

**Zoning Ordinance  
for the  
Town of Midway  
Minnesota**

# Midway Zoning Ordinance

#98 - 5

as amended on June 19, 2003

and December 1, 2005

and March 5, 2009

and November 5, 2015

Board of Supervisors of Town of Midway Ordains:

Zoning Ordinance #98 - 5 of the Town of Midway

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## **ARTICLE I. TITLE**

1.00: This Ordinance shall be known and may be cited and referred to as the "Zoning Ordinance of Midway."

## **ARTICLE II. INTENT OF ORDINANCE**

2.01: Purpose of Zoning Ordinance is to implement the Comprehensive Plan that was adopted by the Town of Midway to protect the rural character and environmental concerns of the Town of Midway.

## **ARTICLE III. DEFINITIONS**

3.00 As used in this ordinance, the following words, terms and phrases shall have the meaning given herein, unless otherwise specifically defined or unless the context clearly requires otherwise. Throughout the text of this Ordinance, unless the context requires otherwise, the singular shall include the plural and vice versa; the masculine shall include the feminine and vice versa; the words "shall" or "will" are interpreted to be mandatory; the term "may" is interpreted to be permissive.

ACCESSORY BLDG. OR FACILITY; A structure on the same lot with and customarily incidental and subordinate to a principle use or structure. Example: Pole bldg., garages, swimming pools, saunas, wind generators, decks, sheds and hoop buildings.

AIRPORT: Any locality, either on land or water, which is regularly used or intended to be used for the landing and take off, storage, or servicing of one or more aircraft.

ALLEY; A public or private way affording only secondary means of access to abutting property.

AGGREGATE PROJECT: Aggregated projects are those that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual Wind Energy Conversion System within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

AMATEUR RADIO OPERATOR: A person holding a written authorization to be the control operator of an amateur radio facility. This authorization shall be in the form of a license or permit issued by the Federal Communications Commission. They provide communication services, including the amateur-satellite service and the amateur service, which are for the purpose of self-training, intercommunication and technical investigations carried out by amateurs who are duly authorized persons interested in radio technique solely with a personal air and without pecuniary interest, as defined in Title 47, Code of Federal Regulations, [97.3(a)(4)].

ANTENNA: Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.

APARTMENT: A building designed for or used by three or more families.

APPLICANT: A property owner, or an individual acting with express, written permission of the property owner, required to submit a request for a land use permit, conditional use permit, variance or any other permission or permit necessary to modify or use property in the county. Specifically, for the consideration of fill permits, “applicant” is the registered owner of the property on which the fill is going to be deposited.

AREA. FLOOR: Floor area shall constitute the total floor area occupied by a use and measured to include all spaces used primarily or incidentally for such use

AREA, SALES: Sales area shall only include that area customarily open and accessible to the public.

BASEMENT: A story having part but not more than one-half (1/2) its height above grade. A basement is counted as a story for the purpose of height regulations, if subdivided and used for business or dwelling purposes by others than a janitor employed on the premises.

BED AND BREAKFAST: A building designed as a single family dwelling containing habitable units providing lodging accommodations by prior arrangements, for compensation. The building must be occupied by the building owner on a permanent basis. It may or may not include serving of meals to guests.

BLOCK: A tract of land bordered on all sides by streets, or by one or more streets and a railroad right-of-way, stream, or river or un-subdivided acreage.

BLUFF: A topographic feature such as a hill, cliff, or embankment having the following characteristics:

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

BLUFF IMPACT ZONE: A bluff and land located within 20 feet from the top of a bluff. An area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff.

BOARDING HOUSE: A building other than a hotel where, for compensation and by pre-

arrangement for definite periods, meals or lodging and meals are provided for five (5) or more persons, but not exceeding twenty (20) persons.

**BORROW PIT:** A land use involving the excavation or digging of material for use as fill at another site. Borrow pits used for the private use of a land owner shall not be considered borrow pits for the purposes of this ordinance. Pits used for public road and other public work purposes shall be considered borrow pits. A rock quarry is considered a borrow pit.

**BUFFER ZONE:** The use of land topography, spaces and screening to separate uses or structures from other uses or structures.

**BUILDING:** Any structure for the shelter, support or enclosure of persons, animals, chattels, or property of any kind, and when separated by dividing walls without openings, each portion of such building, so separated, shall be deemed a separate building.

**BUILDING, HEIGHT OF:** The vertical distance from the grade at a building line to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof.

**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.

**BUS STOP SHELTER:** 4'x4' structure to provide temporary shelter while children are waiting for the school bus.

**CAMPGROUND:** An open-air recreation area where temporary shelters, such as tents and recreational vehicles are intended to provide short-term occupancy.

**CAPITAL IMPROVEMENT PROGRAM:** An itemized program setting forth the schedule and details of specific, contemplated public improvement by fiscal year, together with their estimated cost, the justification for each improvement, the impact that such improvement will have on the current operating expenses of the (Town) and such other information on capital improvements as may be pertinent.

**CHURCH OR SYNAGOGUE :** The term includes the following: Church, synagogue, rectory, parish house or similar building incidental to the particular use which is maintained and operated by an organized group of people for religious purposes.

**CLINIC:** A place used for the care, diagnosis and treatment of persons who are not provided with board, or room nor kept overnight on the premises.

**COMMERCIAL COMMUNICATION TOWER:** A facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar

structures supporting said equipment, equipment buildings, parking areas and other accessory development. The facility provides licensed commercial wireless telecommunication services, including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

COMMERCIAL WIRELESS TELECOMMUNICATION SERVICES: Licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

COMMON INTEREST COMMUNITY: Means contiguous or noncontiguous real estate within Minnesota that is subject to an instrument which obligates persons owning a separately described parcel of the real estate, or occupying a part of the real estate pursuant to a proprietary lease, by reason of their ownership or occupancy, to pay for (i) real estate taxes levied against; (ii) insurance premiums payable with respect to; (iii) maintenance of; or (iv) construction, maintenance, repair or replacement of improvements located on, one or more parcels or parts of the real estate other than the parcel or part that the person owns or occupies. Real estate that satisfies the definition of a common interest community is a common interest community whether or not it is subject to MS 515B. Real estate subject to a master association, regardless of when the master association was formed, shall not collectively constitute a separate common interest community unless so stated in the master declaration recorded against the real estate pursuant to section MS 515B. For the purposes of this ordinance a common interest community shall be treated as a planned unit development.

COMMUNICATION TOWER: A principal structure intended to support communication equipment for wireless, broadcast, and similar communication purposes. Communication towers include, but are not limited to, monopole (free standing), lattice (self-supporting), or guyed (anchored with guy wires or cables). This definition applies to all towers intended for communication purposes.

COMMUNITY BUILDING: A building, group of buildings, or use of land intended to serve a community's educational, recreational, religious, or service activities, typically containing space for a meeting hall, town garage, post office, fire hall, or emergency services.

COMMUNITY FACILITIES PLAN: A compilation of policy statements, goals, standards, maps and action programs for guiding the future development of the public or semi-public facilities of the town, such as recreational, educational and cultural facilities.

COMPREHENSIVE PLAN: This term, unless otherwise specifically noted in this ordinance, refers to the officially adopted Midway Township Comprehensive Plan.

CONDITIONAL USE: A land use or development which would not be appropriate generally or without restriction throughout the zone district, but which if controlled as to number, size, area,



location or relation to neighborhood, and as to compatibility with official town plans, would not be injurious to the public health, safety, convenience, morals, order, comfort, appearance, prosperity or general welfare.

CONDOMINIUM: A type of multi-family structure in which each dwelling unit is owned by the occupant, but in which the halls, entranceways, and underlying land is owned jointly by all of the occupants of the structure.

CONTRACTOR / HAULER: A licensed contractor or hauler possessing the proper license issued by the State of Minnesota to provide services to an applicant for hauling and depositing fill on applicant's property.

DECK: A horizontal, unenclosed platform attached or unattached or adjacent and functionally related to the residence, which exceeds 100 square feet. A deck whether attached or detached shall have no roof, extended soffits nor walls, but may have railings and seats (See Performance Standards XVIII).

DECK, ENTRANCE: A horizontal, unenclosed platform attached or adjacent to the entrance of the structure which does not exceed 100 square feet.

DUPLEX: Group housing unit designed to accommodate two separate dwelling units.

DWELLING: Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons including a mobile home, but not including a tent, trailer, boarding or rooming house, hotel or motel. A motorized recreational vehicle (RV) may be considered a dwelling as specified in Section 16.12 of this ordinance.

DWELLING GROUP: A group of two or more detached dwellings located on a parcel of land in one ownership and having any yard or court in common.

DWELLING SITE: A designated location for residential use by one or more persons using temporary or movable shelter, including camping and recreational vehicle sites.

DWELLING UNIT: One room or a suite or two or more rooms, designated for or used by one family for living and sleeping purposes.

DYNAMIC SIGN: A type of non-static outdoor sign that displays content digitally and is characterized by frequent change or activity.

EARTH TONES: Earth tone colors where required shall extend to windows and door casings, other outside trim and roof covers.

EXTRACTIVE USE - The use of land for surface or subsurface removal of sand, gravel rock, industrial minerals, other nonmetallic minerals, and peat not regulated under Minnesota Statutes, sections 93.44 to 93.51.

FALL ZONE: The area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

FAMILY; Any person or group of persons whether or not related by blood or marriage, occupying a single dwelling unit, and shall not include a group home under the County of St. Louis, or the State of Minnesota.

FEEDER LINE: Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation service the WECS.

FEEDLOT, ANIMAL: A lot or bldg. or combination of lots and buildings. intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that vegetative cover cannot be maintained within the enclosure. Open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots.

FILTER STRIP: The use of land topography and native vegetation to provide runoff, erosion and sedimentation control.

FILL: Any earthen material, brick, crushed concrete or similar material that can be used to elevate or be deposited on area, lot or parcel.

FILLING ACTIVITY: The act of depositing fill upon a property.

FLOOD PLAIN; Lands which are subject to periodic flooding and have been defined by the Soil Conservation Service of the U. S. Dept. of Agriculture to have allured soil deposits, indicating that such flooding has taken place, or as defined by any technically qualified engineer and accepted by the City Council as such a flood plain, with approval of Mn. Dept. of Natural Resources. (To incorporate by reference the flood plain maps as prepared by the Federal Emergency Management Agency and effective February 19, 1992 community panel numbers 270741, 1600, 1650).

FLOOR AREA: Living space of dwelling unit including finished basements measured from the exterior corners.

GARAGE, PRIVATE: An accessory building designed or used for the storage of motor driven vehicles.

GARAGE, PUBLIC: A building or portion thereof, other than private garage, designed or used primarily for servicing, repairing.

GRAVEL PIT: (See Borrow Pits).

GROUP HOME, ADULT ASSISTED LIVING, BOARD CARE: The term "group home" refers to a state licensed residential facility or a housing with services establishment registered under chapter 144D of Minnesota Statutes serving 6 or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445 to serve 14 or fewer children. The term group home does not include a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes related to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses.

GROUP HOME, MULTIFAMILY: A state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons.

GROUP HOUSING & MULTI-FAMILY DWELLING: Type of multiple family structure in which separate dwelling units are within the same structure.

HAUL ROAD: Any County Road, Township road, or any other public easement that will be used in the delivery of fill.

HOME BUSINESS: Structures shall not exceed 1250 square feet; work must be done inside the building, and meet all the setback requirements. Owner may employ only two persons who are not residents of the owner's home, which is of a type or character consistent with a rural residential lifestyle, and which is established and operated under such conditions that the use may not be a nuisance to or otherwise incompatible with the surrounding area and is not considered a planned unit development, highway commercial, neighborhood commercial, or waterfront commercial use. (See Performance Standards, XVIII).

HOME OCCUPATION: A use of non-residential nature conducted entirely within the dwelling or accessory buildings and carried on only by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes, and which does not include an operational activity that is or may be a nuisance to or otherwise incompatible with the surrounding area. (See General Prov. XVI.).

HOOP STRUCTURE: Structure usually constructed with ribbed framework covered by plastic or flexible sheeting.

HORIZONTAL DISTANCE: A distance measured along a plane which is perpendicular to an

axis running through the center of the earth at the point of measurement.

HOTEL: A building in which lodging with or without meals is provided and offered to transient guests.

IMPERVIOUS SURFACE: A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, decks, sidewalks, patios, storage area, and concrete, asphalt or gravel driveways. Impervious surface calculation shall not include pervious materials that allow permeability, excluding previously noted examples.

INDUSTRIAL USE: The use of land or buildings for the production, manufacture, warehousing or transfer of goods, products, commodities or other wholesale items.

INTENSIVE VEGETATION CLEARING: The removal of trees or shrubs in a contiguous patch, strip, row, or block.

INTERIM USE: A temporary use of property until a particular date or until the occurrence of a particular event, as defined or described in Minnesota Statutes section 394.303.

JUNK CARS OR SALVAGE YARD: 1. Any place where there are located two or more motor vehicles not containing current license plates, or not in operable condition. 2. Any establishment, place of business, or place of storage or deposit, which is maintained, operated, or used for storing, keeping, buying or selling junk, wrecked, scrapped, ruined or dismantled motor vehicles, or motor vehicle parts whether maintained in connection with another business or not, where the waste, body discarded material stored is equal in bulk to two or more motor vehicles, and which are to be resold for used parts or old iron, metal, glass or other discarded material. 3. Any place where the depositing, salvaging, or scavenging of any other goods, articles, or merchandise not contained entirely within enclosed buildings is conducted. 4. An inoperable vehicle is a vehicle that is extensively damaged with the damage including such things as broken or missing wheels, motor, drive train or transmission.

KENNEL—COMMERCIAL, BOARDING: A commercial boarding kennel is a commercial activity where animals are brought to the facility by their owner and boarded away from their owner for limited periods of time. Animals in boarding kennels are kept separated and do not engage in breeding activities. Animals in boarding kennels are not held out for sale.

KENNEL—COMMERCIAL BREEDING: A commercial breeding kennel is a commercial activity where (4) or more dogs and/or domestic pets over six (6) months of age are kept for breeding purposes, engage in breeding activities and birthing, and where resulting young are raised for sale and sold.

KENNEL, PRIVATE Any place where 4 or more dogs and/or domestic pets over 6 months of age are owned by any member of the household for private enjoyment including such activities as dogsled racing. Private kennels are an accessory to the principal use of the property. A person's home where less than 4 dogs are kept as pets is not a kennel.

LOADING SPACE, OFF-STREET; Space reserved for bulk pickups and deliveries, intended to be used by vehicles when required off-street parking spaces are otherwise unavailable. Required off-street loading space shall not be included as off-street space in the computation of required off-street parking spaces.

LODGING HOUSE; A building where lodging only is provided for compensation for a number not exceeding twenty (20) persons, in distinction to hotels open to transients.

LOT; - A parcel of land designated by plat, metes and bounds, registered land survey, auditors plot, or other accepted means and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.

LOT COVERAGE; Lot coverage shall include all structures, driving surfaces including gravel surfaces, septic system area, parking areas regardless of type of surface and all other altered surfaces.

LOT FRONTAGE; The front of a lot shall be construed to be the portion of the lot nearest the street, road, or a body of water if the lot abuts water. When the lot abuts a body of water, the shoreline shall be considered front yard.

LOT LINES; The lines bounding a lot.

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

LOT WIDTH, SHORELAND; The shortest distance between the property lines at the ordinary high water level.

LOT OF RECORD; A lot which is part of a subdivision recorded in the office of the County Recorder or Registrar of Titles of St. Louis County, Minnesota, or a lot or parcel described by metes and bounds, the description of which has been lawfully created and recorded prior to the date of enactment of this Ordinance or amendments thereto provided that a lot on tax forfeited lands which has been leased out of the County prior to the date of enactment of this Ordinance shall be considered a lot of record even though that lot has not been individually recorded in the Office of the County Recorder or Registrar of Titles.

MITIGATION MEASURES; Methods, plans or actions taken to reduce, offset, or eliminate adverse project or structure impacts.

MOBILE OR MANUFACTURED HOME: As defined or described Minnesota Statutes, section 327.31.

MOBILE OR MANUFACTURED HOME PARK: Any site, lot, field or tract of land upon which two or more occupied manufactured homes are located, either free of charge or for compensation, and includes any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of the manufactured home park.

MOTEL: A series of sleeping or living units, for the lodging of transient guests, offered to the public for compensation, and with convenient access to off-street parking spaces for the exclusive use of the guest or occupants.

MOTOR VEHICLES: Every device which is or is capable of being self-propelled, and upon or by which any person or property is or may be transported upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

NON-CONFORMITY: Any legal use, structure or parcel of land already in existence, recorded or authorized prior to the adoption of this Ordinance, or amendments here to which would not have been permitted to become established under the terms of this Ordinance as adopted or amended, if this Ordinance had been in effect as of the date the use, structure or parcel was established, recorded or authorized.

NONRIPARIAN PROPERTY: A parcel without shore frontage, but is within a shoreland district.

OPEN SPACE: Land placed in conservancy, bluff zones, E-1 zones.

ORDINANCE: The Zoning Ordinance Number 98-5 of the Town of Midway, St. Louis County, Minnesota.

ORDINARY HIGH WATER LEVEL: The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level shall be the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level shall be the operating elevation of the normal summer pool.

PARKING SPACE: An area, enclosed or unenclosed, sufficient in size to store one (1) motor vehicle, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.

PATIO: A flat surface at ground level that is constructed of patio blocks, concrete blocks, concrete or treated lumber with no side walls or railings. (No permits required.)

PERMANENT FOUNDATION; The words "Permanent Foundation" is one so constructed as to be not readily dismantled, and its removal with result in destruction of all or a portion of its component parts. The phrase, "without a permanent foundation" indicates that the support system is constructed with the intent that the mobile home thereon will be moved from time to time.

PERMITS: No existing structure shall be altered to cause the external dimension of said structure to increase or change without first obtaining the necessary permits from the Town of Midway. (No use or structure shall be changed, altered or established without first obtaining the necessary permits.)

PLANNED UNIT DEVELOPMENT: A type of development characterized by a unified site design for a number of dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses. These developments may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownership, commercial enterprises, or any combination of these or cluster sub-divisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses.

PLANNED UNIT DEVELOPMENT, COMMERCIAL: Typically uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example: hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments. (Planned Unit Development XVII).

PLANNED UNIT DEVELOPMENT, RESIDENTIAL A use where the nature of residency is non-transient and the major or primary focus of the development is not service-oriented. For example: residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments. Residential structures where an agent is employed to promote rental of units in a manner similar to a resort shall be considered a commercial planned unit development.

POLE BUILDING: A structure constructed by placing poles into the ground rather than a permanent foundation.

POWERLINES: Any power line not under the exclusive control of the State of Minnesota is subject to a conditional use permit as it relates to the construction and location of the proposed lines in all zone districts.

PRINCIPAL USE OR STRUCTURE; The structure or use which is the primary or predominant

focus of activity on a parcel. Principal uses include such uses as a single family home, cabin, resort lodge and cabins, salvage yard storage areas, offices and businesses.

PROFESSIONAL OFFICE: Any office in which services are performed in a recognized professional specialty including architecture, real estate, engineering, law, medical, insurance and personal health services.

PUBLIC UTILITY: Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land line telephone service to the general public.. For the purpose of this ordinance, commercial wireless telecommunication service facilities shall not be considered public utility uses, and are defined separately.

RECREATIONAL VEHICLE: Shall be defined in MS Chapter 327.14 as follows: (a) Any vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreation, and vacation use. (b) Any structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation use. (c) Any portable, temporary dwelling to be used for travel, recreation, and vacation constructed as an integral part of self-propelled vehicle. (d) Any folding structure mounted on wheels and designed for travel, recreation, and vacation use.

