or Permittee within a period in which the Registrant or Permittee is not prejudiced by the lack or delay of notice.

If the Registrant or Permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the Registrant or Permittee may not settle the litigation without the consent of the Township. Consent will not be unreasonably withheld.

This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the Township.

In defending an action on behalf of the Township, the Registrant or Permittee is entitled to assert in an action every defense, immunity, or damage limitation that the Township could assert in its own behalf.

14.24. Abandoned and Unusable Facilities.

- 14.24.1. Discontinued Operations. A Registrant who has determined to discontinue its operations in the Township must either:
- 14.24.1.1. Provide information satisfactory to the Zoning Administrator that the Registrant's obligations for its Facilities in the Right-of-Way under this Ordinance have been lawfully assumed by another Registrant; or
 - 14.24.1.3. require the Registrant, at its own expense, to remove it; or
 - 14.24.1.4. require the Registrant to post a bond acceptable to the Township in an amount sufficient to reimburse the Township for reasonably anticipated costs to be incurred in removing the Facilities.
- 14.24.2. Abandoned Facilities. Facilities of a Registrant who fails to comply with Section 14.28.1 of this Section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. The Township may exercise any remedies or rights it has at law or in equity, including, but not limited to, (i) abating the nuisance (ii) taking possession of the Facilities and restoring it to a useable condition, or (iii) requiring removal of the Facilities by the Registrant, or the Registrant's successor in interest.
- 14.24.3. Removal. Any Registrant who has unusable and abandoned Facilities in any Right-of-Way shall remove it from that Right-of-Way during the next scheduled excavation, unless this requirement is waived by the Zoning Administrator.
- 14.24.4. Professional fees and costs. In the event that the Permittee or Registrant discontinues operations and/or abandons facilities, and fails to remove its facilities and restore the Right-of-Way to its original condition, the Township may undertake making or causing it to be cleaned up, repaired or maintained. When the Township undertakes such activity, the Registrant shall reimburse the Township for all of its expenses within thirty (30) days of its billing to the Registrant. If the Registrant fails to pay said bill within thirty (30) days, then the Township may draw from the construction bond, specially assess such costs against the Registrant's property and/or take necessary legal action to recover such costs. The Township shall be entitled to attorneys fees and expenses incurred by the Township as a result of such legal action. Registrant shall knowingly and voluntarily waive all rights to appeal said special assessments under Minnesota Statutes section 429.081.

14.25 Appeal.

- 14.25.1. A Right-of-Way User that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the Township Board. The Township Board shall act on a written request in a timely manner. A decision by the Township Board affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.
- 14.25.2. Upon affirmation by the Township Board of the denial, revocation, or fee imposition, the Right-of-Way User shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the Township Board and Right-of-Way User. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the Township, one arbitrator selected by the Right-of-Way User and one selected by the other two arbitrators. The costs and fees of single arbitrator shall be borne equally by the Township and Right-of-Way User. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

ARTICLE 15

MINERAL EXTRACTION

PURPOSE

- 15.1. The purpose of this Section is to protect the public health, safety and welfare through the following:
 - 15.1.1. Establish permitting requirements, environmental review procedures and performance standards to regulate mineral extraction.
 - 15.1.2. Establish standards which distinguish between longer term and shorter term mineral extraction activities.
 - 15.1.3. Establish standards which prevent or minimize environmental and aesthetic impacts on extracted properties, adjacent properties and the community as a whole.
 - 15.1.4. Establish standards and financial guarantees that restore extracted land to a condition compatible with adjacent properties and suitable for future uses which are compatible with the Hillman Township Comprehensive Plan.

DEFINITIONS

- 15.2. When used in this Ordinance, the following terms shall have the meaning associated with them:
 - 15.2.1. Accessory Uses: Accessory uses of a mineral extraction facility may include the manufacture, storage and sale of products made from minerals on the premises and storage and sale of minerals and topsoil not extracted on the premises.
 - 15.2.2. Board: The Board of Supervisors of Hillman Township.
 - 15.2.3. Dust: Airborne mineral particulate matter.
 - 15.2.4. Excavation: The movement or removal of soil and minerals.
 - 15.2.5. Mineral: Sand, gravel, rock, clay and similar higher density non-metallic natural minerals.
 - 15.2.6. Mineral Extraction: The removal of sand, gravel, rock clay and other minerals from the ground.
 - 15.2.7. Mineral Extraction Facility: any area that is being used for removal, stockpiling, storage, and processing of sand, gravel, topsoil, clay, and other minerals.
 - 15.2.8. Mineral Extraction Permit: The permit required for mineral extraction facilities.
 - 15.2.9. Operator: Any person or persons, partnerships or corporations or assignees, including public or governmental agencies, engaging in mineral extraction.