REMODEL: An alteration of the interior or exterior portion of a structure that does not involve changes in the exterior dimensions of the structure.

ROTOR DIAMATER: The diameter of the circle described by the moving rotor blades of a wind turbine.

ROW OR TOWNHOUSE: Three or more horizontally attached single-family dwellings, each of which are independently owned.

SCREENING: The use of fences or permanent landscape planting to reduce visual impact of a structure or use upon adjacent structures or uses.

SENSITIVE RESOURCE MANAGEMENT: The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection in the E-1, O-1 and bluff zones.

SETBACK: The shortest horizontal distance between a structure, sewage treatment system or principal or accessory use and the ordinary high water level, road, front, side, sewage treatment system, well, bluff, or rear lot lines.

SEWAGE DISPOSAL: Structures which require seepage disposal facilities and which locate on a lot serviced by public sewage facilities shall be required to connect to such facilities subject to



the approval of the local unit of government operating the sewage collection/disposal system. Any premises intended for human occupancy must be provided with an approved method of sewage disposal designed in accord with all regulations of the Minnesota Dept. of Health or the St. Louis County Dept. of Health, or as otherwise specified in this ordinance. No Land Use Permit shall be issued prior to such permit or approval for sewage disposal.

SEWAGE TREATMENT SYSTEM: A septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated by St. Louis County.

SEWER SYSTEM: Pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

SHOPPING CENTER: A group or groups of three (3) or more commercial establishments developed in accordance to an over-all plan and designed and built as an inter-related project.

SHORE IMPACT ZONE: Land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

SHORELAND: All lands located within the following distances from the high watermark of a public water:

- a. 1,000 feet from the normal high watermark of a lake, pond or flowage;
- b. 300 feet from the normal high watermark of a river or stream, or the landward extent of a flood plain designated by ordinance on such a river or stream, whichever greater.

SHORELAND VEGETATION ALTERATION: The removal of trees, shrubs or plants in a contiguous patch, strip, row, or block in a shoreland area.

SIGN: Means any letter, word, model, device, poster, picture, reading matter or representation in the nature of an advertisement announcement or direction, when used for outdoor advertising purposes. It shall not include (a) traffic or other municipal signs, legal notices, railroad crossing and warning signs, (b) signs such as memorial tablets, names of buildings, dates of erection of structures, signs designating the use of a building and other signs when built into the walls of a building as an integral part of the building, (c) signs placed upon a building only while under construction where such signs designate the architect, engineer, contractor of the work, and which signs are designed to give information of and concerning the work, and (d) professional name plates or signs, and church and school bulletin boards.

SIGNS - GROUND: Within the meaning of this Ordinance means any signs exceeding 10 square feet in area, supporting by uprights or braces placed upon the ground.

SIGNIFICANT HISTORIC SITE: Any archaeological site, standing structure, or other property

that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, Section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota State Archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

SLAUGHTERHOUSE: An establishment where poultry or animals are butchered on a commercial basis.

SOLAR ACCESS SPACE: That airspace above all lots necessary to prevent any improvement, vegetation or tree located on said lots from casting a shadow upon any Solar Device located within said zone greater than the shadow cast by a hypothetical vertical wall 10 feet high located along the property lines of said lots between the hours of 9:30 a.m. and 2:30 p.m. Central Standard Time on December 21, provided, however, this restriction shall not apply to any improvement or tree which casts a shadow upon a Solar Device at the time of installation of said device, or to vegetation existing at the time of installation of said Solar Device.

SOLAR COLLECTOR: A device, or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.

SOLAR ENERGY SYSTEM: A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components to the distribution of transformed energy (to the extent they cannot be used jointly with a conventional energy system).

SOLAR FARM: A solar array composed of multiple solar panels on ground-mounted rack or poles which is not directly connected to or designed to serve the energy needs of the primary use but rather for the primary purpose of wholesale sales of generated electricity. Solar farms include but are not limited to community solar gardens which are defined as a solar-electric (photovoltaic) array that provides retail electric power (or a financial proxy for retail power) to multiple community members or businesses residing or located off-site from the location of the solar energy system, consistent with Minn. Statutes 216B.1641 or successor statute. A community solar system may be either an accessory or a principal use.

SOLAR SKYSPACE: The space between a solar energy collector and the sun which must be free of obstructions that shade the collector to an extent which precludes its cost effective operation.

SOLAR SKYSPACE EASEMENT: A right, expressed as an easement, covenant, condition, or other property interest in any deed or other instrument executed by or on behalf of any landowner, which protects the solar skyspace of an actual, proposed, or designated solar energy collector at a described location by forbidding or limiting activities or land uses that interfere with access to solar energy. The solar skyspace must be described as the three-dimensional space in which obstruction is prohibited or limited, or as the times of day during which sunlight to the solar energy collector may not be obstructed, or as a combination of the two methods.

SOLAR STRUCTURE: A structure designed to utilize solar energy as an alternate for, or supplement to, a conventional energy system.

STREET: The entire width between property lines of a way or place dedicated, acquired, or intended for the purpose of public use for vehicular traffic or access other than an alley.

STRUCTURE: Anything more than 30 inches high placed, constructed or erected with a fixed location on the ground, including portable buildings, basements, mobile homes, signs, playing courts (tennis, handball, etc.) swimming pools, etc., except that fences, utility poles, lawn lights, antennas, and related minor equipment shall not be considered structures.

STRUCTURAL ALTERATIONS: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

SUBSTATION: Any electrical facility designed to convert electricity produced by wind turbines to a voltage greater than 35,000 KV for interconnection with high voltage transmission lines. Substations are to be located outside of the road right of way.

TIME LIMIT ON LAND USE PERMITS: Substantial construction on each building requested, or the land use application and permit must be started within one year from the date of obtaining the permit.

TOE OF THE BLUFF: The point on a bluff where there is, as visually observed, a clearly identifiable break in the slope, from gentler to steeper. If no break in the slope is apparent, the toe of the bluff shall be determined to be the lower end of a 50 foot segment, measured on the ground, where the slope exceeds 18 percent.

TOP OF THE BLUFF: The point on a bluff where as visually observed there exists a clearly identifiable break in the slope from steep to gentle. If no break is apparent, the top of the bluff shall be the upper end of a 50 foot segment where the slope is less than 6%.

TOTAL HEIGHT OF A WIND TURBINE: The highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

TOURIST HOME: A building or part thereof, other than a hotel, boardinghouse, lodging house or motel, where lodging is provided by a resident family in its home for compensation, primarily for transients.

TOWER: Any ground or roof mounted pole, spire, structure, or combination thereof taller than 35 feet in height if free standing or 15 in height if roof mounted, including support lines, cables, wires, braces, and masts intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade. Towers include, but are not limited to, monopole (free standing), lattice (self-supporting), or guyed (anchored with guy wires or cables).

TOWER, MULTI-USER: A tower to which is attached the antennas of more than one commercial wireless telecommunication service provider or governmental entity.

TOWER, SINGLE -USER: A tower to which is attached only the antennas of a single user, although the tower may be designed to accommodate the antennas of multiple users as required in this ordinance.

TOWN: A municipality and/or its governing body.

TRAILER: Every vehicle without motor power designed or used for carrying persons or property and for being drawn by a motor vehicle.

TRANSFER STATION: A facility in which solid waste from collection vehicles is concentrated for subsequent transport. A transfer station may be fixed or mobile.

TRANSPORTATION PLAN: A compilation of policy statements, goals, standards, maps and action programs for guiding the future development of the various modes of transportation of the municipality and its environs, such as streets and highways, mass transit, railroads, air transportation, trucking and water transportation and includes a major thoroughfare plan.

TROUT STREAM: A river classification to be used on all trout streams designated by the Commissioner of Natural Resources.

UTILITY CORRIDOR: A strip of land containing transmission towers and lines, pipelines, and similar uses.

VARIANCE: Any modification of provisions or relief from this land use Ordinance where it is determined by the Board of Adjustment that, by reason of exceptional circumstances, the strict enforcement of the provisions of this Ordinance would cause practical difficulties, as defined or described in Minnesota Statutes, chapter 394.

WETLAND: Lowland permanently or intermittently covered with shallow waters to the extent that there is predominant development of moist soil vegetable communities (such as alder, black

ash, sedges, cattails, cord grasses, duck potatoes, duck weeds, laborador-tea, leather-leaf, pond weeds, rushes, smart weeds, sphagnum moss, tamaracks, etc.) Shall be defined by Minnesota Wetland Conservation Act of 1991, Chapter 354, and all subsequent amendments.

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 line, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

Commercial WECS: A WECS of greater than 40 kW in total name plate generating capacity.

Non-commercial WECS: A WECS of equal to or less than 40 kW in total name plate generating capacity.

WIND TURBINE: Any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind.

WIRELESS TELECOMMUNICATION SERVICES: Licensed commercial wireless telecommunication services including cellular, personal communications services, specialized mobilized radio, enhanced specialized mobilized radio, paging, and similar services that are marketed to the general public

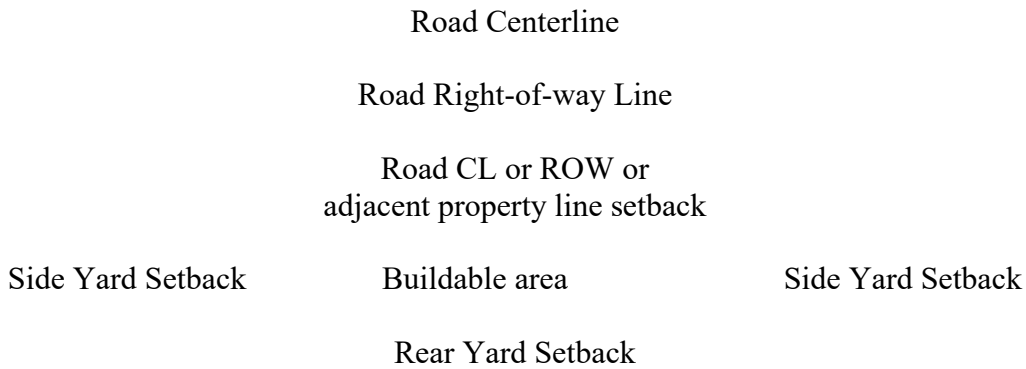
WOODSHED: An accessory structure used primarily for storage of firewood, whether constructed of poles and a roof, or enclosed walls and a roof.

YARD: A required space unoccupied and unobstructed by any structure or portion of a structure from the ground upward, provided, however, that fences, signs, utility poles, lawn signs, antennas and related minor equipment may be permitted in accordance with the provisions of this Ordinance in any yard, provided that they do not constitute a traffic safety hazard.

YARD, FRONT: A yard extending between lot lines which intersect a street line or adjacent property line nearest the lot, the depth of which is the horizon distance between the street right-of-way or adjacent property line, and a line on the lot which is at all points equidistant from any parallel to the street or adjacent property line and shoreline setback (see diagram).

YARD, REAR: A yard extending cross the rear of the lot between inner side yard lines, in the case of through lots there will be no rear yard. In the case of corner lots, the rear yard shall extend from the inner side yard line of the side yard adjacent to the interior lot to the rear line of the half-depth front yard (see diagram)

YARD, SIDE: A yard extending from the rear line of the required front yard to the rear lot line and shoreline setback. (see diagram.)



**ARTICLE IV. ESTABLISHMENTS OF ZONING DISTRICTS: OFFICIAL ZONING MAP**

4.00: For the purpose of this Ordinance, the town is hereby divided into zoning districts, as shown on the Official Zoning Map which together with all explanatory matter thereon, is hereby incorporated by reference and declared to be a part of this Ordinance. Said districts shall be known as

- |                                   |                                    |
|-----------------------------------|------------------------------------|
| A-1 Agricultural District         | C-2 Commercial District            |
| RR-1 Rural Residential District   | M-1 Manufacturing District         |
| RR-2 Rural Residential District   | M-2 Manufacturing District         |
| S-1 Suburban Residential District | E-1 Environmental Protection Dist. |
| C-1 Commercial District           | 0-1 Open Space                     |

4.03: A certified copy of the Official Zoning Map, together with any amendments thereto shall be filed with the County Register of Deeds. In the case of conflict between said map and the provisions of this ordinance, the latter shall govern. The original shall be filed in the office of the Town Clerk.

4.06: MAJOR THOROUGHFARE PLAN; COMMUNITY FACILITIES PLAN;  
Any major thoroughfare plan or community facilities plan may be adopted by the Town Board pursuant to the provisions of Minnesota Statutes, and if adopted shall be included on the official map. Subsequent to inclusion of such a plan or plans whenever any street or highway is widened or improved, or any new street is opened or interests in lands for other public purposes are acquired by the Town, it shall not be required in such proceedings to pay for any building or structure placed without a permit within the limits of the mapped street or outside of any building line that may have been established upon the existing street or within any area thus identified for public purposes.

4.08: All territories which may hereafter be annexed to the Town shall remain subject to the zoning classifications existing in the area prior to annexation; provided that the annexed area

may be subject to such interim zoning requirements as the Town Board may approve. The Planning Commission shall immediately begin reviewing of the zoning classification of any annexed land and shall prepare a report and submit recommendations to the Town Board as to the proper classification.

4.10: Whenever any street, alley or other public way is vacated by official action of the Town Board, the zoning districts adjoining each side of such street, alley or public way shall be automatically extended to the center of such vacation and all area included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts.

4.12: The height area, lot width, setback and maximum building coverage requirements for the districts regulated by this Ordinance shall be those set out in the following schedule:

DISTRICT AREA REQUIREMENTS:

ZONE DIST.	LOT WIDTH	PER UNIT LOT AREA	CENTER RD SETBACK	SIDE EACH	YARDS CORNER	REAR YARD	MAX BLDG	MAX HT	BLUFF SETBK
A-1	330'	10 acres (1)	143'	75'	100'	100'	2%	35'	30'
RR-1	330'	5 acres (1)	143'	75'	100'	70'	4%	35'	30'
RR-2	330'	5 acres (1)	143'	75'	100'	70'	4%	35'	30'
S-1	75'	10,890 sq.ft. (1)	35' (ROW) (4)	25'	25' (7)	15'	20%	35'	30'
C-1	100'	1 Acre	50' (ROW)	25' (3)	25'	50' (3)	75% (6)	35'	30'
M-1	300'	4.5 acres	143'	25' (3)	25'	50' (3)	75% (6)	50'	30'
M-2	300'	4.5 acres	143'	25' (3)	25'	50' (3)	75% (6)	50'	30'
E-1	The E-1 District is an overlay district applied within 300' of any township stream or floodplain. (8)								
O-1	600'	10 acres (1)	143'	100'	100'	100'	1%	35'	30'

FOOTNOTES TO DISTRICT AREA REQUIREMENTS:

1. To be computed so as to include any highway easements or parts thereof within the original parcel of land.
2. No lot of record containing less than 10,890 square feet of land shall be used for multiple family dwelling use.
3. Side yard and rear setback required of not less than 100 feet shall be provided on the side or rear yard of a lot abutting an agricultural or residential district.

4. Units must be serviced by both public sanitary sewer and public water.
5. Reserved for later installment.
6. Includes all structures, plus all parking areas, loading areas, and similarly altered ground surfaces.
7. Accessory structure 5' side 10' rear.
8. Within the E-1 Environmental District the lot width, lot size, setback, height and other dimensional requirements of the underlying district shall apply except that no structure shall be built closer than 200' to the normal high water mark from any township stream or flood plain.

## **ARTICLE V. A-1 AGRICULTURAL DISTRICT**

5.00: PURPOSE; The regulations set forth in this Article or set forth elsewhere in this Ordinance when referred to in this Article are the regulations in the A-1 Agricultural District.

The A-1 Agricultural District is established so as to protect existing and potential agricultural areas of the Town, to promote their continued existence, to promote and maintain the rural character of these areas.

5.01: Agriculture/farming activities are exempt from home occupation, home business regulations and permits.

5.02: PERMITTED USES; A building or premise in the A-1 Agricultural shall be used only for the following purposes.

- a. Agriculture involving domesticated animals, except feedlots, provided the conditional use requirements of Article XX are satisfied.
- b. One family dwelling or a mobile home used as a one-family dwelling.
- c. Veterinary hospital.
- d. Home occupation, provided that the performance standards of Section XVIII are satisfied.
- e. e Accessory building or use, customarily incidental to permitted uses.
- f. Group homes and Assisted living.
- g. Duplex.
- h. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.
- i. Solar collector and solar energy system, where the size of collector panel(s) is less than 100 square feet in area, as an accessory structure, not requiring a permit provided that all setbacks and height restrictions of the district are met.



- j. Solar collector and solar energy system, where the aggregate size of collector panel(s) is greater than 100 but less than 300 square feet in area, as an accessory structure.
- k. Non-commercial wind energy conversion system as a permitted accessory use.
- l. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the A-1 zone district and which is consistent with the Midway Comprehensive Plan.

5.04: CONDITIONAL USES; A building or premise in the A-1 Agricultural District may be used for the following purposes under the provisions of Article XX of this Ordinance;

- a. Church or other place of worship.
- b. Public school, elementary and secondary, parochial school or private school having no rooms regularly used for housing or sleeping purposes, except staff quarters.
- c. Universities and colleges.
- d. Country club or golf course, except a miniature course or commercial driving range.
- e. Extractive activities.
- f. Temporary recreation or amusement such as fairs and circuses.
- g. Radio or television station tower.
- h. Parks, playgrounds, community buildings.
- i. Home business other than farming/agricultural activities.
- j. Recreational Trails.
- k. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the A-1 zone district and which is consistent with the Midway Comprehensive Plan.
- l. Accessory buildings or use customarily incidental to any conditionally permitted uses.
- m. Feedlots.
- n. Home business other than farming/agricultural activities.
- o. Signs.
- p. Residential planned unit development.
- q. 45-day borrow pit.
- r. General borrow pit
- s. Cemetery, crematorium or mausoleum for humans or animals.
- t. Riding stable (providing that it meets the requirements of Article XX of this ordinance.)
- u. Utility corridors and necessary related facilities including but not limited to transmission towers and lines, pipelines, sub-stations, and pumping stations.
- v. Towers.
- w. Road material or building debris for fill, or deposited on property.
- x. Solar collector and solar energy system, where the aggregate size of collector panel(s) is equal to or greater than 300 square feet in area, as an accessory structure.
- y. Filling activity.

z. Kennel—Commercial, Breeding

5.05: INTERIM USES: A building or premise in the A-1 Agricultural District may be allowed as an Interim Use for the following purposes under the provisions of section 16.38 of this Ordinance:

- a. Home business.
- b. Temporary second dwelling.
- c. Special events such as circuses.
- d. Farmers market.
- e. Temporary signs for events, fairs and circuses.
- f. Interim accessory building.

5.06: In the A-1 zone district no permits are necessary for the keeping and raising of live-stock.

5.08: HEIGHT AND AREA REGULATIONS: The height and area regulations set forth in Article IV of this ordinance shall be observed in the A-1 Agricultural District.

5.10: PARKING REQUIREMENTS: Off street parking requirements shall be provided in accordance with the requirements for specific uses set forth in Article XIX of this ordinance.

5.12: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE VI. RR-1 RURAL RESIDENTIAL DISTRICT**

6.01: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this Ordinance when referred to in this Article are the regulations in the RR-1 Rural Residential District.

The RR-1 Rural Residential District is established to provide areas of the Town for people who seek rural amenities without necessarily undertaking agricultural pursuits. This district is also intended to promote the rural character of the Town and to preserve and enhance open space areas.