- 15.2.10 Owner: The owner of the property on which the mineral extraction occurs.
- 15.2.11. Processing: Any activity which may include the crushing, washing, stockpiling, compounding, mixing, or treatment of sand, gravels, rocks, or similar mineral products into consumable products such as construction grade sand, gravel, concrete, concrete products, asphalt, and other similar products.
- 15.2.12. Rehabilitation: To renew land to self-sustaining long-term use which is compatible with contiguous land uses, present and future, in accordance with the standards set forth in this Ordinance.
- 15.2.13. Soil: A natural three dimensional body of the earth's surface.
- 15.2.14. Subject Property: The land on which mineral extraction is permitted.
- 15.2.15. Topsoil: The upper portion of the soils present that is the most favorable material for plant growth.
- 15.2.16. Township: The Township of Hillman, Kanabec County, Minnesota.
- 15.2.17. Zoning Ordinance: The Hillman Township Zoning Ordinance.

PERMIT REQUIRED

15.3. It is unlawful for any person, firm, or corporation to extract or process minerals in the Township without obtaining a permit required in this ordinance.

15.3.1.Exceptions. A mineral extraction permit shall not be required for any of the following:

- 15.3.1.1. Excavation for a foundation, cellar or basement of a building if a land use permit has been issued.
- 15.3.1.2. Excavation by state, county, city, or township authorities in connection with construction or maintenance of roads, highways, or utilities, conducted solely within permanent easement areas or rights-of-way.
- 15.3.1.3. Curb cuts, utility hook-ups or street.
- 15.3.1.4. Excavation less than one hundred (100) cubic yards per year.
- 15.3.1.5. Excavation or grading for agricultural purposes.
- 15.3.1.6. Other activities in which a permit has been issued, site grading is allowed and mineral extraction is clearly an incidental activity.

MINERAL EXTRACTION PERMIT APPLICATION REQUIREMENTS

- 15.4. An application for a mineral extraction permit shall be submitted to the Township on a form supplied by the Township. Information shall include but not be limited to the following:
- 15.4.1. Name, address, phone number, contact person for the operator.
 - 15.4.2. Name, address, phone number of the landowner.
 - 15.4.3. Acreage and complete legal description of the property on which the facility will be located, including all contiguous property owned by the landowners.
 - 15.4.4. Acreage and complete legal description of the property on which the mineral extraction permit will apply.
 - 15.4.5. Estimated type and quantity of material to be extracted.
 - 15.4.6. Estimated time frame to operate the facility.
 - 15.4.7. A description of the estimated average daily and peak daily number of vehicles accessing the facility, including a breakdown of operator owned and non-operator owned vehicles.
 - 15.4.8. A description of the haul routes within the Township to be used in the operation of the facility.
- 15.5. Supporting Documentation: Every application for a mineral extraction permit shall include submission of supporting documentation which shall include, but may not be limited to the following:
- 15.5.1. A description of existing land uses on the subject property and all adjacent properties.
 - 15.5.2. A general description of the subject property.
 - 15.5.3. A general description of surface waters and wetlands of the subject property.
 - 15.5.4. A general description of any wells or private sewer systems of record, pipelines, power lines; and other utilities or appurtenances on the subject property.
 - 15.5.5. A general description of the depth, quantity, quality and intended uses of the mineral deposits on the subject property.