6.03: Only one residence per legal parcel in the RR-1 zone.

6.06: PERMITTED USES: A building or premise in the RR-1 Rural Residential District shall be used only for the following purposes:

- a. Agriculture involving domesticated animals, except feedlots, provided the conditional use of Article XX are satisfied.

- b. One-family dwelling.
- c. Group home, assisted living & day care.
- d. Home occupation, provided the performance standards of Section 20.03 are satisfied.
- e. Accessory building or use, customarily incidental to permitted uses, between 1000 and 1250 square feet provided they satisfy the performance standards set forth in Article XVIII of this ordinance.
- f. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.
- g. Solar collector and solar energy system, where the size of collector panel(s) is less than 100 square feet in area, as an accessory structure, not requiring a permit provided that all setbacks and height restrictions of the district are met.
- h. Solar collector and solar energy system, where the aggregate size of collector panel(s) is greater than 100 but less than 300 square feet in area, as an accessory structure.
- i. Non-commercial wind energy conversion system as a permitted accessory use.
- j. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the RR-1 zone district and which is consistent with the Midway Comprehensive Plan.

6.08: CONDITIONAL USES; A building or premise in the RR-1 Rural Residential District may be used for the following purposes under the provisions of Article XX of this ordinance.

- a. Church or other place of worship.
- b. Public school, elementary and secondary, parochial school or private school having no rooms regularly used for housing or sleeping purposes, except staff quarters.
- c. Country club or golf course, except a miniature course or commercial driving range.
- d. Campgrounds for tents and/or motorized camping vehicles.
- e. Extractive activities.
- f. Non-commercial airplane landing strip or field.
- g. Cemetery, crematorium or mausoleum.
- h. Temporary recreation or amusement such as fairs and circuses.
- i. Recreational Trails.
- j. Riding stable, (Provided that it meets the requirements of Section XVIII of this ordinance).
- k. Parks, playgrounds, community buildings.
- l. Duplex.
- m. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of RR-1 zone district and which is consistent with the Midway Comprehensive Plan.
- n. Accessory building or use customarily incidental to any conditionally permitted use.
- o. Utility corridor.

- p. Group home, multifamily.
- q. Tower.
- r. Accessory buildings over 1250 square feet in size.
- s. Signs.
- t. Home business.
- u. 45-day borrow pit.
- v. General borrow pit.
- w. Residential planned unit development.
- x. Road material or building debris used as fill or deposited on property.
- y. Solar collector and solar energy system, where the aggregate size of collector panel(s) is equal to or greater than 300 square feet in area, as an accessory structure.
- z. Filling activity.

6.09: INTERIM USES: A building or premise in the RR-1 Rural Residential District may be allowed as an Interim Use for the following purposes under the provisions of section 16.38 of this Ordinance:

- a. Home business.
- b. Temporary second dwelling.
- c. Special events such as circuses.
- d. Farmers market.
- e. Temporary signs for events, fairs and circuses.
- f. Interim accessory building.

6.10: HEIGHT & AREA REGULATIONS: The height and area regulations in Article IV of this ordinance shall be observed in the RR-1 Rural Residential District.

6.12: PARKING REQUIREMENTS: Off-street parking spaces shall be provided in the RR-1 Rural Residential District in accordance with the requirements for specific uses set forth in Article XIX of this ordinance.

6.14: EROSION CONTROL AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE VII. RR-2 RURAL RESIDENTIAL DISTRICT**

7.00: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this ordinance when referred to in this Article are the regulations of the RR-2 Rural Residential District. The RR-2 Rural Residential District is established to provide semi-rural living within the predominately forested portions of the Township while insuring, to the greatest degree possible, the continued existence and values of the existing forested lands.

7.02: PERMITTED USES: A building or premise in the RR-2 Rural Residential District shall be used only for the following purposes:

- a. One family dwelling.
- b. Home occupation provided the performance standards of Article XVIII of this ordinance are satisfied.
- c. Group home.
- d. Accessory building or use, customarily incidental to permitted uses between 1000 and 1250 square feet provided they meet the performance standards set forth in Article XVIII of this ordinance.
- e. Agriculture involving domesticated animals, except feedlots, provided the conditional use of Article XX is satisfied.
- f. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.
- g. Solar collector and solar energy system, where the size of collector panel(s) is less than 100 square feet in area, as an accessory structure, not requiring a permit provided that all setbacks and height restrictions of the district are met.
- h. Solar collector and solar energy system, where the aggregate size of collector panel(s) is greater than 100 but less than 300 square feet in area, as an accessory structure.
- i. Non-commercial wind energy conversion system as a permitted accessory use.

7.04: CONDITIONAL USES: A building or premise in the RR-2 Rural Residential District may be used for the following purposes under the provisions of Article XX of this ordinance.

- a. Home business.
- b. Signs.
- c. Campgrounds for tents and/or motorized camping vehicles.
- d. Residential planned unit development.
- e. Tower.
- f. Group home, multifamily.
- g. Duplex.
- h. All uses permitted in this district involving more than 2 acres of newly cleared land.
- i. Accessory buildings over 1,250 square feet..
- j. Utility corridor.
- k. Churches or other places of worship.
- l. Recreational Trails.
- m. Road material or building debris used for fill or deposited on property.
- n. Solar collector and solar energy system, where the aggregate size of collector panel(s) is equal to or greater than 300 square feet in area, as an accessory structure.

- o. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the RR-2 zone district and which is consistent with the Midway Comprehensive Plan.
- p. Filling activity.

7.05: INTERIM USES: A building or premise in the RR-2 Rural Residential District may be allowed as an Interim Use for the following purposes under the provisions of section 16.38 of this Ordinance:

- a. Home business.
- b. Temporary second dwelling.
- c. Special events such as circuses.
- d. Farmers market.
- e. Temporary signs for events, fairs and circuses.
- f. Interim accessory building.

7.06 HEIGHT AND AREA REGULATIONS: The height and area regulations for the RR-2 Rural Residential District shall be the same as those for the RR-1 Rural Residential District as set forth in Article XIX of this Ordinance.

7.08: PARKING REQUIREMENTS: Off street parking requirements shall be provided in accordance with the requirements for specific uses set forth in Article XIX of this ordinance.

7.10: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE VIII. S-1 SUBURBAN RESIDENTIAL DISTRICT**

8.00: The regulations set forth in this Article or set forth elsewhere in this Ordinance when referred to in this Article are the regulations in the S-1 Suburban Residential District.

The S-1 Suburban Residential District is established to provide density requirements which allow for existing areas developed to suburban or urban densities and to provide for possible additions to those areas.

For existing and grandfathered in residential uses in the S-1 zone, accessory structure permits may be granted if they exceed the building coverage, provided said structure will meet the setback requirements.

8.02: PERMITTED USES: A building or premise in the S-1 Suburban Residential District shall be used only for the following purposes:

- a. One family dwelling.
- b. Home occupation.
- c. Park, playground or community building.
- d. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the S-1 zone district and which is consistent with the Midway Comprehensive Plan.
- e. Accessory buildings or use customarily incidental to any permitted use, under 600 sq. ft. in size.
- f. Group homes, assisted living and day care.
- g. Home occupation, provided the performance standards of Article XVIII are satisfied.
- h. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.
- i. Solar collector and solar energy system, where the size of collector panel(s) is less than 100 square feet in area, as an accessory structure, not requiring a permit provided that all setbacks and height restrictions of the district are met.
- j. Solar collector and solar energy system, where the aggregate size of collector panel(s) is greater than 100 but less than 300 square feet in area, as an accessory structure.
- k. Non-commercial wind energy conversion system as a permitted accessory use.

8.04: CONDITIONAL USES; A building or premise in the S-1 Suburban Residential District may be used for the following purposes under the provisions of Article XX of this Ordinance.

- a. Public school, elementary and secondary, parochial school or private school having no rooms regularly used for housing or sleeping purposes.
- b. Athletic facilities, indoor and outdoor, except that no warehouses or garages will be allowed. Storage building for storage of ground maintenance equipment for the athletic fields will be allowed subject to a conditional use permit.
- c. Parks, playgrounds, community buildings.
- d. Residential planned unit development.
- e. Any other use which as determined by the Planning Commission is clearly within intent and purpose of the S-1 zone district and which is consistent with the Midway Comprehensive Plan.
- f. Accessory buildings or use, customarily incidental to permitted uses 600 sq. ft. or over in size.
- g. Utility Corridor.
- h. Duplex.
- i. Signs, limited to six square feet.

- j. Recreational Trails.
- k. Solar collector and solar energy system, where the aggregate size of collector panel(s) is equal to or greater than 300 square feet in area, as an accessory structure.
- l. Filling activity.

8.05: INTERIM USES: A building or premise in the S-1 Suburban District may be allowed as an Interim Use for the following purposes under the provisions of section 16.38 of this Ordinance:

- a. Special events such as circuses.
- b. Temporary signs for events, fairs and circuses.

8.06: HEIGHT AND AREA REGULATIONS: The height and area regulations set forth in Article IV of this Ordinance shall be observed in the S-1 Suburban Residential District.

8.08: PARKING REQUIREMENTS: Off-street parking spaces shall be provided in the S-1 Suburban Residential District in accordance with the requirements for specific uses set forth in Article XIX of this Ordinance.

8.10: EROSION CONTROL AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE IX. C-1 COMMERCIAL DISTRICT**

9.00: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this Ordinance when referred to in this Article are the regulations in the C-1 Commercial District. The C-1 Commercial District is established to provide appropriate commercial development in the Town to meet the needs of the residents and adjacent communities. The district is intended to enforce the commercial area concept in the Town Comprehensive Plan.

9.01. PERMITTED USES: A building or premise in the C-1 Commercial District shall be used only for the following purposes:

- a. Accessory use and building equal to or less than 600 square feet in area.
- b. Solar collector and solar energy system, where the size of collector panel(s) is less than 100 square feet in area, as an accessory structure, not requiring a permit provided that all setbacks and height restrictions of the district are met.
- c. Solar collector and solar energy system, where the aggregate size of collector panel(s) is greater than 100 but less than 300 square feet in area, as an accessory structure.
- d. Non-commercial wind energy conversion system as a permitted accessory use.



9.02. **CONDITIONAL USES:** A building or premise in the C-1 Commercial District may be used for the following purposes.

- a. Commercial retail and service establishments including but not limited to: general merchandise, motor vehicles, farm machinery, apparel, furniture, hardware, food, eating, drinking, lodging, personal and professional services, entertainment, recreation facilities and services, finance, insurance and real estate services, special activities, concerts, fairs, expos.
- b. General warehousing, storage and wholesaling.
- c. Light manufacturing or assembly provided that all manufacturing occurs within a confined structure, the building includes display and/or sales space, and the use is compatible with character of the commercial district.
- d. Community building.
- e. Accessory use and building over 600 square feet in area.
- f. Signs.
- g. Commercial planned unit development (strip mall)
- h. Tower.
- i. Storage of flammable liquids, gas and diesel fuels.
- j. Recreational Trails.
- k. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.
- l. Special activities, fairs, concerts and expos.
- m. Solar collector and solar energy system, where the aggregate size of collector panel(s) is equal to or greater than 300 square feet in area, as an accessory structure.
- n. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the C-1 zone district and which is consistent with the Midway Comprehensive Plan.
- o. Filling activity.
- p. Kennel—Commercial, Breeding.
- q. Road material or building debris used as fill or deposited on property.
- r. Solar farm.

9.03: INTERIM USES: A building or premise in the C-1 Commercial District may be allowed as an Interim Use for the following purposes under the provisions of section 16.38 of this Ordinance:

- a. Special events such as circuses.
- b. Temporary signs for events, fairs and circuses.

9.04: HEIGHT & AREA REGULATIONS: The height and area regulations set forth in

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Article IV of this ordinance shall be observed in the C-1 Commercial District.

9:06: SITE AND BUILDING DESIGN REQUIREMENTS: All uses in the C-1 Commercial District shall conform to the following requirements:

- a. All exposed ground surfaces shall be covered with vegetative growth, wood chips, crushed rock or similar cover.
- b. Trees, shrubs, and other vegetation existing or planned, shall be located around the site in planters and/or in the required yards..
- c. A detailed plan for managing stormwater and meltwater runoff, including detention, retention, treatment and discharge, shall be prepared by an engineer licensed in Minnesota.
- d. All objectionable views, including parking areas, storage areas, and lighting, of the proposed development as viewed from abutting property or public roads, are to be effectively screened year-round through the use of trees, shrubs, wood fencing, earth berms or other suitable materials or techniques. This requirement is mandatory where
  - a. "C-1" uses abut "A", "RR-1", "RR2", "S" or "O" district or road. This requirement is optional, at the Planning Commission's discretion, where the "C-1" use abuts another commercial or industrial use, and shall be required for all Planned Community Development.
- e. The Town encourages building designs that are customized to the site, reject standardized design, reflect structural styles typical of rural Midway Township, decrease use of interior lit plastic signs, and favor the use of wood, stone, brick and other natural looking construction materials.

9:08: LOT LINE SETBACK REQUIREMENTS: All structures on commercially zoned property abutting a A-1, RR-1, RR-2, S-1, E-1, or O-1 zone district must be set back a minimum of 300 feet from the abutting side and rear lot lines, regardless of the requirements of section 3.22 of this ordinance.

9:10: PARKING & LOADING REQUIREMENTS: Off-street parking spaces shall be provided in the C-1 Commercial District in accordance with the requirements for specific uses set forth in Article XIX of this Ordinance.

9.12: EROSION CONTROL AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE X. C-2 COMMERCIAL DISTRICT**

10:02 PURPOSE: The regulations set forth in this Article or set forth elsewhere in this ordinance when referred to in this Article are the regulations of the C-2 Commercial District. The C-2 Commercial District is established to control certain commercial land uses that have a

direct and detrimental effect on the character of the Town's residential and other commercial neighborhoods.

10:04: FINDINGS SUPPORTING PURPOSE: The following findings support the Town's conclusion that sexually-oriented businesses, as herein defined, have a detrimental effect on adjacent land uses and thus require special land use controls:

- a. Sexually-oriented businesses can exert a dehumanizing influence on persons attending places of worship, children attending licensed daycare, persons, using public parks, and children and other persons attending public schools.
- b. Sexually-oriented businesses can contribute to an increase in criminal activity in the area where such businesses are located and thereby increase demand for law enforcement services.
- c. Sexually-oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the value of residences in the area in which such businesses are located.
- d. A concentration of sexually-oriented businesses in one area can have a substantially detrimental effect on the area in which such businesses are located. This detrimental effect may include the perception by others that the area is experiencing deterioration, a decline in real estate values, and relocation of existing businesses all of which contribute to a declining Town tax base.

10:06: DEFINITIONS: The following terms are defined for application in this ordinance:

- a. ADULTS-ONLY BOOKSTORE: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises for a fee, and other periodicals which are distinguished or characterized by their principle emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse.
- b. ADULTS-ONLY MOTION PICTURE THEATER: An enclosed building or open air facility used regularly and routinely for presenting programs, material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse for observation by patrons therein.
- c. MASSAGE PARLOR: A type of massage parlor which restricts minors by reason of age, or which provides the service of "massage", if such service is distinguished by an emphasis on nudity, sexual conduct, sexual excitement or sadomasochistic abuse for observation or participation by patrons.
- d. NUDITY: The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully

opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernible turgid state.

- e. ADULT RAP PARLOR: A conversation/rap parlor which excludes minors by reason of age, and which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on nudity, sexual conduct, sexual excitement or sadomasochistic abuse, for observation or participation by patrons therein.
- f. ADULT SAUNA: An establishment of place primarily in the business or providing a steam bath or hot air bathing and/or massage services which excludes minors by reason of age where service(s) is distinguished or characterized by an emphasis on nudity, sexual conduct, sexual excitement or sadomasochistic abuse, for patrons.
- g. SEXUAL CONDUCT: Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks, or if such person be a female, her breast.
- h. SEXUAL EXCITEMENT: The condition of human male or female genitals when in a state of sexual stimulation or arousal.
- i. SADOMASOCHISTIC ABUSE: Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed
- j. ADULT ENTERTAINMENT CENTER: An enclosed building, part of an enclosed building or premises wherein an admission is charged for entrance into the facility, or for food, alcoholic beverages or other beverages intended for consumption within the facility, wherein may be observed or which contains one or more fee-based mechanisms which when activated permit a customer to view one or more life persons unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
- k. ADULT CABARET: A building, portion of a business or premises used for providing dancing or other live entertainment, if such building, portion of building or premises excludes minors by reason of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, for observation or participation by patrons therein.
- l. ADULT HEALTH/SPORT CLUB: A health/sport club which excludes minors by reason of age or if such club is distinguished or characterized by an emphasis on specified sexual activities or nudity, sexual conduct, sexual excitement or sadomasochistic abuse, for observation or participation by patrons therein.
- m. ADULT STEAM ROOM/Bathroom FACILITY: A building or portion of a building used for providing a steam bath or heated bathing room used for the purpose of pleasure, bathing,

relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if such building or portion of a building restricts minors by reason of age or if the service provided therein is distinguished or characterized by an emphasis on nudity, sexual conduct, sexual excitement or sadomasochistic abuse, for observation or participation by patrons therein.

- n. SEXUALLY-ORIENTED BUSINESS: An adults-only bookstore, adults-only theater, adult massage parlor, adult conversation/rap parlor, adult sauna, adult entertainment center, adult cabaret, adult health/sport club, adult steam room/bathhouse facility, or any other business whose primary business activity is characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

10:08. CONDITIONAL USES: A building or premise in the C-2 Commercial District may be used only for the following purposes:

- a. All development and activities are subject to a commercial use permit.
- b. Sexually-oriented businesses provided they meet the standards of this ordinance.
- c. Non-commercial wind energy conversion system as a permitted accessory use.

10:10: LOCATION REQUIREMENTS FOR SEXUALLY-ORIENTED BUSINESSES: A Conditional Use Permit shall not be granted for any proposed sexually-oriented business that fails to meet all of the following standards and requirements:

- a. All business and related activities at a sexually-oriented business shall be conducted within the confines of buildings.
- b. No sexually-oriented business shall be located or operated less than 750 feet from a A-1, RR-1, RR-2, S-1 or O-1 district.
- c. No sexually-oriented business shall be located or operated less than 750 feet of a church or other place of worship, licensed daycare facility, public library, public or private educational facility which serve persons age 17 or younger, elderly housing project, or existing residential use.
- d. No sexually-oriented business shall be located or operated less than 2000 feet of another sexually-oriented business.
- e. No sexually-oriented business shall be located in the same building or upon the same property in or on which alcohol is dispensed or consumed.
- f. Recreational trails.

10:12: MEASURING OF SEPARATION DISTANCE: The distance limitations set forth in Article IV shall be measured in a straight line from the main public entrance(s) of said sexually-oriented business to the nearest lot line of properties so noted in Article IV.

10:16: SIGNS AND WINDOWS:

- a. Notwithstanding any other provision of this ordinance, a sexually-oriented business shall not be permitted more than one on-site sign. All such signs must meet the following standards.

1. Shall be flat wall signs.
  2. Shall not exceed 128 square feet in area. Shall not contain any flashing lights, moving elements, or mechanically changing messages.
  3. Shall not contain any depiction of the human form or any part thereof.
- b. Window areas shall not be covered or made opaque in any way nor shall merchandise or pictures of the products or entertainment sold or provided on the premises be displayed in window areas or any area where they can be viewed from a public road.

10.18: HEIGHT AND AREA REGULATIONS: The height and area regulations for the C-2 Commercial District shall be the same as those for the C-1 Commercial District set forth in Article IV of this Ordinance.