- 15.5.6. A phasing plan which illustrates the sequencing of mineral extraction, the locations of processing equipment, mineral stockpiles, staging areas, accessory uses and access routes.
 - 15.5.7. Copies of MPCA application documents and operating permits.
 - 15.5.8. A description of the potential impacts to adjacent properties resulting from mineral extraction and off-site transportation, including but not limited to noise, dust, surface water runoff, groundwater contamination, traffic and aesthetics.
 - 15.5.9. A description of the plan to mitigate potential impacts resulting from mineral extraction.
 - 15.5.10. A description of site screening, landscaping and security fencing.
 - 15.5.11. A description of the method in which complaints about any aspect of the facility operation or off-site transportation are to be received and the method which complaints are to be resolved.
- 15.6. **PERMITTING PROCEDURE** Mineral extraction permits shall be considered and processed by the Township as interim use permits.
- 15.6.1. Applicants are encouraged to appear before the Planning Commission to make a preliminary presentation on the conceptual nature of the proposed extraction activity.
 - 15.6.2. A copy of the application and required supporting information shall be forwarded to the Township Zoning Officer or its designee. If the application is complete, the review process will begin.
 - 15.6.3. The Planning Commission shall make findings on the permit application and submit recommendations to the Town Board.
 - 15.6.4. The Town Board will order an Environmental Assessment Worksheet to be prepared according to Minnesota Rules, Chapter 4410 under if the permit is to create a new, or expand an existing or past mineral extraction site, to 40 acres or more.
 - 15.6.5. Upon completion of the environmental review process, the Town Board will process the mineral extraction permit. The Board may require that the applicant submit additional information to address or clarify any issues raised in the environmental review. The formal review process will commence after completion of the environmental review or upon receipt of additional information required.
 - 15.6.6. Within thirty (30) days of receipt of all required information and upon completion of the environmental review process, the Planning Commission shall hold a public hearing for the mineral extraction permit. The hearing will satisfy the hearing requirements of the interim use permit.

- 15.6.7. After the public hearing, the Town Board shall approve the permit application, deny the permit application or approve the permit application with modification.
- 15.6.8. A mineral extraction permit application denied by the Town Board may not be reapplied for, whether the same or modified application, for a period of twelve (12) months from the date of denial.
- 15.6.9. Review and Renewal. All mineral extraction permits shall be reviewed at three-year intervals for renewal. Owner(s) shall submit renewal fees, along with field surveys illustrating the extent of mineral extraction facility operations, material stockpiles, extraction areas, and any site rehabilitation, between January 1 and March 1 of the year due. Owner(s) shall also furnish the Township with a record of any complaints received at the facility during the previous year and a summary of each complaint resolution.

Within thirty (30) days of receipt of review data and renewal fees, the Planning Commission shall review the information for compliance with the terms and conditions of the permit and make recommendations to the Town Board for renewal. In its recommendations, the Planning Commission shall also advise the Town Board of the appropriate hours of operation for facility operations. Upon receipt of the Planning Commission's permit renewal recommendation, the Town Board shall make one of the following findings:

- 15.6.9.1. The Interim Use Permit shall be renewed according to the original permit conditions; or
- 15.6.9.2. The Interim Use Permit shall be renewed according to modified permit conditions; or
- 15.6.9.3. A violation of the permit has occurred which requires a remedy according to the procedures outlined in this Ordinance, and permit renewal will not be considered until such remedy is completed; or
- 15.6.9.4. Termination of the permit is appropriate based on the provisions outlined in this Ordinance.

15.7. **MINERAL EXTRACTION PERFORMANCE STANDARDS** The following performance standards apply to all mineral extraction facilities in the Township:

15.7.1 Hours of Operation.

- 15.7.1.1. Mineral extraction processing shall occur only between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday. A mineral extraction facility may be opened one-half hour before and one hour after hours of operation to allow for the staging and loading of vehicles hauling extracted materials. The Town Board, at its sole discretion, may allow longer hours subject to a review of the operator's mine plan, site logistics, and impact mitigation plans. Longer hours shall be subject to annual review and amendment by the Town Board based on the performance of the previous year.