10.20: PARKING REQUIREMENTS: Off Street parking requirements shall be provided in accordance with the requirements for specific uses set forth in Article XIX of this ordinance.

10.22: STORAGE UNITS: If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.

10.24: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE XI. M-1 MANUFACTURING DISTRICT**

11.02: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this ordinance when referred to in this Article are the regulations in the Manufacturing District, and all development and activities are subject to Conditional Use Permits.

The M-1 Manufacturing district is established to promote light industrial, manufacturing and distributive uses in the area described in the Town Comprehensive Plan. The placing and regulation of the uses allowed in this district are intended to minimize any possible negative economic or environmental features of the uses and to maximize the effectiveness of the Town Comprehensive Plan.

11.03 PERMITTED USES: A building or premise in the M-1 Manufacturing District can be used for the following purposes:

- a. Non-commercial wind energy conversion system as a permitted accessory use.

11.04: CONDITIONAL USES: A building or premise in the M-1 Manufacturing District may be used for the following purposes:

- a. Manufacturing and light industrial uses consistent with the purpose of the district.

- b. Warehousing, storage and wholesaling.
- c. Transportation terminal.
- d. Community building.
- e. Accessory uses.
- f. Signs.
- g. Industrial park or planned unit development.
- h. Tower.
- i. Utility corridor.
- j. Soil farming or treating of any contaminated earthen materials created as a result of said operation on site.
- k. Any depositing of road or building debris subject to General Provisions Article XVI.
- l. Storage of flammable liquids, gas and diesel fuels.
- m. Recreational Trails.
- n. Solar collector and solar energy system as an accessory structure.
- o. Commercial wind energy conversion systems.
- p. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the M-1 zone district and which is consistent with the Midway Comprehensive Plan.
- q. Filling activity.
- r. Solar farm.

11.08: HEIGHT & AREA REGULATIONS; The height and area regulations set forth in Article IV of this ordinance shall be observed in the M-1 Manufacturing District.

11.10: SITE AND BUILDING DESIGN REQUIREMENTS; All uses in the M-1 Manufacturing District shall conform to the requirements specified in Article 9.06 of this ordinance.

11.12: PARKING & LOADING REQUIREMENTS; Off-street parking and loading spaces shall be provided in the M-1 Manufacturing District in accordance with the requirements for specific uses set forth in Article XIX of this ordinance.

11.14: LOT LINE SETBACKS; All structures on commercially zoned property abutting a A-1, RR-1, RR-2, S-1, E-1 or O-1 zone district must be set back a minimum of 300 feet from the abutting side and rear lot lines, regardless of the requirements of Article IV, Section 4.12 of this ordinance.

11.16: STORAGE UNITS; If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.

11.18: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

## **ARTICLE XII. M-2 MANUFACTURING DISTRICT**

12.01: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this ordinance when referred to in this Article are the regulations in the M-2 Manufacturing District.

The purpose of the M-2 Manufacturing District is to accommodate heavy industrial which are pertinent to the Town's vitality and to minimize the negative impact of these uses on adjacent land uses.

12.02 PERMITTED USES: A building or premise in the M-2 Manufacturing District can be used for the following purposes:

- a. Non-commercial wind energy conversion system as a permitted accessory use.

12.03: CONDITIONAL USES: A building or premise in the M-2 Manufacturing District may be used for the following purposes:

- a. Locomotive and railroad car building and repair.
- b. Railroad yard, roundhouse, repair and overhead shops.
- c. Utility corridor.
- d. Tower.
- e. Any contaminated earthen materials created as a result of said operation on for storage or treatment.
- f. Storage of flammable liquids, gas and diesel fuels.
- g. Recreational trails.
- h. Road materials or building debris used for fill or deposited on property.
- i. Solar collector and solar energy system as an accessory structure.
- j. Commercial wind energy conversion systems.
- k. Any other use which as determined by the Planning Commission is clearly within the intent and purpose of the M-2 zone district and which is consistent with the Midway Comprehensive Plan.
- l. Filling activity.
- m. Solar farm.

12.05: HEIGHT AND AREA REGULATIONS: The height and area regulations set forth in Article IV of this ordinance shall be observed in the M-2 Manufacturing District.

12.07: PARKING AND LOADING REQUIREMENTS: Off-street parking and loading spaces shall be provided in the M-2 Manufacturing District in accordance with the requirements for



specific uses set forth in Article XIX of this ordinance.

12.09: SETBACK REQUIREMENTS: When the M-2 Manufacturing District abuts the RR-1 and S-1 zones, a 100 foot buffer strip with screening will be required.

12.11: STORMWATER MANAGEMENT: Before any permit is issued to a M-2 use, a detailed plan for managing stormwater and meltwater runoff, including detention, retention, treatment and discharge, shall be prepared by an engineer licensed in Minnesota for review and approval by the Planning Commission.

12.13: STORAGE UNITS: If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.

12.15: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

### **ARTICLE XIII. "E-1" ENVIRONMENT PROTECTION DISTRICT**

13.02: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this Ordinance, when referred to in this Article are the regulations in the Environment Protection District.

The intent of the "E-1" Environment Protection District is to insure the protection and maintenance of critical physical environmental features including stream courses, flood plains, swamps and wetlands, certain vegetative types, wildlife habitat and similar areas as deemed by the Planning Commission so as to insure water quality, natural characteristics, functional integrity and the general health, safety and welfare.

The regulations of the "E-1" Environment Protection District shall be applied to all land within 300 feet of each side of the normal high water mark or waterways, lakes, ponds, flowages, wetlands, swamps and within 300 feet of wildlife habitat areas or unique vegetative areas as herein designated or as designated by the Planning Commission, specifically, waterways in Midway Township, namely, Sargent's Creek, Midway River, Mission Creek, Anderson Creek, Rocky Run, Kingsberry Creek and Stewart's Creek, including all flood plains as mapped out by the Federal Emergency Management Agency in community panel numbers 270741 1600, 1650 and effective 2-19-92.

13.04: STATUTORY AUTHORIZATION: This shoreland ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 105, Minnesota regulations, Parts 6120.2500 - 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes or Chapter 462 (for municipalities) dated 1-1-90.

13.06: POLICY; (supplied by the State of MN. & dated 1-1-90) The uncontrolled use of shorelands of the Town of Midway, Minnesota, affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The Legislature of Minnesota has delegated responsibility to local governments of the state to regulate the subdivision, use and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the Town of Midway.

13.08: JURISDICTION; (supplied by the State of MN. & dated 1-1-90) The provisions of this ordinance shall apply to the shorelands of the public water bodies as classified in Section 4.0 of this Ordinance. Pursuant to Minnesota Regulations, Parts 6120.2500 - 6120.3900, no lake, pond, or flowage less than 10 acres in size in municipalities or 25 acres in size in unincorporated areas need be regulated in a local government's shoreland regulations. A body of water created by a private user where there was no previous shoreland shall be exempt from the ordinance.

13.10: NOTIFICATION PROCEDURES: (MN. Rule 6120.3900, Subp. 6) Administration

- a. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least 10 days before the hearings. Notices of hearings to consider proposed plats must include copies of the plats.
- b. A copy of approved amendments and plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within 10 days of final action.
- c. Townships with shoreland management controls adopted under subpart 4a must also provide these materials to the zoning official of the county.

13.14: CONDITIONAL USES; Premises in the "E-1" Environment Protection District may be used for the following purposes:

- a. Low intensity recreation such as trails (no structures allowed).
- b. Agriculture uses (no structures, or animal holding areas such as pens or feedlots).
- c. Single family residence.
- d. One accessory structure.

13.16 LAND ALTERATIONS, PERMIT THRESHOLD STANDARD: Within the E-1 District, grading, filling, excavating, or any alteration of the natural topography requires a permit if the following levels of alteration are met or exceeded:

- a. Any alteration of the natural topography located within the shore impact zone, bluff impact zone, or on a steep slope, involving more than 10 cubic yards of material.
- b. Any alteration of the natural topography, located within the E-1 District and not covered by 'a' above, involving more than 50 cubic yards of material.
- c. The following shall not require a land alteration permit: Excavations, grading and filling associated with construction of permitted structures, driveways located at the building setback or greater, walking paths, sewage treatment systems, and gardens, provided that: it is done in a manner designed to minimize erosion, sedimentation, and surface runoff and the standards set forth in sections 13.163, 13.164 and 13.165 are observed; and, permanent ground cover is established in as short a period of time as possible following completion of the project; and, except that for excavations, grading and filling disturbing more than one acre the applicant must secure all appropriate permits from the Soil and Water Conservation District and any other entities requiring permits for such activities.

13.161 LAND ALTERATION PERFORMANCE STANDARD PERMIT: An over-the-counter permit may be issued for alternations exceeding the threshold standards listed in 13.16 if the follow standards are observed:

- a. No alteration which exceeds the threshold has taken place in the two years prior to the proposed alteration.
- b. The standards listed in sections 13.163, 13.164, and 13.165 are being observed.
- c. The technical standards of the Soil and Water Conservation District are being observed.

13.162 LAND ALTERATION CONDITIONAL USE: A conditional use permit shall be required when the threshold standards of 13.16 have been exceeded and one of the following has taken place:

- a. The applicant disagrees with the permit standards developed under section 13.161.
- b. Any alteration that exceeds the threshold standard has taken place without permit, in which case the applicant shall pay the appropriate late fee.

13.163 LAND ALTERATIONS NOT PERMITTED: The following alterations within the E-1 District shall not be allowed:

- a. Activities that cause unnecessary potential for soil erosion.
- b. An alteration that will cause water backup on adjacent properties.
- c. Land disturbances that significantly retard or severely impede the drainage of adjacent properties.
- d. Intensive vegetation clearing within shore and bluff impact zones and on steep slopes.
- e. Activities in designated wetland areas governed by state, county and federal regulations.

13.164 MINIMUM STANDARDS FOR ALL LAND ALTERATIONS: The following standards shall apply to all alterations whether they require a permit, a performance standard permit, or conditional use permit:

- a. The smallest amount of bare ground shall be exposed for as short a period of time as possible.

- b. Mulches or similar materials shall be used for temporary bare ground coverage, and permanent vegetative cover shall be established as soon as possible.
- c. Accepted methods to prevent or limit erosion and trap sediment, such as hay bales and silt fences, shall be employed.
- d. Altered areas shall be stabilized according to accepted engineering or soil erosion standards.
- e. Material shall not be placed in a manner that creates an unstable slope, or in bluff impact zones.
- f. Plans to place material on steep slopes shall be reviewed by qualified professionals, and the finished slope shall not exceed 20%.
- g. Any alterations below the ordinary high water level of public waters must first be authorized by the Commissioner of Natural Resources.
- h. The applicant shall submit a detailed plan, showing existing conditions and proposed alterations, from aerial view and cross-section perspectives.

13.165 STORM WATER MANAGEMENT: The following standards shall apply for storm water management:

- a. Impervious lot coverage shall not exceed 5%.
- b. Existing natural features that control stormwater runoff shall remain unchanged, as much as possible.
- c. When areas are to be disturbed, alterations shall be managed to minimize the area to be modified, control runoff velocity and erosion, and reduce and/or delay runoff volume. Sediments shall be retained on site and the disturbed area shall be stabilized and in a completed condition in as short a period of time as possible.
- d. When man-made materials and/or facilities are used to control runoff directly into surface waters, the Soil and Water Conservation District shall be informed and its requirements and concerns shall be addressed and followed.
- e. Whenever a question arises concerning methods, management, or engineering practices, the Soil and Water Conservation District's advice shall be followed.

13.18: ADDITIONAL CONSIDERATIONS; If deemed necessary by the Planning Commission, findings shall be made by an applicant for a permit in the "E-1" Environment Protection District on the following issues. Unresolved negative impacts on one or all of these issues shall be sufficient grounds to deny permit issuance.

- a. Quality or supply of surface or ground water.
- b. Water flow.
- c. Erosion or contamination of soils.
- d. Vegetation.
- e. Wildlife.

13.20: BLUFF AREA STANDARDS;

Unless other provisions have been established for specific soil conditions the following standards shall apply in bluff areas:

- a. The land must slope towards a public water.
- b. The land must rise a minimum of 25 feet from the Ordinary High Water Level.

- c. The land has a slope of 30% but, if at any location within the slope, that percent slope becomes 18% or less over a 50 foot run, or there is an obvious break in the slope, the bluff impact zone shall not include that area.
- d. The top of the bluff shall be that area where there is a clear break in the slope and generally where the slope is less than 18% over a 50 foot run. All structures must be set back a distance of 30 feet from where the break in the slope begins. The 30 foot setback standard may be waived if all of the following conditions are met: a) The building would encroach upon the sewage treatment system expansion area; b) Vegetative screening and the integrity of the soil is maintained; and, c) No alternative building site exists.

13.21: SHALLOW SOILS BLUFF STANDARD; This standard applies to a bluff where the soil depth over ledge rock averages 24 inches or less. Where this condition exists, structures may be placed on the bluff at a setback from the ordinary high water level that equals 150% of the standard setback requirement, provided all of the following conditions are met:

- a. The parcel shall have suitable area set aside for a sewage treatment system and expansion area.
- b. Erosion control standards consistent with Soil and Water Conservation Service guidelines are followed.
- c. The shore impact zone shall be one-half the new structure setback.

150% setback waiver. Structures may be placed between the standard and 150% setback if all the following conditions exist:

- a. Approved sewage treatment and expansion area exists.
- b. Sufficient screening and vegetative filter strip exists.
- c. Erosion control standards consistent with Soil and Water Conservation Service guidelines are followed.
- d. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.

The following geographic areas are of special concern due to highly erodible soils and sensitive fish habitat. The standards below shall apply to these areas, unless the regular bluff impact zone or building setback standards result in more restrictive standards. It is not necessary for the height of the land above the water to be more than 25 feet, or for the slope to exceed 30%, for the standards that exist in Sections 13.24 and 13.26 to apply.

13.24: LAKE SUPERIOR WATERSHED RIVERS AND TOWN OF MIDWAY RIVERS; The red clay areas of the Lake Superior watershed and along the streams in the Town of Midway have been identified as having significant potential for erosion and such erosion would severely impact the streams which border these areas. Therefore, the following standards shall apply whenever they result in a greater structure setback than outlined in the general standards. The bluff impact zone shall be the vertical distance from the ordinary high water level (OHWL) inland to a point where the slope levels to 6% over a 100 foot run. The toe of the 6% slope shall serve as the point where the OHWL top of the bluff measurement shall be made. The vertical height from the OHWL to the start of the 6% slope shall be measured, and that height shall be

multiplied by four. This distance shall serve as the bluff impact, and shore impact zone for the purposes of vegetation removal. The principal structure setback from the top of the bluff shall be 30 feet. No water orientated accessory structures are permitted in this bluff impact zone.

**13.26: ADDITIONS TO EXISTING STRUCTURES NOT CONFORMING TO THE BLUFF SETBACK:** Principal structures that meet the required setback from shoreline, but do not conform to the bluff setback, may expand with permit without limits to the size of expansion if:

- a. The original structure has a minimum footprint of 600 square feet.
- b. Adequate vegetative screening exists.
- c. Erosion control guidelines are followed.
- d. The building contractor demonstrates to the County that effective erosion control measures will be taken, especially during the construction period.
- e. The addition does not come within the shore impact zone or closer than twice the minimum side yard setback standard.

If the structure is less than 600 square feet in area foundation footprint, an addition of 50% of floor area is permitted without variance provided:

- a. The side yard setback standards set above are followed; and
- b. Erosion control measures that conform to the technical standards of the Soil and Water Conservation District are taken.

Accessory structures that meet the normally required setbacks, but not the bluff setback may be added to, provided all other provisions in the ordinance are adhered to.

**13.28: PLACEMENT & DESIGN OF ROADS, DRIVEWAYS & PARKING AREAS:**

All public or private roads, driveways and parking areas must be designed to take advantage of natural vegetation to achieve maximum screening from view from public waters. They must also meet the following standards and subject to Article XIX of this text:

- a. Designed and constructed to minimize erosion and runoff.
- b. Have area available for snow storage that will not result in rapid runoff into the surface water. The snow storage area must be outside the structure setback area.
- c. All lots of over 100 spaces shall have a plan prepared to control runoff using Soil and Water Conservation District guidelines.
- d. Unless intended for a water access ramp, all roads, driveways and parking areas shall be no closer than the principal structure setback. Water access ramps shall have vegetative screening and erosion control measures taken.
- e. All roads, driveways and parking lots in bluff and steep slope areas shall be reviewed according to the land alteration standards of this Ordinance.

**13.30: HIGH WATER ELEVATIONS:** In addition to the setback requirements of Item a., local shoreland controls must regulate placement of structures in relation to high water elevation. Where state-approved, local flood plain management controls exist, structures must be placed at an elevation consistent with the controls. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows.

For rivers and streams, by placing the lowest floor at least three feet above the flood of record, if data are available. If data are not available, by placing the lowest floor at least three feet above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish the flood protection elevation. Under all three approaches, technical evaluations must be done consistent with Parts 6120.5000 to 6120.6200 governing the management of flood plain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities. Subject to Minnesota Rule 6120.3300, Subp. B.

13.32: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

13.33: If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.

#### **ARTICLE XIV. "O-1" OPEN SPACE**

14.02: PURPOSE: The regulations set forth in this Article or set forth elsewhere in this Ordinance, when referred to in this Article are the regulations in the "O-1" Open Space District.

The intent of the "O-1" Open Space District is to prevent destruction of natural or man-made resources where developments would result in hazards to health or safety, would deplete or destroy resources; or be otherwise incompatible with the public welfare.

14.04: PERMITTED USES: Premises in the "O-1" Open Space District shall be used only for the following purposes:

- a. Commercial timber harvesting provided that a forest management plan for the property prepared by a professional forester accompanies the permit.
- b. Once principle residential use has been established, accessory use is incidental to principle use. Examples: garages, chicken coops, horse barns and accessory buildings not exceeding 1250 square feet in size.
- c. If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit.

14.06: CONDITIONAL USES: A building or premises in the "O-1" Open Space District may be used for the following purposes under the provisions of Article XX of this ordinance.

- a. Game farm.
- b. Park or playground.
- c. Pipeline.
- d. Agriculture involving domesticated animals, except feedlots, provided the performance standards of Article XVIII are satisfied.

- e. Recreation, private or public.
- f. Utility corridor.
- g. Establishing new home.
- h. Recreational Trails.
- i. Road material or building debris for fill deposited on the property.
- j. Filling activity.

14.08: HEIGHT & AREA REGULATIONS: The height and area regulations set forth in Article IV of this ordinance shall be observed in the "O-1" Open Space District.

14.10: PARKING REQUIREMENTS: Off-street parking requirements shall be provided in accordance with the requirements for specific uses set forth in Article XIX of this ordinance.

14.12; ADDITIONAL STANDARDS: The standards and regulations of Article XIII, Sections 13.16 through 13.30 of this ordinance shall apply in the O-1 district.

14.14: EROSION AND STORMWATER MANAGEMENT: In accordance with the requirements for specific uses set forth in Article XVI, General Provisions, of this ordinance.

14.16: If storage units, such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit in all zones.

## **ARTICLE XV. RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES**

15.02: Except as otherwise set forth under the provisions of this ordinance, where a district is bounded by a street, highway, alley, river, stream or town limit, the center line of such feature shall be the boundary. Boundaries following railroad lines shall be construed to be located midway between the main tracks.

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

15.06: Where the actual street or property layout is at variance with that shown on the official zoning map, or in other circumstances wherein a District Boundary in question, the Permit Director shall interpret the boundary in question. Such interpretation may be appealed pursuant to the provisions of Article XXIII.

## **XVI. GENERAL PROVISIONS**

16.02: Only one residence allowed per legal parcel.



16.04: DUPLEX, TOWNHOUSES, TWIN HOMES REQUIRED LOT AREA: Duplexes, townhouses, twin homes not to be more than two units per building, if allowed in a district, must have a minimum lot area equal to twice the required minimum lot area for the district in which it is located.

16:06: PRIVATE DRIVES, RESIDENTIAL: Each lot on which a structure is to be erected, altered in its exterior dimensions, or moved, shall have frontage on and access to an improved public road, except as follows:

- a. The lot owner shall provide to the director a copy of an easement of record across all lands between the lot in question and an improved public road, which easement shall be in perpetuity and transferable to the successors, heirs and assigns of the lot owner, and which easement provides to the lot owner the unrestricted right of ingress and egress between the lot in question and an improved public road.
- b. The lot owner shall sign before a notary public and record with the County Recorder an affidavit, to be supplied by the Director, agreeing to the following:
  1. The lot owner shall maintain a private access to the lot, within the easement, at his or her expense, that allows the reasonable access of emergency vehicles; and
  2. The lot owner shall agree not to demand nor require any governmental unit to provide a public road or a publicly maintained cartway to the lot, nor to have the private access maintained at government expense; and
  3. The lot owner shall agree that all structures on the lot shall be setback at least 68 feet from the centerline of the easement.

16.08: FENCES: All property fences built on a property line or facing a public road shall be constructed with the finished side out. All fences shall be kept painted and in a presentable condition at all times. Construction of fences in A-1, S-1, RR-1, RR-2 and O-1 zones which would result in structures six feet in height or higher is subject to Article XX, Conditional Uses. No fence shall be constructed in a manner that results in a public nuisance or hazard.

16:10: NO LAND USE PERMIT SHALL BE REQUIRED FOR: Local public utility distribution lines, agriculture excluding livestock except in O-1 and RR-2 districts, forest management activities except in O-1 district, lawn ornamentation, remodeling of existing structures not involving expansion of the exterior physical dimensions of the structure, accessory structures (used solely for storage) of less than 100 square feet, and satellite receiving antennas and apparatus of a diameter of 12 feet or less, provided that all appropriate setbacks are met.

16.12: RECREATIONAL VEHICLES:

- a. Recreational vehicles temporarily parked and not being used as a dwelling or dwelling unit shall meet all setback requirements for accessory structures in the pertinent district. Recreational vehicles temporarily located on a parcel and being used as a dwelling or dwelling unit shall be allowed without meeting the setback requirements for primary structures in the pertinent district for a period not to exceed 14 days cumulative per year.

b. A recreational vehicle located on a parcel for more than 14 days cumulative per year and used during that period as a dwelling or dwelling unit shall be considered a dwelling requiring a permit pursuant to the provisions of this ordinance, provided that said recreational vehicle shall not be used as a dwelling or dwelling unit on that parcel for more than 180 days within any calendar year. All recreational vehicles used as a dwelling or dwelling unit shall be connected to a licensed septic or sewage system. A permit for a recreational vehicle as a dwelling shall only be granted for parcels in the A-1, RR- 1, RR-2 and 0 districts.

c. No more than one recreational vehicle being used as a dwelling or dwelling unit may be located on the same parcel for more than 14 cumulative days.

16.14: MOBILE HOMES:

- a. It shall be unlawful for any person to park, store or maintain any mobile home on any street, alley, highway or other public place or on any tract of land within the Town of Midway, except as provided herein and otherwise permitted.
- b. Emergency or temporary parking or storage will be permitted on any alley, street or highway for not longer than 24 consecutive hours, subject to any other prohibitions, regulations, or ordinances affecting such parking, except that construction "shack" trailers will be permitted during any reasonable construction period.
- c. Nothing in this section in any way restricts and limits the occupancy of a mobile home as a single family dwelling. No person shall otherwise park or occupy any mobile home on the premises of any occupied dwelling lot or any other lot without first obtaining a permit as required in this ordinance; provided that only one unoccupied mobile home may be parked in an accessory structure or outside behind the front yard setback for a period not to exceed 21 days for the purpose of sale or repair of the mobile home.

16.15: STORAGE UNITS: Such as containers, rail cars, semi-trailers are located on properties for six months or more, they shall be considered a structure, and will require a permit in all zones.

16.16: SIGNIFICANT HISTORIC SITES: No structure or use may be established within 50 feet of a platted or unplatted cemetery unless approved by the State Archaeologist. No structure or use may be placed on a significant historic site that affects the values of the site unless adequate information about the site has been removed and documented and such removal is approved by St. Louis County.

16.18: PLACEMENT & DESIGN OF ROADS, DRIVEWAYS & PARKING AREAS:

All public or private roads, driveways, and parking areas must be designed to take advantage of natural vegetation to achieve maximum screening from view from public waters. They must also

meet the following standards:

1. Designed and constructed to minimize erosion and runoff.
2. Have area available for snow storage that will not result in rapid runoff into the surface water. The snow storage areas must be outside the structure setback area.
3. All lots of over 100 spaces shall have a plan prepared to control runoff using Soil & Water Conservation District guidelines.
4. Unless intended for a water access ramp, all roads, driveways and parking areas shall be no closer than the principal structure setback. Water access ramps shall have vegetative screening and erosion control measures taken.
5. All roads, driveways and parking lots in bluff and steep slope areas shall be reviewed according to the land alteration standards of this Ordinance.

16.20: DRIVEWAY ENTRANCES; Driveway access to any parcel or lot from any public roadway shall be limited to not more than one (1) twenty to thirty-two foot driveway entrance unless permission is given by the appropriate road authority. In no case shall a driveway entrance be permitted to be located within 100 feet of the right-of-way line of any intersecting road. More than one driveway entrance may be allowed if permission from the appropriate road authority is granted. Whenever possible, new commercial uses shall use driveways and parking areas in combination with existing establishments so as to reduce the number of driveway entrances. A planting strip of not less than three feet beyond the right-of-way shall be provided between the parking area and the right-of-way.

16.22: Houses or homes that are abandoned due to fire or other structural reasons are not safe for human occupancy. Said structure(s) must be removed within 90 days from the date of the notice served on the landowner by certified mail. The landowner may ask for a review before the Planning Commission.

Structures that are damaged, or fallen into a state of disrepair, that creates a public hazard and a concern for public safety, shall be repaired or removed within 90 days from the date of notification served either personally or by certified mail on the landowner by the town board. The landowner may request a review before the Planning Commission. (Township shall follow Mn. Statutes 463.15-463.261).

16.23: SANITARY SYSTEM SETBACKS AND STANDARDS

- a. Structure Setback from Sanitary System: All occupied structures, including accessory dwellings shall meet the minimum setback requirement of the St. Louis County sewage treatment standards. These standards may result in lot area and widths greater than required by the specific dimensional standards in which case the sanitary system standards shall apply.
- b. Sanitary Record Review: All land use permits issued within the shoreland area and parcels of less than 2.5 acres outside the shoreland area shall have the sanitary system reviewed to

determine if the proposed land use permit would adversely impact the existing sewage system or the expansion area, if required, for the sewage system.

- c. Structure Setback from Wells: All occupied structures, including accessory dwellings, shall meet the minimum setback requirement of the Minnesota State Well Code.

16.24. SETBACK WAIVERS.

- a. The building setback standard may be waived if the applicant can demonstrate that a suitable site exists for building closer to the lake or river that will provide a building site that minimizes erosion and that the erosion control standards will be followed, on-site sewage disposal can be adequately addressed, and view from water is not substantially different from the required bluff setback. However, the structure shall not be placed within the revised shore impact zone without a variance.
- b. The following standards for screening shall be followed when screening is required as a performance standard, conditional use or variance:
  - 1. General: Screening may consist of walls, fences, land forms or natural or planted landscape materials and shall effectively screen the use or structure from roads or adjacent residential parcels. Screening must be on the same parcel as the structure or use being screened and it shall be the responsibility of the owner to maintain the screening. The order of preference for screening is as follows:
    - i. Maintaining existing vegetation and using natural topography;
    - ii. Planting native vegetation which is a minimum of four feet high at the time of planting and is planted and maintained in accordance with accepted silver-cultural practices;
    - iii. Construction of a berm which must be seeded and have side slopes not to exceed a 2:1 ratio. The planting of vegetation shall meet the standards of the Soil & Water Conservation District;
    - iv. Construction of a solid wood fence;
    - v. Construction of a chain link fence.
- c. Required Screening Plans: The following uses shall submit a screening plan with the permit application: Borrow Pits, Salvage Yards, Solid Waste Disposal Facilities, Building Material Storage Yards, Contractor Yards, Rural Industry, and other similar uses.

16.25: SPECIFIC USES NOT ALLOWED IN MIDWAY: Under no circumstances shall the following uses be allowed as permitted or conditional uses in Midway Township:

- a. Kennels, Private.
- b. Junk or salvage yards.
- c. Industrial procedures commonly associated with mineral and ore deposit evaluation procedures including bulk samples by means of excavating, trenching, constructing shafts, ramps, tunnels, pits, production of refuse and other associated activities. This includes exploratory boring or surface drilling for the purpose of exploring or prospecting for oil,

natural gas, and metallic minerals, including but not limited to iron, copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, berlium, thorium, uranium, aluminum, platinum, palladium, radium, tantalum, tin and niobium.

- d. Mining and milling of minerals and ores.

16.26: ENVIRONMENTAL REVIEW:

- a. The Town of Midway Planning Commission shall review and act upon all environmental review petitions, worksheets and impact statements that involve conditional uses, subdivision plats, or other development proposals. It shall be the responsibility of the applicant to supply all required information and to pay all fees. The Commission on any development proposal may require the applicant to provide information regarding the environmental effects of a proposal either through a discretionary EAW or as part of the permit review process. The Planning Director shall review all EAW's and EIS's for accuracy and completeness. The Planning Director upon certification may submit the report to the appropriate review agencies in accordance with State regulations. The Planning Director may refer the issue of accuracy and completeness to the Planning Commission who shall hold a public hearing on the draft environmental review. It shall be the responsibility of the Planning Commission after holding a public hearing to make the final declaration regarding the environmental review.
- b. When any application for a permitted use or a conditional use requires an Environmental Assessment (EA), Environmental Assessment Worksheet (EAW) or Environmental Impact Statement (EIS), pursuant to the rules of the Minnesota Environmental Quality Board (EQB) or as requested by Midway Township, no permit or conditional use permit which the Town may grant shall be considered valid until and unless such EA, EAW or EIS has been approved by the responsible agency and the applicant has received any final approval necessary from the EQB.

16.28: CONSTRUCTION MUST COMMENCE: Construction of all structures covered by a permit or commencement of a use shall be substantially begun within twelve (12) months of the date of issue of a permit or said permit shall become void. A single permit extension of 12 months may be granted by the Planning Director, provided that the proposal meets Ordinance requirements.

16.30: CONFORMANCE WITH SUBDIVISION REGULATIONS: No Land Use Permit shall be issued to establish a use on any lot which has been divided or transferred in violation of the Subdivision Regulations of St. Louis County, or when the Planning Director determines such violation exists.

16.32: TRANSFERS OF LAND: No lot shall be created which does not meet the requirements of this Ordinance; transfers to adjoining parcels of non-conforming parcels are permitted providing such a transfer does not adversely affect the conformity of the remaining lot as it relates to zoning and sanitary standards.

16.34: EROSION AND STORMWATER MANAGEMENT: for all permitted development

must:

- a. Be designed and constructed to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by the Soil & Water Conservation District and/or the Minnesota Pollution Control Agency may be required if project size and site physical characteristics warrant.
- b. Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff.
- c. Other Standards and Requirements:
  1. The proposed project shall have no adverse effect on adjacent property.
  2. The only uses allowed within the project are residential home occupation, and accessory uses.
  3. The project shall not have a density of residential units than that required by this ordinance in the district in which the proposed project is located.
  4. The proposed project shall conform to all other applicable town ordinances.

16.36: Erosion control and stormwater control shall be provided for all permitted development in all zones and deal with stormwater runoff, sediment control, grass matting, silt fences, hay bales, seeding and sodding as needed to prevent erosion. After area is stabilized with cover, said controls shall be removed within 90 days.

16.38. INTERIM USE:

- a. Purpose: To allow a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.
- b. Review and Approval: Any use listed in this ordinance as, or determined by the Permit Director to be, an interim use may be permitted only after an application for an interim use permit has been reviewed and approved by the Planning Commission, based on the following criteria:
  1. The use conforms to the zoning regulations.
  2. The date or event that will terminate the use can be identified with certainty.
  3. Permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future.
  4. The user agrees to any conditions that the governing body deems appropriate for permission of the use.
  5. The use must meet the conditional use permit process in Article XX of this Ordinance.

- 6. Any interim use may be terminated by a change in zoning regulations.
- c. Process: Interim use permits will be processed according to the public hearing procedures for conditional use permits found in this ordinance.
- d. Additional Conditions: In permitting an interim use, the Planning Commission may impose, in addition to the standards and requirements expressly specified by this ordinance, additional conditions necessary to protect the interests of the surrounding area.
- e. Termination of Interim Use Permit: An interim use will terminate and become void upon the occurrence of any of the following events:
  - 1. The termination date stated in the permit is reached.
  - 2. A violation of any condition under which the permit was issued.
  - 3. A change in the applicable zoning regulations which no longer allows the use.
  - 4. The operator/owner or the use changes.
  - 5. The designation of the use and property upon which it is located is changed to a permitted or conditional use within the respective zone district.
  - 6. The permit is not utilized within a period of one year from the date issued.
  - 7. The use has been discontinued for a minimum of 1 year.
- f. Certification of taxes paid. Prior to approving an application for an interim use permit, the applicant shall provide certification to the Town that there are no delinquent property taxes, special assessments, interest, or Town utility fees due upon the parcel of land to which the interim use permit application applies.
- g. Expiration of Interim Use Permit: An interim use permit may not be granted for a period of greater than five years. The use will terminate upon a date or event that can be identified with certainty. The period of time for which the interim use is to be granted will terminate before any adverse impacts are felt upon adjacent properties. A land use permit can be extended for up to an additional five years without a public hearing if the following conditions are met:
  - 1. An application and fee to extend the permit is submitted 120 days prior to the expiration date of the permit.
  - 2. All minimum conditions of this ordinance and conditions approved as part of the public hearing are being followed.

**16.40 LAND ALTERATIONS AFFECTING WETLAND AREAS:** The activities listed in section 13.163 shall not be allowed in wetlands. Further, all activities impacting wetlands must

be done in conformance with county, state, and federal regulations.

16.41 GENERAL ORDINANCE USE AND INTERPRETATION:

- a. Rules. For the purposes of this Ordinance, words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined herein, are construed according to such special meaning or their definition. The words “shall” or “must” are mandatory, not permissive. The singular includes the plural; and the plural, the singular; words of one gender include the other genders; words used in the past or present tense include the future. General words are construed to be restricted in their meaning by preceding particular words. All distances, unless otherwise specified, shall be measured horizontally; measures of height are vertical. References to Minnesota Statutes and Rules incorporate the language of the Statute or Rule as if were contained in, and pertained to, this Ordinance.
- b. Contractor Responsibility. Each contractor shall ascertain that all work done on the property of another person must have the proper permit to do such work and complies with the applicable ordinance standards. Failure of any such contractor to comply herewith shall be considered a violation of this ordinance and subject to the enforcement provisions of Article XXVI.
- c. Applicant Responsibility. Actions taken pursuant to permits granted under this ordinance are the sole responsibility of the property owner or his/her agents. Property owners are presumed to know the location of their property lines and may not rely on township staff or data to determine such locations. Midway Township assumes no liability for any adverse effects to the property owner, or to third parties, caused by any actions taken pursuant to permits granted under this ordinance. Property owners and their agents are responsible for determining, locating and complying with setbacks when developing a lot.
- d. Application and Interpretation
  1. Conformance with subdivision regulations: No land use permit shall be issued to establish a use on any lot that has been created, divided or transferred in violation of the subdivision regulations of St. Louis County, or when the Director determines such violation exists.
  2. Conformance with floodplain regulations: No land use permit shall be issued that is not in compliance with township or St. Louis County floodplain regulations. Where the 100-year flood elevation has not been determined with a detailed study, Minnesota Rule 6120.3300 shall be utilized to approximate the flood elevation.
  3. Transfers of land: No lot shall be created that does not meet the requirements of this ordinance; transfers to adjoining parcels of nonconforming parcels are allowed provided such a transfer does not adversely affect the conformity of the remaining lot as it relates to zoning and sanitary standards. A transfer shall not create any new nonconformity, nor shall it increase an existing nonconformity.



- e. Private Party Cause of Action: In the event the Town of Midway chooses not to pursue an action for injunctive relief, any property owner negatively impacted by a violation of this Ordinance may bring an action to prevent, restrain, correct, or abate violations or threatened violations. The town shall be notified of such actions and shall not be made a party in the case.

## **ARTICLE XVII. PLANNED UNIT DEVELOPMENT**

### 17.02: RESIDENTIAL PLANNED UNIT DEVELOPMENT:

- a. Usable Area Calculation.
  - 1. From the total area of the project shall be excluded the following: area in wetlands, bluffs, exposed bedrock, highly erodible soils, area set aside for sewage treatment, and land below the ordinary high water level of public waters. The area remaining shall be used to calculate the allowed density for the project.
  - 2. The number of allowable dwelling units is calculated by dividing the acres of usable area as determined by the minimum required residential lot size of the zone district.
- b. Design Criteria. The criteria for reviewing and approving residential planned unit developments are as follows:
  - 1. The proposed project must contain at least 5 dwelling units.
  - 2. At least 50 percent of the total project area must be preserved as open space.
  - 3. Dwelling units or sites, road right-of-ways, or land covered by road surfaces areas, or structures, except water-oriented accessory structures or, are developed areas and shall not be included in the computation of required open space.
  - 4. Open space must include areas with physical characteristics unsuitable for use in their natural state, and areas containing significant historic sites unplatted cemeteries.
  - 5. Open space may include outdoor recreational facilities for use by owners of the units or sites or the public.
  - 6. The appearance of open space areas, including topography, vegetation, and allowable uses must be preserved through public dedication and acceptance, easements or other equally effective and permanent means. Land in conservancy, bluff zones and E-1 zones.
  - 7. Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems.
  - 8. Residential planned unit developments must be connected to publicly owned supply and sewer systems, if available. On-site water supply and sewage systems must be centralized when feasible and designed and installed to meet or exceed applicable standards or rules of the Minnesota Dept. of Health and Minnesota Pollution Control Agency and St. Louis County. On-site sewage systems must be located on the most suitable areas of the development, sufficient lawn area free of limiting factors must be provided for a replacement treatment system for each sewage system.
  - 9. Dwelling units or sites must be clustered into groups and located on suitable areas the

development. They must be designed and located to meet or exceed the dimensional standards for the relevant shoreland classification: setback the ordinary high water level, elevation above the surface water features, and height.

10. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands or public roads by vegetation, , increased setbacks, color, or other means acceptable to the Planning.
  11. Non shore recreational facilities should be placed in a manner that avoids major routes and placed in an environmentally sound location. The facilities also be located in centralized locations for use by the residents of the.
  12. Erosion control and stormwater management for the development must:
    - i. Be designed and constructed to minimize the likelihood of serious erosion either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary covers, sediment entrapment facilities, vegetated buffer strips, or appropriate techniques must be used to minimize erosion impacts on water features. Erosion control plans approved by the Soil and Conservation District may be required if project size and site physical warrant.
    - ii. Be designed and constructed to effectively manage reasonably expected and qualities of stormwater runoff.
- c. Other Standards and Requirements:
1. The proposed project shall have no adverse effect on adjacent property.
  2. The only uses allowed within the project are residential, home, and accessory uses.
  3. The project shall not have a density of residential units greater than that by this ordinance in the district in which the proposed project located.
- d. Information Requirements. Planned Unit Development applications shall the following information:
1. A site plan drawn to either 1":100 foot or 1":50 foot scale showing boundaries, surface water features, existing and proposed and their uses, sewage treatment systems, topographic at ten-foot intervals or less, location of all uses including and other recreational facilities, utility lines, driveway entrances, wells including abandoned wells, and other information required the Permit Director or Planning Commission in order to adequately the proposal.
  2. Documents that explain how the project is designed and will function. Documents, which shall be submitted in draft form for review, may be finalized after review and shall include: and erosion control plan, covenants, property association which all property owners shall be a member, easements, floor for structures, fire protection plans, and other information required adequately review the proposal.

17.03: CLUSTER HOUSING: If an amount of the property equal to or greater than 50 percent of the total property is placed into permanent conservancy status, then (1) a bonus of up to 25 percent more housing units above that permitted within the district may be allowed, and, (2) lot sizes and setbacks for individual homes may be reduced below the minimums required within the district. Examples of what are considered uses compatible with permanent conservancy status include: trails, non-commercial recreational uses, screening, playgrounds, wetlands, nature

trails, ATV trails, bike and walking trails, bluff zones, actively used agricultural fields including animal pastures and corrals, and forested lands. The initial and replacement site for on-site sewage treatment systems shall not be included in the conservancy area. No structures shall be allowed in the conservancy area.

17.04: SHOPPING CENTERS: The owner of a tract of land in the C-1 Zoning District may submit to the Planning Commission, a preliminary plan and application for the use and development of such tract of land for an integrated shopping center to show...

- a. That the tract contains not less than five (5) acres;
- b. The need for the proposed development;
- c. That the proposed center is located so that reasonably direct traffic access is supplied from thoroughfares with a gross axle weight that exceeds nine (9) ton and where traffic congestion will not likely be created by the proposed center.
- d. That the plan provides for a single building or a grouping of buildings of harmonious design, together with adequately arranged traffic and parking facilities, and adequate landscaping of grounds;
- e. That the proposed center will not have adverse effects on surrounding properties;
- f. The proposed project satisfies the requirements of Article IX, Section 9.06 and Article IV, Section 4.12 of this ordinance.
- g. That any other requirements have been met such as may be imposed by the Planning Commission to safeguard the public interest.

17.06: INDUSTRIAL PARKS: The owner of a tract of land in the M-1 district may submit to the Planning Commission a preliminary plan and application for the use and development thereof for a planned industrial district or industrial park. It shall be the responsibility of the applicant to show that the proposed plan meets or exceeds the following conditions:

- a. That the tract contains not less than twenty (20) acres;
- b. That the plan provides for a grouping of buildings of harmonious design having properly arranged traffic ways, parking and loading facilities, adequate landscaping and not having adverse effect on the neighboring properties;
- c. That the proposed project will have direct access to at least one major or secondary thoroughfare with a nine (9) ton axle capacity;
- d. That all uses proposed are listed as basic provisions or conditional uses in the M-1 district;
- e. The proposed project satisfies the requirements of Article IX, Section 9.04 and Article IV, Section 4.12 of this ordinance.

17.07: COMMON INTEREST COMMUNITY AS A PUD: Ownership of or within a PUD may be in the form of a common interest community as defined by Minnesota statutes.

## **ARTICLE XVIII. PERFORMANCE STANDARDS**

18.01 GENERAL

- a. If a use, requiring adherence to performance standards is to be considered a permitted use,

cannot meet the appropriate terms of this article, shall be reviewed as a Conditional Use.

- b. Every land use permit issued with performance standards shall be conditioned upon the proposed use or structure fully complying with all pertinent standards specified herein. Failure to comply shall be considered a violation of this Ordinance.

18.04 ACCESSORY BUILDINGS: Accessory buildings between 1,000 and 1,250 square feet in area shall meet the following standards:

- a. Sidewall does not exceed 12 feet in height.
- b. Structure meets all setback, height and other applicable dimensional standards for the district.
- c. Structure is served by an existing driveway.
- d. Color of structure blends with existing structures on property.
- e. Existing vegetation, fencing or other items that serve to screen the proposed accessory building from view from adjacent property or public roads is to be retained.

18.05 INTERIM ACCESSORY BUILDING: An accessory building may be allowed prior to the construction of the principle structure or use provided the following standards are satisfied.

- a. Applicant shall provide the Town of Midway with a preliminary plan, with proposed setbacks, as to the location of the proposed residence, well, septic and other accessory structures as well as the accessory structure for which the permit is being sought. Final Plan may be modified.
- b. Proposed accessory structures greater than 1250 square feet in area shall require an Interim Conditional Use Permit.
- c. Said accessory structure must conform to all setback restrictions in the zone district in which it is located.
- d. Said accessory structure must be for the applicant's personal use only.
- e. Said accessory structure shall not be located in wetlands.
- f. Applicant shall comply with best practices as they relate to storm water and erosion controls.
- g. Applicant shall commence construction of the primary residence within 1 year from the date a permit is issued for the accessory structure. The Planning Commission may grant an extension upon appeal by the applicant presented to the Planning Commission.
- h. Applicant will remove the accessory structure from the property in question if construction of the primary residence is not underway 1 year from the date the permit for the accessory structure is issued or after any extension approved by the Planning Commission as expired.
- i. The applicant shall post with the Town of Midway a Surety Bond in an amount determined by resolution of the Midway Town Board payable to the Town of Midway. If the applicant fails to comply with the terms of this Ordinance he/she shall forfeit said bond to the Town of Midway.

18.06 HOME OCCUPATION;

- a. The only employees of the enterprise are residents of the owner's home.
- b. Off-street parking is provided for clients, delivery vehicles, and other vehicles using or serving the business.

- c. The enterprise does not generate nuisance levels of sound, vibration, dust, light, electrical interference, or similar types of impacts at the lot line of the parcel or at the nearest public road.
- d. If at such time the Planning Commission determines said activity is no longer compatible in the zone it is located, the Planning Commission may require the home occupation be removed or closed.

18.08 AGRICULTURE WITH LIVESTOCK:

a. GENERAL: The Town of Midway recognizes that agricultural and residential and other uses can exist in a manner that promotes and protects the interests of all concerned. However, in the A-1 district agricultural activities, including those with livestock, are given precedence over all other uses in regards to the application of this ordinance.

b. PERMIT REQUIRED:

1. All operations containing animals shall follow these standards or obtain a conditional use permit, except in the A-1 district, regardless of whether or not the use was established prior to the adoption of this ordinance.
2. If the landowner is operating any kind of business involving animals, he/she is required to obtain a permit for a home occupation, home business or conditional use.
3. No animals penned within 200 feet of a neighboring residence or 150 feet from any well, except up to 3 domesticated dogs or cats shall be permitted. Penned is defined as the confined feeding, breeding, raising or holding of animals. This provision does not apply if the animals are pastured in an area of 10 acres or more.
4. The keeping of amounts greater than 1,000 poultry or small animals or more than 250 swine
5. Where any parcel contains 5 or more animals units of swine or poultry, closed quarters or fencing shall be provided at no less than twice the required setback for the zone district unless the provision in item 3 above results in a great setback.
6. All required state and federal permits shall be obtained for the keeping of animals.
7. Animal waste must be disposed of in an environmentally sound manner, and in no case shall runoff from waste discharge directly into a lake, river, unsealed well, or wetland. The construction of animal waste systems is encouraged and may be required by the Planning Commission or the Director.

c. SHORELAND, BLUFFS AND STEEP SLOPES. Animals shall not be picketed, fenced or otherwise contained in shore and bluff impact zones or on steep slopes. However, access to the shore shall be allowed for watering purposes only, on a sites approved by the Soil Conservation Service.

d. ANIMAL UNITS. The Town determines impact of livestock by using animal units as shown in the following table. The Director may determine the animal unit value for animals not listed:

One dairy cow	1.4 animal unit
One slaughter steer or heifer	1.0 " "
One horse	1.0 " "

One swine	0.4	"	"
One sheep, goat	0.2	"	"
One duck, turkey	0.02	"	"
One chicken	0.01	"	"

- e. PERMITS NOT REQUIRED: A permit is not required if, as is pertinent to the use, the following standards are met:
1. Dogs and cats may be kept as pets in any district. The number of dogs and cats cannot exceed 3 per parcel.
  2. On parcels with 2 to 4.5 acres adequately fenced to contain the animals, 1 animal unit is allowed.
  3. On parcels with 4.51 to 9 acres adequately to contain the animals, 5 animal units are allowed.
  4. For parcels with more than 9 acres adequately fenced to contain the animals, 9 animal units plus 1 animal unit per every acre over 9 acres to a maximum of 30 per quarter/quarter section or government lot. If an individual owns more than one quarter/quarter or government lot that may be considered in the general area, that property may be used in calculating the total animal units allowed at the rate of 20 animal units per quarter/quarter or government lot, even if all the animals are kept on a single parcel.

18.10 RIDING STABLE: A riding stable shall:

- a. Have a minimum of 20 acres.
- b. Meet the pertinent requirements of Article 20.08
- c. Meet the standards for a home occupation or home business whichever applies.

18.11: DECK: Platforms no higher than 18" in height without permanent footings and attached to a structure, not to exceed 100 square feet will not need a permit.

18.12: SOLAR ENERGY COLLECTORS: Solar energy collectors mounted on the roof of an approved structure may extend no more than 18 inches higher than the highest point of the roof.

18.13: WIND ENERGY CONVERSION SYSTEMS.

- a. No more than one non-commercial WECS shall be permitted per primary use in the A-1, RR-1, RR-2, O-1, E-1, C-1 and C-2 districts.
- b. Setbacks for non-commercial WECS:
  1. Setback from property lines: 1.1 times the total height of the WECS.
  2. Setback from road right-of-way: The distance of the fall zone plus 10 feet.
- c. Setbacks for commercial WECS:
  1. Setback from property lines: 1.1 times the total height of the WECS.
  2. Setback from road right-of-way: The distance of the fall zone plus 10 feet.
  3. Distance from neighboring dwellings: 750 feet.

- d. In addition to the requirements for towers specified in section 20.16, the following standards shall specifically apply to WECS:
1. Substation shall be treated as an accessory use.
  2. Engineering certification: For all WECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the WECS are within accepted professional standards.
  3. Clearance: Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.
  4. Warnings: For all commercial WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage.
  5. Total height: non-commercial WECS shall have a total height of less than 150 feet.
  6. Tower configuration: All wind turbines, which are a part of a commercial WECS, shall be installed with a tubular, monopole type tower.
  7. Color and finish: All wind turbines and towers that are part of a commercial WECS shall be white, gray, or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matt or non-reflective.
  8. Feeder lines: All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried, where reasonably feasible.
  9. Noise: All WECS shall comply with Minnesota Rules 7030 governing noise.
  10. Interference: The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within two miles of the proposed WECS location upon application to the Town for permits. No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions.

18.14 ADDITIONS TO NON-CONFORMING PRINCIPLE STRUCTURE. Non-conforming principle structures may be allowed (1) addition in accordance with the standards found in this article WITHOUT a variance. However, a land use permit is required.

1. Said addition shall not increase the nonconformity.
2. The height of proposed addition shall not exceed the height of the existing structure by more than 2 feet.
3. The proposed addition shall not encroach on the septic treatment system or expansion area for septic treatment.
4. Original structure must have been built prior to September of 1976 when the Midway

Zoning Ordinance went into effect.

5. If a structure met the setbacks at the time Midway enacted the Zoning Ordinance, but as a result of road improvement or enlargement of road right of way, said structure no longer meets the setbacks.
6. Proposed addition shall blend in with existing structure. In the event that said addition and structure are to be re-sided or re-roofed, we encourage earth tones shall extend to siding, roofing, window trim, door casings and outside trim.
7. Land alternations shall be done in such a manner to minimize erosion, sedimentation, and surface run-off that impact adjacent property owners.
8. Permanent ground cover shall be established in a short period of time as possible following completion of said addition.

18.15 SOLAR FARMS: Solar Farms shall meet the following performance standards:

- a. Stormwater management shall meet the requirements as set forth in this Ordinance.
- b. Erosion and sediment control shall meet the requirements as set forth in this Ordinance.
- c. Foundations. The manufacturer's engineer or another qualified engineer shall certify that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions.
- d. Other standards and codes. All solar farms shall be in compliance with any applicable local, state and federal regulatory standards, including the State of Minnesota Uniform Building Code, as amended; and the National Electric Code, as amended.
- e. Power and communication lines. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted by the Town in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines.
- f. Setbacks. Solar farms must meet the minimum building setback for the zoning district and be located a minimum of 100 feet from a residential dwelling unit not located on the property.
- g. Application requirements. The following information shall be provided to the Town prior to issuance of the conditional use permit:
  1. A site plan of existing conditions showing the following:
    - i. Existing property lines and property lines extending 100 feet from the exterior boundaries, including the names of the adjacent property owners and current use of those properties
    - ii. Existing public and private roads, showing widths of the roads and any associated easements
    - iii. Location and size of any abandoned wells, sewage treatment systems and dumps
    - iv. Existing buildings and any impervious surface



- v. Topography at 2 foot intervals and source of contour interval, unless determined otherwise by the Town. A contour map of the surrounding properties may also be required
  - vi. Existing vegetation (list type and percent of coverage; i.e. grassland, plowed field, wooded areas, etc.)
  - vii. Waterways, watercourses, lakes and public water wetlands
  - viii. Delineated wetland boundaries
  - ix. The 100-year flood elevation and Regulatory Flood Protection Elevation, if available
  - x. Floodway, flood fringe and/or general flood plain district boundary, if applicable
  - xi. The shoreland district boundary, if any portion of the project is located in a shoreland overlay district
  - xii. In the shoreland overlay district, the ordinary high water level and the highest know water level
  - xiii. In the shoreland overlay district, the toe and top of any bluffs within the project boundaries
  - xiv. Mapped soils according to the St. Louis County Soil Survey
  - xv. Surface water drainage patterns
  - xvi. LESA score for the parcel, if located within an agricultural zoning district.
2. Site Plan of Proposed Conditions
    - i. Location and spacing of solar panels
    - ii. Location of access roads
    - iii. Planned location of underground or overhead electric lines connecting the solar farm to the building, substation or other electric load
    - iv. New electrical equipment other than at the existing building or substation that is the connection point for the solar farm
    - v. Proposed erosion and sediment control measures as required by this Ordinance..
    - vi. Proposed stormwater management measures as required by this Ordinance.
    - vii. Sketch elevation of the premises accurately depicting the proposed solar energy conversion system and its relationship to structures on adjacent lots (if any);
  3. Manufacturer's specifications and recommended installation methods for all major equipment, including solar panels, mounting systems and foundations for poles or racks;
  4. The number of panels to be installed;
  5. A description of the method of connecting the array to a building or substation;
  6. A copy of the interconnection agreement with the local electric utility or a written explanation outlining why an interconnection agreement is not necessary;
  7. A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels must occur in the event they are

not in use for 12 consecutive months. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site. The Town may require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

8. Visual Impact Analysis. An analysis of the potential visual impacts from the project including solar panels, roads and fencing along with measures to avoid, minimize or mitigate the visual effects shall be required. A plan may be required showing vegetative screening or buffering of the system from those items to mitigate for visual impacts.
9. Interference: The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any solar farm installation.

## **ARTICLE XIX. OFF-STREET PARKING AND LOADING REQUIREMENTS**

19.01: REQUIRED PARKING SPACES; Off-street automobile parking or storage space shall be provided on every lot on which any new structures are hereafter established. Such space shall be provided with vehicular access to a roadway, street or alley, and such space shall be provided with a suitable area for vehicle turn-around so as to allow vehicles safe entry onto the roadway, and such space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner. When a structure is enlarged, the required off-street parking space shall be provided for the enlarged portion if the enlargement increases the demand for parking. If a use is changed to a different use requiring more parking, the additional amount of parking area shall be provided. Facilities which operate on shifts shall have sufficient parking based on the standards in this section and the maximum number of employees that would park at the facility at any given time. In addition, the following minimum standards shall apply:

- a. An off-street parking space shall comprise an area with dimensions of 9 feet by 18 feet plus necessary maneuvering space; total area for parking and maneuvering shall not encroach upon any public -of-way.
- b. Residential dwellings shall have 1 parking space for each licensed vehicle of the occupants.
- c. Tourist accommodations: One parking space for each room or unit, and one parking space for each non-resident employee.
- d. Theater, stadium, auditorium, church, or other places of public assembly: one parking space for each 5 seats, based on maximum seating capacity, and one parking space for each employee.
- e. Stores and other retail business establishments: 5.5 parking spaces for 1,000 square feet of total floor area, and 1 parking space for each employee.
- f. Office buildings: 1 parking space for each 200 square feet of office floor area and 1 parking space for each employee.

- g. Industrial, manufacturing or wholesale establishments: 1 parking space for each worker based on peak employment in any one shift.
- h. Restaurants, supper clubs, taverns and bars: 1 parking space for each 2 seats, based on maximum seating capacity, and 1 parking space for each employee, based on peak employment at any one time.
- i. Non-residential off-street parking areas, whether public or private, for more than five vehicles, shall be effectively screened from residential uses. All public or private parking areas shall be separated from the right-of-way of any road by means of a sod strip not less than 3 feet in width or other barrier that clearly delineates the parking lot from the road.

**19.03: PLACEMENT AND DESIGN OF ROADS, DRIVEWAYS AND PARKING AREAS;**

All public or private roads, driveways, and parking areas must be designed to take advantage of natural vegetation to achieve maximum screening from view from public waters. They must also meet the following standards:

- a. Designed and constructed to minimize erosion and runoff.
- b. Have area available for snow storage that will not result in rapid runoff into the surface water. The snow storage area must be outside the structure setback area.
- c. All lots of over 100 spaces shall have a plan prepared to control runoff using Soil & Water Conservation District guidelines.
- d. Unless intended for a water access ramp, all roads, driveways, and parking areas shall be no closer than the principal structure setback. Water access ramps shall have vegetative screening and erosion control measures taken.
- e. All roads, driveways and parking lots in bluff and steep slope areas shall be reviewed according to the land alteration standards of this Ordinance.

**19.06: PARKING SPACES TO BE LOCATED ON SAME LOT:** All parking spaces required by this article shall be located on the same lot with the building or use served; except, that where an increase in the number of spaces are provided collectively or used jointly by two or more buildings or establishments. The required spaces may be located and maintained not to exceed 300 feet from an institutional building served and not to exceed 500 feet from any other non-residential building served. In any case where the required parking spaces are not located on the same lot with the building or use served or where such spaces are collectively or jointly provided and used, a written agreement thereby assuming their retention for such purposes shall be properly drawn and executed by the parties concerned, approved as to form and execution by the town attorney, and shall be filed with the application for a building permit.

**19.08: SHARING OF PARKING SPACES:** Up to 50% of the parking spaces required for a given use may be provided and used jointly one or more adjoining uses not normally open, used or operated during the same hours as the given use provided, that written agreement thereto is properly executed and filed, as specified in the preceding section 7.18 of this ordinance.

**19.10: LOCATION OF REQUIRED PARKING SPACES IN FRONT YARDS:** Off-street parking space in any "C" or "M" district within the required front yard of any "C" or "M" district, shall not be located nearer than 100 feet to the lot line of any abutting "A", "R", "S", "C",

"E", or "O" district.