- 15.7.1.2. Trucking activities shall be conducted only Monday through Saturday during the same hours as the mineral extraction activities are permitted for, including any extended hours of operation provided the operator's mine plan, site logistics, and impact mitigation plans are appropriate for extended hours of operation. Consideration for extensions of hours of operation for trucking activities will also be based upon access to major State and County roadways and mitigation or improvements to local roads providing direct access to major roadways. Longer hours shall be subject to annual review and amendment by the Town Board based on the performance of the previous year. The trucking hours may also be extended on a temporary basis for government work required by agency contracts, with the prior approval by the Town Board.
- 15.7.1.3. Revocation of longer hours of operation and trucking shall be at the sole discretion of the Town Board, based upon findings that the mitigation measures approved for longer hours of operation and trucking are ineffective to protect the public health, safety, and welfare, and according to the following procedures:
 - 15.7.2. Fencing. The Board may require fencing, signs and barriers around artificial ponding areas and steep sloped excavation areas.
 - 15.7.3. Roadway Dust Control. Owner(s) will be responsible for providing water trucks to control dust on all gravel roads utilized by trucks hauling to or from a mineral extraction facility. Unless waived by the Town Board in lieu of other remedies, watering roadways will be required when conditions warrant it.
 - 15.7.4. Mineral Extraction Facility Dust Control. The Township may require watering in a facility when it is determined that airborne dust from extraction areas, processing activities, stockpiles or internal roadways creates a public nuisance. Other remedies to control dust may include berming, landscaping and enclosures for processing equipment.
 - 15.7.5. Noise. Maximum noise levels at the facility will be consistent with the standards established by the Minnesota Pollution Control Agency.
 - 15.7.6. Vibration. Operators shall use all practical means to eliminate adverse impacts on adjacent properties from vibration of equipment.
 - 15.7.7. Accessory Uses. Accessory uses, such as concrete, concrete products, asphalt production, and stockpiling and sale of materials not extracted on the subject property may be considered for approval by the Township
 - 15.7.8. Unauthorized Storage. No vehicles, equipment of materials not associated with the mineral extraction facility or not in operable condition may be kept or stored at the facility.

- 15.7.9. Setbacks. No extraction activity may occur within one hundred (100) feet of any resident and fifty (50) feet of any adjacent property, road right-of-way or public utility. Screeners, crushers, other processing equipment and manufacturing equipment may not be located closer than five hundred (500) feet of a residence. Grading plans affecting pipelines or power line corridors will be evaluated on a case-by-case basis.
- 15.7.10. Phasing. Extraction and reclamation phasing plans must be prepared for all mineral extraction facilities. Mineral extraction properties shall be delineated between plant area, stockpile area, and extraction area. Portions of the extraction area where extraction has been completed shall be rehabilitated according to the provisions of this Ordinance and the terms of the Interim Use Permit, and shall be subject to annual review.
- 15.7.11. Weed Control. The operators shall be required to control noxious weeds.
- 15.7.12. Explosives. If the use of explosives is desired by the operator, a conditional use permit shall be required for each incident to provide adequate public notice and input.
- 15.7.13. General Compliance. The owner(s) and operator(s) must comply with all other federal, state, regional, county and local laws and regulations applicable to the operation of the mineral extraction facility, including but not limited to floodplain management regulations, wetland regulations, shore land management regulations and zoning ordinance regulations.
- 15.7.14. Additional Regulation. The Township may impose additional regulations and requirements to the mineral extraction permit, including but not limited to mitigation and monitoring requirements to protect the public health, safety, and welfare.
- 15.7.15.1. Mitigation and monitoring plans outlined in any environmental assessment worksheet (EAW) or environmental impact statement (EIS) shall be required as minimum conditions in any Interim Use Permit for mineral extraction. The Owner shall be required to adequately fund mitigation and monitoring measures as a condition of any Interim Use Permit for mineral extraction.
- 15.7.15.2. Rehabilitation Plan. A rehabilitation plan must include the grading plans, topsoil replacement, seeding, mulching, erosion control and sedimentation control specifications for each phase and the final site restoration. The following minimum standards and conditions apply:
- 15.7.15.2.1. Final grades may not exceed a 3:1 ratio (33% slope). In completing final grading in each phase, the top of the slope may begin twenty (20) feet from property lines.
- 15.7.15.2.2. A minimum of four (4) inches of topsoil shall be placed on all final graded and rehabilitated surfaces.

- 15.7.15.2.3. Soil restoration, seeding and mulching must occur within each phase as soon as final grades, or interim grades identified in the phasing plans, have been reached. Exceptions to seeding and mulching include the processing, storage and staging areas within each phase.
- 15.7.15.2.4. Unless otherwise amended or approved by the Township, all final grades and site restoration efforts shall be consistent with the Rehabilitation Plan.
- 15.7.15.2.5. Within twelve (12) months after completion of mineral extraction or after termination of the permit, all equipment, vehicles, machinery, materials and debris shall be removed from the subject property.
- 15.7.15.2.6. Within twelve (12) months after completion of mineral extraction or after termination of the permit site, rehabilitation must be completed.