19.12: **REQUIRED LOADING SPACE:** There shall be provided at the time any building is erected or structurally altered, except as otherwise provided in this chapter, off-street loading space in accordance with the following requirements:

- a. Office buildings and hotels: One space for each 5,000 to 50,000 square feet of gross floor area in the "C-1" district, one space for each 20,000 to 50,000 square feet of gross floor area in the "M-1" district, two spaces for each 50,000 to 200,000 square feet of gross floor area in any district and one additional space for each 75,000 square feet of gross floor area above 200,000 square feet in any district.
- b. Retail or service establishments or wholesale commercial use: One space for each 2,000 to 20,000 square feet of gross floor area in the "C-1" district, one space for each 4,000 to 20,000 square feet of gross floor area in the "M-1" district, two spaces for each 20,000 to 100,000 square feet of gross floor area in any district and one additional space for each 75,000 square feet of gross floor area above 100,000 square feet in any district.
- c. Manufacturing or industrial use: One space for each 5,000 to 25,000 square feet of gross area in the "M-1" district and one additional space for each 75,000 square feet of gross floor area in the "M-1" district.
- d. No building or part thereof in the "C-1" district erected prior to date of adoption, which is used for any of the purposes specified above shall hereafter be enlarged or extended, unless off-street loading space is provided to both the original structure and the addition in accordance with the provisions of this article.
- e. No building or part thereof in the "M-1" district erected prior to date of adoption, which is used for any of the purposes specified above shall hereafter be enlarged or extended, to provide a gross floor area of 25,000 square feet or more, unless off-street loading space is provided in accordance with the provisions of this article.

## **ARTICLE XX. CONDITIONAL USES**

20.01: Any use listed in this Ordinance as a Conditional Use may be permitted only after an application for a Conditional Use Permit has been reviewed and approved by the Planning Commission and, where required, by the Town Board.

### Application, Hearings, Decisions & Conditions

- a. An application for a Conditional Use Permit shall be filed with the Permit Director on a proper form provided for that purpose, and shall be submitted in a timely manner as prescribed by the Planning Commission in its rules of procedure.
- b. The application shall be complete and shall be accompanied by a copy of title to the property that contains the legal description. The applicant must also provide a proposed use of the land, a detailed drawing of the proposed building(s) and all existing buildings, wells, septic systems with setbacks to scale of all of the above, as well as any other information hereinafter prescribed.

- c. The application shall be accompanied by sufficient additional material as is necessary to make clear the nature of the request and proposed use.
- d. The application shall be accompanied by the required fee.
- e. The Permit Director shall reject, and refuse to refer to the Planning Commission any application not accompanied by the required fee or by other materials and information as required by this ordinance.

20.03: PUBLIC HEARING REQUIRED;

- a. The Planning Commission shall conduct a public hearing on each Conditional Use Permit application giving 10 days notice to the public.
- b. Such public hearings shall be conducted according to applicable Minnesota Statutes and to the rules of procedure of the Planning Commission.

20.04: DECISION;

- a. Decisions of the Planning Commission on all Conditional Use Permit applications shall be made according to the general requirements and criteria for such permits as listed in Article 20.06 of this Ordinance, and to any special requirements and criteria applicable to the particular application as listed in Section 20.10 of this ordinance.
- b. The Planning Commission shall render its decisions in writing within 30 days of the close of the public hearing, stating its reasons in sufficient detail so that it can be determined that the decision was made in reliance on testimony given at the public hearing, and according to the criteria contained in this ordinance.
- c. After a Conditional Use Permit is granted, a certified copy of the permit and decision shall be filed with the Register of Deeds or Registrar of Titles for record. The Permit shall include a legal description of the property involved. It shall be the responsibility of the Planning Director to carry out this provision. (The Conditional Use Orders will be recorded by the clerk of the township.)
- d. In order to record Conditional Use Permits and decisions regarding Registered or Torrens property with the Registrar of Titles, it is necessary for the Planning Director to have the owner's duplicate copy of the Certificate of Title to the property. Applicants for permits which have been approved on Registered or Torrens property shall temporarily furnish the Planning Director with the owner's duplicate copy of the Certificate of Title.
- e. No Conditional Use Permit shall be issued or be valid until the permit and decision has been filed as required in this section.
- f. Decisions of the Planning Commission on matters within its jurisdiction and pursuant to the article shall be final subject to appeal to the Town Board and the right of later judicial review. Such appeals to the Town Board shall be made within 10 days of the Planning Commission's decision and the Board shall hear and decide such appeals within 45 days after they are made. Decisions of the board shall be in writing giving the reasons supporting them, and shall be filed with the Town Clerk. The clerk shall certify copies of the decisions and send them by registered mail to the person(s) making said appeals.

20.06: CONDITIONS;

- a. In issuing any Conditional Use Permits, the Planning Commission may impose such conditions or restrictions as it deems necessary to protect the public interest, including but not limited to matters relating to appearances, lighting, hours of operation and performance characteristics.
- b. When appropriate, restrictive covenants may be entered into regarding such matters.
- c. A Conditional Use Permit shall remain in effect for so long as the conditions agreed upon are observed. If violations of the conditional use continue, the Planning Commission has the authority to revoke the conditional use. However, whenever it is deemed advisable, a time limitation or review requirement may be placed as a condition of any permit.
- d. Conditional use and variance permits shall expire if said use or structure is not completed within three years.

20.08: GENERAL CRITERIA AND REQUIREMENTS:

- a. All classes of Conditional Use Permits may be approved only upon a showing by the applicant that the standards and criteria stated in this section will be satisfied. Since by definition a conditional use is a special use not generally appropriate within the zone district, the applicant bears the burden of demonstrating a right to the permit by making such showing. Absent such showing, the Planning Commission shall deny any application.
- b. A Conditional Use Permit may be granted only upon finding all of the following:
  - 1. The use conforms to the Town Comprehensive Plan.
  - 2. The use is compatible with the existing neighborhood.
  - 3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
  - 4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
- c. When in the opinion of the Planning Commission a Conditional Use Permit may result in a material adverse effect on the environment, the applicant may be requested by the Planning Commission to demonstrate the nature and extent of the effect.

20.10: SPECIAL CRITERIA AND REQUIREMENTS FOR CERTAIN USES:

- a. GENERAL: Certain types of conditional uses are required to meet additional specific standards as provided below.
- b. HOME BUSINESS:
  - 1. No equipment or material shall be stored outside except with fencing, plantings or other effective means of screening from view from adjacent property or public roads.
  - 2. All waste is to be disposed of in accordance with County and State regulations. Copies of Permits and/or licenses shall be filed with the Township.
  - 3. The authority whose road provides access to the parcel determines that the road may be utilized by the home business without adversely impacting the public safety or ability of the road to support the additional traffic.
  - 4. County on-site sewage treatment regulations are adhered to.
  - 5. The fire department has approved the design and placement of structures and the storage of materials. The fire department must be made aware of any hazardous, toxic or flammable material kept on the property.

6. The business is not a salvage yard or other use considered industrial in nature.
7. There are no more than 3 employees who are not residents of the owner's home.
8. Off-Street parking is provided for clients, delivery vehicles, and other vehicles using or serving the business.
9. The enterprise does not generate nuisance levels of sound, vibration, dust, light, electrical interference, or similar types of impacts at the lot line of the parcel or at the nearest public road.

c. SIGNS:

1. Permit Required: Except as otherwise specifically authorized, no sign shall be located, erected, moved, reconstructed, extended, enlarged, or structurally altered within the Town until a permit has been issued by the Permit Director.
2. Off-Site Signs Not Permitted: Signs not located upon the premises for the sign is advertising, providing directions, or otherwise promoting as otherwise noted in this ordinance, shall not be permitted in the Town of Midway.
3. Exemptions: Sign permits shall be required and shall be subject to the requirements of this ordinance except for the following exemptions:
  - i. Signs not exceeding 6 square feet in area and bearing only property numbers, post box numbers, names of occupants, or other identification of premises, not having commercial connotations.
  - ii. Flags and insignias of any government except when displayed in connection with commercial promotion.
  - iii. Legal notices, identification, or directional signs erected or required by governmental bodies, as defined in Minnesota Laws 1971, Chapter 173, Section 17302. Subd. 6.
  - iv. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.
  - v. Signs not exceeding 16 square feet in area directing and guiding traffic and parking on private property but bearing no advertising matter.
  - vi. A temporary sign indicating real estate for rent or for sale related to the premises only on which it is located, 50 square feet in all zones shall be reviewed by the Planning Commission, if they are erected for more than six months.
  - vii. Signs used on a temporary basis in conjunction with garage, estate, rummage and produce sales, and not exceeding 6 square feet in area.
  - viii. Political posters, erected or placed in accordance with all applicable state laws, may be allowed without obtaining a land use permit, provided they are removed within 30 days following the election for which they were intended, and provided such posters do not exceed 32 square feet in area.
4. Prohibited Devices: No advertising sign or device shall be erected or that:

- i. Claims to be or resembles, hides from view, or interferes with the effectiveness of any official traffic or railroad control device, sign or signal.
  - ii. Obstructs or interferes with a driver's view of approaching, merging intersecting traffic.
  - iii. Prominently displays the words "stop" or "danger".
  - iv. Displays messages that are painted or drawn upon rocks, trees, public utility poles or abandoned buildings.
  - v. Allows access to be obtained only from an interstate main-traveled way, but excluding frontage roads adjacent thereto.
  - vi. Is structurally unsafe or in disrepair.
  - vii. Is located with the right-of-way of any public roadway.
  - viii. Is located in, over, or upon public waters, unless authorized by public authority.
  - ix. Is located within the shore impact zone, unless attached to a permanent structure.
5. Number: Only 1 side of a double-sided, or V-type sign shall be used calculating the maximum surface area of a sign.
6. Surface Area: The surface, or advertising area of a sign shall mean portion of the advertising face of a sign that includes the border and trim thereof, but excludes the base and apron supports other structural members.
7. Official Signs: Only official identification, directional or traffic control signs as defined in Minnesota Laws 1971, Chapter 173, Sec.173.02, Subd. 6(a), (b), and (d) and all acts amendatory thereof, shall be allowed within the public right-of-way.
8. Setbacks: All free-standing signs shall be set back a minimum distance of 10 feet from any right-of-way, and/or front, side, or rear line.
9. Lighting:
- i. Signs shall not be erected or maintained that contain, include or are illuminated by any flashing lights except those giving public service information such as time, date, temperature, weather or news.
  - ii. Signs shall not be erected or maintained that are not effectively shielded so as to prevent: Beams or rays of light from being at any portion of any roadway; or beams of light of such or brilliance as to cause glare or impair the vision of the of any motor vehicle; or beams or rays of light from affecting adjacent or nearby residential property.
  - iii. Any freestanding sign over 10 feet in height shall be internally.
  - iv. Downward, back lighted, internally lighted or otherwise dark sky compliant standards shall be utilized to the greatest extent possible unless there is a site-specific reason prohibiting or limiting such lighting.
10. Signs Permitted:



- i. Each use in the C-1 and M-1 districts shall be allowed 2 signs. Each sign shall not exceed 128 square feet in surface area and shall not exceed 35 feet in height.
  - ii. Home occupations and home businesses shall be limited to one sign not to exceed 6 square feet in area.
  - iii. Signs for residential sales. Housing development the signs must be located in Industrial Parks or Commercial Development.
  - iv. A conditional use permit is required for all permanent signs.
11. Temporary Signs for Events, Fairs and Circuses: Signs used for the promotion and advertising of a special event, fair or circus shall be allowed as an Interim Use subject to the following restrictions:
- i. Sign shall be erected no more than 3 weeks before the event is to take place.
  - ii. Sign shall be removed within 1 week after said event has concluded.
  - iii. Sign shall only promote the activity, the sponsors of said activity, and not general merchandise, items to be sold or promoted at the event.
  - iv. Sign must conform to size and setback requirements of this Ordinance.
  - v. Sign cannot be parked on a road or located within a road right-of-way.
  - vi. No permanent structure shall be constructed to hold said sign.
  - vii. No electronic / LED / dynamic signs or billboards shall be allowed.
  - viii. Sign cannot have flashing lights or lights directed into the driving lane of any road way.
  - ix. No electrical generators shall be allowed to power said sign.
  - x. Sign shall be properly maintained at all times.
  - xi. Promoter of said special event, fair or circus shall post a Surety Bond in an amount determined by resolution of the Midway Town Board indemnifying Midway Township and hold Midway Township not liable for any injuries or damage caused by said sign.

#### 20.14: BORROW PITS AND EXTRACTIVE USES

- a. MINIMUM STANDARDS: All borrow pits shall satisfy the following minimum standards. For the purposes of this ordinance, a borrow pit shall include the pit area, stockpiles, haul roads, entrance roads, scales, crusher, washer, and all related facilities.
  - 1. No borrow pit shall be within the setback for principal structures from the shore of any lake or river.
  - 2. A no disturbance buffer area of 100 feet shall be established between the property line containing the borrow pit and any adjacent parcel containing a residence or public/semi-public building. The buffer area may be altered through an agreement with the adjacent property owner. Such agreement shall be filed with the Planning Director, recorded with the County Recorder, and specifically state what activities may take place in the buffer area. Absent such an agreement, the buffer area may be used under the following circumstances.

- i. The buffer area may contain the haul road if it is determined by the public road authority that for safety purposes the pit access needs to be within the buffer area.
  - ii. The haul road may be within the buffer area to avoid wetlands. For either of these two situations the haul road must move out of the buffer area as soon as feasible.
  - iii. If authorized in an approved reclamation plan, 50 feet of the buffer area may be used for storage of topsoil and final sloping. All topsoil storage areas shall be seeded to prevent erosion and dust. Berms including those consisting of topsoil to be used for reclamation, may be placed in the buffer area but they shall be seeded and mulched in a manner that prevents dust from blowing onto adjacent properties. Only berms within the buffer area are required to be seeded and mulched and such berms that are in the 45 day permit pits only are required to have temporary seeding and need not be mulched.
3. A no disturbance buffer area of 50 feet shall be established for all other parcels not listed in '2' above unless the adjacent property owner authorizes, in writing, a reduced buffer. Such written authorization shall be recorded with the Planning Director. The 50 foot buffer shall apply to all highways with the buffer area beginning at the road right-of-way.
4. Hours of operation shall be limited to 7:00 a.m. to 8:00 p.m., Monday through Saturday. No borrow pit operations may take place on Sundays, Memorial Day, Independence Day, or Labor Day. The hours of operation may be expanded through conditional use approval provided the pit operator obtains the signatures of two-thirds of the resident property owners who live within one-quarter mile of the pit and all resident property owners whose dwelling is within 300 feet of the pit. The petition must be renewed on an annual basis. Equipment maintenance may take place at any time if done within an enclosed structure or if maintenance is part of an extended hour operation. Hauling from a pit to a residential lot is permitted on Sundays and Holidays, if delivery during regular hours is not feasible for the residential property owner. Hours and days of operation may also be extended when an emergency exists. An emergency is a short term, unplanned and unexpected event where an immediate need for borrow material exists in order to address a significant threat to the public safety.
5. Permanent hot mix facilities require specific approval in a conditional use permit. Portable hot mix facilities are permitted for specific projects without a conditional use permit if no residence is located within 300 feet of the pit. Such facilities may operate for two working days for each 1,000 tons of mix produced from the time of hot mix plant startup.
6. All Minnesota Pollution Control Agency noise and air quality standards shall apply; also, stormwater and erosion control, in accordance with the requirements for specific uses set forth in Article XVI, General Provisions.
7. Existing vegetation shall remain as a screen between the pit site and surrounding residences and public roads or parks. If screening is not sufficient to block the view of the borrow pit from any residence, road or park, the Planning Director may require additional screening or placement of a fence and/or berm when such additional screening is topographically feasible.
8. Excavation below the water table is permitted with appropriate State permits and provided the applicant demonstrates there will be no adverse impact upon the quality and

- quantity of nearby surface water or nearby wells.
9. All entrances and exits shall be constructed so as not to create a safety hazard and, during the hours of operation of the pit, "Trucks hauling" signs shall be placed along all public roadways leading to the pit at a distance not less than 500 feet from the pit access road. Signs must be removed or covered when the pit is not in use for more than a 48 hour period.
  10. A pit shall have a barrier controlling access and such barriers shall be clearly visible to prevent safety hazards to members of the public. The use of cable, chain or similar barrier is prohibited. The control barrier shall deny access when the pit is not in operation.
  11. The pit access road shall be placed in a manner that minimizes the view into the pit from the public road or any residence unless the road authority requires improved visibility for safety purposes.
  12. Dust control measures shall be utilized on non-paved routes in accordance with the policy of the pertinent road authority. Dust control measures shall take place within the pit itself if dust leaves the property and regularly affects adjacent residential properties.
  13. A borrow pit shall be solely used for operations directly related to a borrow pit. Any other use shall require a separate conditional use permit. It shall be the responsibility of the pit operator or owner to control a activity within the pit area and to clean up any debris or other material left on the site. If done in conjunction with a hot mix operation, the recycling of asphalt may be done in a borrow pit.
  14. No waste classified as hazardous by the Minnesota Pollution Control Agency shall be disposed of on the site.
  15. A concurrent reclamation plan shall be submitted and approved by the Town. The stripping and stockpiling of the upper six inches of soil is a required component of any reclamation plan. These stockpiles shall be seeded and only used for reclamation purposes.
  16. All property lines shall be located by a Registered Land Surveyor with the line location approved by the County Surveyor. This requirement may be waived if the adjacent property owners and the borrow pit operator/owner agree to the property lines. This agreement must be in writing, submitted to the Planning Director and recorded. No survey is needed if the County Surveyor determines that a property line dispute has no merit, or if the pit operator will maintain all setbacks based on the line proposed by the adjacent owner, or that the operation would not encroach upon any required setback based upon a determination by the Planning Commission.
  17. All utility line easements shall be observed and any encroachment into the utility right-of-way shall only be permitted with the written approval of the utility.
  18. All operating borrow pits shall take measures to: control erosion that has the potential to damage adjacent land, and control sedimentation that has the potential to leave the site. The access road shall be designed in a manner that minimizes erosion. Erosion and sediment control measures shall conform to the standards and specifications of the Natural Resources Service "Field Office Technical Guide" or that of the Minnesota Dept. of Transportation. The Planning Commission shall approve all erosion and sediment control measures. The owner or operator shall maintain all such practices until the pit

area is permanently stabilized or reclaimed.