15.8. **TERMINATION** The Township shall have the authority to terminate the mineral extraction permit on the happening of any of the following events:

- 15.8.1. The date of termination specified in the interim use permit.
- 15.8.2. Upon a violation of a condition under which the permit was issued, but only after the Township has first provided written notice to the Owner(s), describing with particularity the specific violation(s) and the steps necessary to cure the violation(s). Excepting threats to public health, safety and welfare or violations with simple remedy, the Owner(s) shall have a period not exceeding sixty (60) consecutive days to cure the specific violations(s). If the 60-day remedy period overlaps with or occurs within a period of seasonal shutdown, and the violations(s) are not easily remedied or do not pose a threat to public health, safety and welfare, the 60-day period may be extended to include the seasonal shutdown period. Upon notice of violations(s) which may threaten the public health, safety and welfare or are easily remedied, the owner(s) shall respond promptly and cure the violation(s) in the shortest reasonable timeframe.

15.9. ENFORCEMENT

- 15.9.1 Upon reasonable notice, the owner and operator shall grant the Township's officers and representatives access to the facility during normal operation hours to inspect the mineral extraction facility and enforce the provisions of this Ordinance. Any such inspection must be in the company of an employee of the operator following all site safety regulations.
- 15.9.2 The owner(s) shall be responsible for the repair and maintenance of public and private property in the Township which is acknowledged by the operator to be or proven to be damaged by it, its agents or employees in conducting business or any other activity associated with the mineral extraction facility.

15.9.3 A mining plan will be required for all mineral extraction permits. The form will be the state mining plan.

15.9.4 The owner(s) and operator(s) shall hold the Township harmless against all claims by third parties for damage or costs incurred in the development of the subject property. The owner(s) and operator(s) shall indemnify the Township for all costs, damages, or expenses incurred by the Township arising from such claims, including attorney's fees.

15.10. FEES

15.10.1 The applicant shall pay for the application fee and any estimated expenses to be incurred by the Township before an application will be considered complete and processed, including professional consulting fees, meeting fees and other expenses.

15.10.2 A fee schedule will be established by the Hillman Town Board by resolution.

15.11. FINANCIAL GUARANTEE

15.11.1 The Township shall require a performance bond, cash escrow or a letter of credit, in a form acceptable to the Township, to guarantee compliance with this Ordinance and the terms and conditions of the Interim Use Permit. The Township shall have the right to use the financial guarantee to remove stockpiles and complete site rehabilitation and correct other deficiencies or problems caused by the operator, in the event the operator is in default of the permit obligations. The amount of financial guarantee will be set by the Town Board. The financial guarantee shall be adjusted annually and shall remain in full force and effect for a minimum period of one and one-half (1-1/2) years beyond the expiration date or renewal date of the permit.

15.11.2. The Township shall also require a performance bond, cash escrow or a letter of credit, in an amount and form acceptable to the Township, to guarantee compliance with any mitigation and monitoring costs identified in the Interim Use Permit.

15.11.3. All out-of-pocket costs and expenses incurred by the Township for administering, monitoring, and enforcing the Interim Use Permit are intended to be covered by annual permit renewal fees. In the event such fees collected are inadequate to cover all Township costs and expenses incurred by the Township for administering, monitoring, and enforcing the Interim Use Permit, the Township may at its discretion use financial guarantees secured for the Interim Use Permit to cover such out-of-pocket costs and expenses that have not been reimbursed by the owner.

15.12. **LIABILITY INSURANCE** The operator shall, at all times procure and maintain at the operator's expense general public liability insurance and automobile insurance. This insurance shall cover claims for bodily injuries, wrongful death, and property damage occurring as a result of the operator's performance of its duties under this Ordinance. Such insurance shall afford protection to a limit of not less than Five Hundred Thousand dollars (\$500,000) in respect to injuries or death to a single person, to a limit of not less than One Million Dollars (\$1,000,000) in respect to any one accident or occurrence, and to a limit of not less than Two Hundred Thousand Dollars (\$200,000) in respect to property damage. The Township shall be named an additional insured on all such policies of insurance. The operator shall file with the Township a certificate evidencing coverage before the commencement date of the term of the mineral extraction permit. The certificate shall provide that the Township must be given thirty (30) days written notice of the cancellation of insurance.

ARTICLE 16 **AMENDMENTS**

16.1 AMENDMENTS: The regulations, restrictions and boundaries set forth in this ordinance may be amended, supplemented or repealed in accordance with the provisions of this Article.

16.2 INITIATIONS: Amendments may be initiated by the Planning Commission, the Town Board or by petition of any person owning property within the boundaries of the district subject to the proposed amendment.

16.3 REFERRAL TO PLANNING COMMISSION: Amendments shall be referred to the Commission for study and report and may not be acted upon by the Town Board until it has received the recommendation of the Commission on the proposed amendment, or until sixty (60) days have elapsed from the date of reference of the amendment without a report being prepared by the Commission. Upon receipt of the recommendation of the Planning Commission, The Town Board by majority vote may adopt in whole or in part, deny, or take any other action on the proposed amendment, as it may deem advisable.

16.4 No amendment shall be made in the boundary line of zones or districts unless at least 50 percent of the owners of lands proposed to be changed shall file a petition for such change.

16.5 HEARING: No amendment shall be adopted until a public hearing has been held thereon by the Town Board. Not less than thirty (30) days before the public hearing held by the Town Board, a notice of intention to enact such amendment shall be published in the official newspaper of the Township stating subject matter and the general purpose of the proposed amendment.

ARTICLE 17 **SEVERABILITY**

In any case in which the provisions of this ordinance are declared by the Courts to be unconstitutional or invalid, said rulings shall not effect the validity of the remaining provisions of the ordinance, and to this end, the provisions of this ordinance are declared to be severable.

ARTICLE 18

VIOLATIONS AND PENALTY

18.1 Any person, party, firm or corporation who shall violate any of the provisions of this ordinance or shall fail to comply with any of the provisions of this ordinance or shall make any false statements in any document required to be submitted under the provisions hereof shall be guilty of a misdemeanor. Upon conviction thereof, such person, firm, or corporation shall be punished by a fine and/or imprisonment as authorized by law for the punishment of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

18.2 In the event of a violation or a threatened violation of this ordinance, the Township Board of Supervisors or any member thereof in addition to the other remedies may institute appropriate actions or proceedings to prevent, restrain, correct or abate such violations or threatened violations.

18.2.1. Recovery of Costs: The owner of the land shall be personally liable for the costs incurred by the Township for remediation, correction, abatement or other action necessitated by the violation including legal and administrative fees and costs. Upon completion of work performed or directed by the Township, the Township shall prepare an invoice for the fees, costs and expenses and mail it to the owner of the land. The amount invoiced shall be immediately due and payable.

18.2.2 Assessment: If the Township is not fully reimbursed for all its reasonable costs incurred in the remediation, correction, abatement or other relief required to terminate a violation hereunder, said cost may be assessed in the manner of a special assessment under Minnesota Statutes Chapter 429 against the lot or property to which the costs, charges, and fees are attributed. The Town Board shall certify the assessment to the County Auditor for collection along with the real estate taxes for the following year or in annual installments, not exceeding three years, as the Town Board may determine in each case.

18.3 Any person, party, firm or corporation may institute mandamus proceedings in District Court or any other court of competent jurisdiction to compel specific performance by the proper official or officials of any duty required by this ordinance.

18.4 Any person, party, firm or corporation damaged as a result of a violation of this ordinance may pursue appropriate legal remedies in a Court of competent jurisdiction or governmental agency including but not limited to an injunction, mandamus and administrative remedies in addition to the prosecution of the misdemeanor.

ARTICLE 19 **EFFECTIVE DATE**

This ordinance shall be in full force and effect from after its passage and approval as provided by law. Passed and approved an effective date of 1st day of January, 2009.


Town Board Chairperson

Attest: 
Township Clerk

Recommended by: The Township Planning Commission

Date: 16th day of June, 2008.

Audrey Brasch
Terry Dalbey
Alan B. Peterson

Published in the Kanabec County Times the 16th and the 23rd days of October, 2008.

These amendments to the Hillman Township zoning ordinance shall become effective following their publication, posting and recording according to law.

Passed and approved this 18th day of November, 2008.


Town Board Chairperson

Attested: 
Township Clerk