19. No surface or ground water may be used in borrow pit operations unless specifically authorized by the Dept. of Natural Resources. The Town shall receive proof of such authorization.
20. All road weight limits and other road restrictions placed in effect by the pertinent road authorities shall be observed.
21. The Town adopts as a guideline for reclamation the report entitled "A Handbook for Reclaiming Sand and Gravel Pits" published in July, 1992 by the Minnesota Dept. of Natural Resources. Reclamation plans will be reviewed in accordance with those standards and the technical standards of the Soil & Water Conservation District.
22. Under no circumstance shall a borrow pit come within the principal structure setback for the zone district unless a variance is approved.
23. Blasting to release rock and other materials shall require specific approval from the Planning Commission. Permission for blasting may contain restrictions regarding hours of blasting, location of blasts, impacts on adjacent property, and notices to potentially affected property owners.

b. EXISTING PITS

1. All pit owners whose pit does not have a conditional use permit or other authorization shall make application to the Town within 12 months of adoption of this ordinance.
2. No borrow pits may be closed under this provision if the pit was established prior to July 1, 1969 and has been in continuous use since that date, application is made within 12 month period, and the minimum standards are met. Continuous use is defined as the removal of a minimum of 100 cubic yards of material every two years.
3. All legally established nonconformities shall cease to exist if no application is made.
4. The permit shall remain in effect as long as the operation remains in compliance with the minimum standards.
5. An existing pit that cannot meet the minimum standards may continue in operation provided the Planning Commission has reviewed the applicant's basis for non-compliance and agrees that the standards cannot be followed. The Commission, in such a situation, while not being permitted to close operation, may require other mitigative measures.

c. 45-CALANDER DAY, SINGLE SEASON PITS. A conditional use permit may be issued for a borrow pit that will not be used for more than one construction season and activity other than hauling from stockpiles and any hot mix operation will not continue for more than 45 calendar days. The following restrictions shall apply for such a permit:

1. No residential uses or lakes or rivers are within 300 feet of the borrow pit.
2. All minimum standards shall be followed.
3. Hot mix plant may be part of the application and all federal and state regulations are met.
4. The establishment of a 45 day permit pit will not be used a rationale for a permanent borrow pit.
5. Hours of operation may be expanded upon written permission of two-thirds of residential property owners within one-quarter mile of the proposed pit, and all properties containing a residence within 300 feet of the pit. If the pit is located on a road closed for construction, hours and days of operation will be permitted without restriction if the

- residential property owners within 300 feet of the pit agree to such an extension.
6. No application will be permitted from an operator who has received a single site permit previously, and the Planning Director has determined that the previously approved pit was not adequately reclaimed.
  7. The borrow pit shall conform with the comprehensive land use plan.
  8. Crushing shall be limited to 45 calendar days. Hauling may continue until completion of the project for which the pit was authorized. The hot mix operation may continue for two working days for each 1,000 tons of mix produced from the time of hot mix plant startup.
  9. The Planning Director may extend the length an approved 45-calendar day pit is to remain in operation if the following circumstances exist:
    - i. The borrow pit meets the pertinent standards of this ordinance.
    - ii. The intent of the original Planning Commission approval would be met if the extension was authorized.
    - iii. The length of the extension does not exceed 30 days during which time the Planning Commission shall meet to review and act upon the extension and may conduct a public hearing concerning the extension.
- d. GENERAL PURPOSE BORROW PITS:
1. All borrow pits that are not existing pits or 45-calendar pits shall require a conditional use permit as a general purpose borrow pit.
  2. The following criteria shall be used by the Planning Commission in approving a new borrow pit:
    - i. The ability of roads to handle pit-related traffic.
    - ii. Air quality, dust and noise control measures the ability to limit impact upon any adjacent residential properties.
    - iii. Groundwater protection.
    - iv. Public safety.
    - v. Control of erosion and sedimentation.
    - vi. Impact upon watershed including groundwater.
    - vii. The cumulative impact of borrow pit operations in the area.
    - viii. Visual impacts on adjacent property and roadways.
    - ix. The ability of the owner/operator to implement the requirements of this ordinance.
  3. The Planning Commission may take the following actions relating to new borrow pits:
    - i. Approve the borrow pit with conditions including limiting the years the permit is valid and conditions that mitigate problems relating to pit operations.
    - ii. Deny the application but permit reapplication after certain conditions are met.
    - iii. Deny the application for a fixed number of years.
    - iv. Deny the application permanently.
  4. The Planning Commission may extend the years an approved conditional use pit is to remain in operation if the following circumstances exist:
    - i. The borrow pit meets the pertinent standards of this ordinance.
    - ii. The intent of the original Planning Commission approval would be met if the extension was authorized.
-

- iii. The length of the extension does not exceed the length of the original permit.
- e. THE APPLICATION FORM. All borrow pit applications shall contain the following information:
  - i. An index map using the USGS map showing all features within one mile of the pit. The features shall include all residences, wetlands, lakes, rivers, roads, existing borrow pits, location of other structures, utility lines and other features.
  - ii. A written description of the pit and operation including: volume of material to be excavated, length pit is to be in operation, amount of truck activity at highest and average levels, dust control measures, buffer area vegetation, depth to groundwater, hours of operation, description of operation including timing of excavation areas, routes trucks will take to and from the site, types of barriers established, property lines, reclamation plans, noise levels at property lines, screening from residential properties, drainage on and from site, location and adequacy of topsoil set aside for reclamation, and future plans for the pit.
  - iii. A detailed drawing at a scale of 100 feet per inch unless pit property covers 40 acres or more when a 200 feet inch scale may be used. The drawing shall show the following:
    - 1. Contours at 10 foot intervals unless the Planning Commission requires a more detailed scale.
    - 2. Location of all activities within the pit.
    - 3. Horizontal dimensions of the pit site.
    - 4. All setbacks from roads and adjacent property lines.
    - 5. Location, size, and use of all structures on the parcel.
    - 6. Location of all adjacent structures and their uses.
    - 7. Area of excavation.
    - 8. Extent of vegetation in buffer area.
    - 9. Location of utilities.
    - 10. Location of all interior roads and the location of barriers.
    - 11. All lakes, streams and wetlands on the property.
    - 12. Timing of reclamation of effort.
  - iv. Information submitted to other regulating agencies that address the required information needs of this ordinance may be used in lieu of the specific information items listed in this section.
- f. RECLAMATION STANDARDS: All borrow pits shall implement the following minimum reclamation standards:
  - 1. Concurrent reclamation shall occur during the operation as well as at the completion of borrow excavation and related activities.
  - 2. At the non-working face of the pit, banks shall be maintained at a slope not exceeding 2:1 except that at cessation of pit operations the slope shall not exceed 2.5:1. The working face may be permitted at a greater than 2:1 slope, provided that by December 1 of each year banks that are higher than 15 feet shall be rounded or fenced for safety purposes. Pits that are in operation year around may be exempted from this standard, if the operator

demonstrates that these safety measures are not needed and that other measures are more appropriate.

3. All trees, brush, stumps and any other debris removed for the sole purpose of operation of barrow, shall be disposed of in a manner acceptable to the fire warden and the local solid waste authority. In no case shall vegetation from over a 10 acre area be kept on the property unless it is burned or buried.
  4. The tops of all banks shall be rounded to conform to the surrounding topography.
  5. Pits may be reclaimed for wetland mitigation or creation and, if it is the intent of the operator to reclaim in that manner, it must be done in accordance with a plan approved by the Town and St. Louis County.
  6. All slopes shall be stabilized, equipment and structures removed, topsoil properly placed and permanent seeding established, banks rounded, and other reclamation actions completed in accordance with the reclamation plan within 18 months of cessation of pit operations. A pit shall be considered inactive and requiring reclamation when less than 100 cubic yards of borrow material is excavated and removed per year for a two-year period. The Planning Director may require the pit owner to supply evidence of pit usage. All temporary and permanent seedings shall conform to the Minnesota Dept. of Natural Resources pit reclamation standards, Minnesota Dept. of Transportation standards, or Natural Resources Service technical standards.
- a. FINANCIAL ASSURANCES: All pits shall meet the following financial assurances standards:
1. The pit owner shall not, at any time, have any delinquent taxes owed on the pit.
  2. All pits, unless owned by a government agency, or if proof is provided that through government road projects adequate bonding protection to assure reclamation is provided, shall have a bond or other financial instrument of sufficient amount to cover cost of reclamation of the site. The Town may consult with the County Highway Engineer to determine if the financial assurance is sufficient to cover the cost of reclamation by a private individual. The financial assurance amount shall be adjusted for inflation. The amount of the financial instrument may be increased to cover cost of other potential environmental or safety related issues. The Planning Commission is authorized to develop a formula to set the cost of reclamation so that there will be a standard basis for assurance amount calculation.

20.15 FILLING, HAULING FILL AND HAUL ROADS: The deposition of more than 100 cubic yards of fill on property within the Town of Midway may be allowed provided the following standards are met. Fill for residential driveways and septic systems pursuant to the permit(s) issued for the construction of a residence are exempt from these requirements and do not require an additional Conditional Use Permit.

- a. Haul Road:
1. The applicant and/or contractor/hauler shall designate the roads to be used in the delivery of the material.

2. The applicant and/or contractor/hauler shall review the route with the Township Road Supervisor to determine the condition of the haul roads prior to commencement of hauling.
  3. The applicant and/or contractor/hauler shall post a Surety Bond in an amount determined by resolution of the Midway Town Board indemnifying the Town of Midway to insure that any damages to the haul roads is repaired. Haul roads shall be returned to their condition prior to hauling.
- b. If fill material is to be stockpiled for future use, silt screening shall be installed around said piles.
  - c. Town of Midway retains the right to restrict or prevent the use of industrial by-products such as, but not limited to, ash dregs, fly ash, pulp or dredge spoils as fill.
  - d. Areas around said fill that slope towards lower land or drainage ways shall have silt socks and/or hay or straw bales to control erosion.
  - e. All open ground shall be seeded and mulched within 14 days after hauling and deposition has been completed.
  - f. Applicant and/or the contractor/hauler shall be responsible for maintaining mulching until such time that sufficient green growth has been established to prevent erosion and effectively controls storm water runoff.
  - g. Applicant and/or contractor/hauler may be required to install storm water retention ponds or rain gardens to control storm water runoff.
  - h. Applicant and/or contractor/hauler shall post a Surety Bond in an amount to be determined by resolution of the Midway Town Board indemnifying the Town of Midway to insure that proper erosion and storm water best practices are provided and followed.
  - i. Applicant shall grant permission for the Town of Midway Zoning Official(s) to enter said property for the purposes of inspection and enforcement.

20.16: TOWERS:

In order to accommodate the needs of residents and businesses while protecting the public health, safety and general welfare of the community, the Township finds that these regulations are necessary in order to facilitate the provision of towers for wind generation power, and wireless telecommunication systems to the residents and businesses of the Township; minimize adverse visual effects of towers through careful design and siting standards; avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and, maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

- a. EXCEPTIONS: The following towers shall be exempted from these regulations:
  1. Towers 35 feet or less in height supporting amateur radio antennas and conforming to all applicable provisions of this ordinance shall be allowed only in the rear yard of residentially zoned parcels. In accordance with the Federal Communications Commission's preemptive ruling PRB1, towers erected for the primary purpose of supporting amateur radio antennas may exceed 35 feet in height provided that a



- determination is made by the Planning Commission that the proposed tower height is technically necessary to successfully engage in amateur radio communications.
2. Any satellite earth station antenna 6.5 feet in diameter or less which is located in an area zoned industrial or commercial.
  3. Any satellite earth station antenna 40 inches in diameter or less regardless of zoning district.
  4. Public utility structures, including but not limited to water towers, antennas, lights and signals, power and telephone poles, and poles supporting emergency warning devices.
  5. Church sanctuaries, steeples and bell towers.
- b. CO-LOCATION REQUIREMENTS. All commercial wireless telecommunication towers erected, constructed, or located within the Town shall comply with the following requirements.
1. A proposal for a new commercial wireless telecommunication service tower shall not be approved unless the Planning Commission finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a 1.5 mile search radius of the proposed tower due to one or more of the following reasons:
    - i. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
    - ii. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
    - iii. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
    - iv. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
  2. Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 but not more than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
  3. All towers shall make space available for 911 communication antennas.
- c. TOWER CONSTRUCTION REQUIREMENTS. All towers erected, constructed, or located within the Town, and all wiring therefor, shall comply with the following requirements:
- a. All applicable provisions of this ordinance.
  - b. Towers shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building

- Code and the Electronics Industry Association.
2. With the exception of necessary electric and telephone service and connection lines approved by the issuing Authority, no part of any antenna or tower nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, or property line.
  3. Towers and associated antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
  4. All signal and remote control conductors of low energy extending substantially horizontally above the ground between a tower or antenna and a structure, or between towers, shall be at least 8 feet above the ground at all points, unless buried underground.
  5. Every tower affixed to the ground shall be protected to discourage climbing of the tower by unauthorized persons.
  6. All towers shall be constructed to conform with the requirements of the Occupational Safety and Health Administration.
  7. Metal towers shall be constructed of, or treated with, corrosive resistant material. Wood poles shall be impregnated with rot resistant substances.
  8. Auxiliary power sources, if any, must meet all pertinent Federal and State regulations or Town standards, as may be required regarding fuel storage, spills, noise, electrical engineering methods, and similar concerns.
- d. TOWER & ANTENNA DESIGN REQUIREMENTS. Proposed or modified towers and antennas shall meet the following design requirements.
1. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
  2. Commercial wireless telecommunication service towers shall be of a design that best blends into the surrounding environment.
  3. Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower. When incorporated into the approved design of the tower, light fixtures used to illuminate ballfields, parking lots, or similar areas may be attached to the tower.
  4. Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.
  5. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

6. Any fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities shall be constructed in accordance with requirements set forth by the Planning Commission unless more stringent fencing requirements are required by FCC regulations.
  7. All towers must be reasonably posted and secured to protect against trespass.
  8. All parcels upon which towers are located must provide access during normal business hours and have parking spaces for at least 2 vehicles.
  9. Communication towers shall make space for emergency response, eg: 911, sheriff, police and fire.
- e. TOWER HEIGHT:
1. In the S-1 zone district the maximum height of any tower, including all antennae and other attachments, shall be 35 feet.
  2. The maximum height of any tower, including all antennae and other attachments, shall not exceed 1 foot for every 2 feet the tower is setback from the nearest property line up to a maximum height of 150 feet.
  3. No tower shall be in excess of a height equal to the distance from the base of the antenna and tower to the nearest overhead electrical power line which serves more than one dwelling or place of business.
  4. The height of towers shall be determined by measuring the vertical distance from the tower's point of contact with the ground to the highest point of the tower, including all antennae or other attachments. When towers are mounted upon other structures, the combined height of the structure and tower must meet the height restrictions of this ordinance.
- f. TOWER SETBACKS. Towers shall conform with each of the following minimum setback requirements:
1. Towers shall meet the setbacks of the underlying zoning district, or a distance of twice the height of the tower, or a distance equal to the length of the longest supporting guy wire measured from its point of anchor in the ground, whichever is greatest.
  2. Towers shall not be located between a principal structure and a public street, with the following exceptions:
    - i. In industrial zoning districts, towers may be placed within a side yard abutting an internal industrial street.
    - ii. On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.
  3. A tower's setback may be reduced or its location on a site varied, at the sole discretion of the Planning Commission, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure, or, upon the receipt of certification from a qualified professional engineer that in the event of failure, the tower in question will collapse within the confines of the property on which the tower is located.
  4. Towers exempted under this ordinance shall be setback the height of the tower or the

- setbacks of the zoning district, whichever is greater.
- g. ABANDONED OR UNUSED TOWERS OR PORTIONS OF TOWERS: Abandoned or unused towers or portions of towers shall be removed as follows:
1. All 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 Planning Commission. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the Town and the costs of removal assessed against the property.
  2. Unused portions of towers above a manufactured connection shall be removed within 6 months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new conditional use permit.
- h. ANTENNAS MOUNTED ON ROOFS, WALLS, AND EXISTING TOWERS: The placement of wireless telecommunication antennas on roofs, walls, and existing towers may be approved by the Planning Commission, provided the antennas meet the requirements of this ordinance, after submittal of 1) a final site and building plan as specified by this ordinance, and 2) a report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's stability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.
- i. INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS:  
No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an inter-modulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the Town at least 10 calendar days in advance of such changes and allow the Town to monitor interference levels during the testing process.
- j. ADDITIONAL SUBMITTAL REQUIREMENTS: In addition to the information required elsewhere in this ordinance development applications for towers shall include the following supplemental information:
1. A report from a qualified and licensed professional engineer which:
    - i. Describes the tower height and design including a cross section and elevation.
    - ii. Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
    - iii. Describes the tower's capacity, including the number and type of antennas that it can accommodate;
    - iv. Documents what steps the applicant will take to avoid interference with established public safety telecommunications.
    - v. Includes an engineer's stamp and registration number; and,

- vi. Includes other information necessary to evaluate the request.
- 2. For commercial wireless telecommunication service towers, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
- 3. Before the issuance of a building permit, the following supplemental information shall be submitted:
  - i. Proof that the proposed tower complies with regulations administered by Federal Aviation Administration; and,
  - ii. A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with the aforementioned structural and electrical standards.
- k. MAINTENANCE:
  - 1. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
  - 2. Tower owners shall install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state or local regulations, and in such manner that will not interfere with the use of the property.
  - 3. All towers, telecommunications facilities and antenna support structure shall be at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
  - 4. All maintenance or construction on a tower, telecommunications facilities or antenna support structure shall be performed by licensed maintenance and construction personnel.
  - 5. All towers shall maintain compliance with radio frequency emissions standards of the FCC.
  - 6. In the event the use of a tower is discontinued by the tower owner, the tower owner shall provide written notice to the Town of its intent to discontinue use and the date when the use shall be discontinued.
- l. EXISTING TOWERS;
  - 1. Any owner upon whose land a tower is located, which contains additional capacity for installation or collocation of telecommunications facilities, shall allow other persons to install or co-locate telecommunication facilities on such a tower subject to reasonable terms and conditions negotiated between the parties.
  - 2. An existing tower may be modified to accommodate co-location of additional telecommunications facilities as follows:
    - i. Application shall be made by the Planning Commission for a Conditional Use Permit.
    - ii. The total height of the modified tower and telecommunications facilities attached thereto shall not exceed the maximum height for towers allowed under the terms of the ordinance.
    - iii. Permission to exceed the existing height may not require additional distance separation from property lines, structures easements, utility lines and similar

items.

- iv. A tower which is being rebuilt to accommodate the co-location of additional telecommunications facilities may be moved on the site subject to the setback requirements of this ordinance.
- v. A tower that is relocated on site shall continue to be measured from the original tower location for the purpose of calculating the separation distances between towers as required by this ordinance.

20.18: FEEDLOTS: Feedlots may be permitted provided they meet the following standards:

- a. Applicant has secured all necessary local and state permits and licenses.
- b. Any waste storage facilities are not located closer than 660 feet to any residence other than the farmstead residence at which the facility is located.
- c. The feedlot and any waste storage facilities will not pollute the groundwater or surface waters of the Town.
- d. Adequate measures have been taken to prevent or sufficiently control offensive odors affecting adjacent properties.
- e. Any waste storage facilities are at least 200 feet from any public road right-of-way.
- f. Any other reasonable standards presented by the Planning Commission related to the design and operation of the feedlot particularly regarding protection of surface and ground water quality, erosion, and color.

## **ARTICLE XXI. SPECIAL PROVISIONS: SUBDIVISION PLATTING REGULATIONS (Reserved)**

## **ARTICLE XXII. NON-CONFORMING USES**

22.01: INTENT: It is the intent of this article to regulate non-conforming uses of structures and lots and to provide for their gradual elimination.

22.03: NON-CONFORMING USES: Any use of a structure or lot existing at the time of adoption of this ordinance and lawful under the provisions of any township, county or other ordinance may be continued, although such use does not conform to the provisions of this ordinance for so long as it remains lawful, subject to the provisions of this article. Provided that no non-conforming use shall be continued, unless the owner shall have completed a material amount of construction or shall otherwise have acquired a vested right with respect to the use.

22.06: AMORTIZATION: The Town Board may provide for the termination of non-conforming uses, either by specifying the period or periods within which they shall be required to cease, or by providing a formula whereby compulsory termination shall be so fixed as to allow a reasonable period for the recovery of the investment in the non-conforming use.

22.08: NON-CONFORMING USES: The following conditions shall govern the continuance of non-conforming uses:

- a. No non-conforming use shall be enlarged, increased, extended or moved unless the use is changed to one permitted use pursuant to the provisions of this ordinance.
- b. Any non-structural repairs and incidental alterations for normal maintenance may be made. Structural alterations required by law or ordinance shall be allowed.
- c. Any non-conforming use may be extended throughout any parts of the building which in accordance with an application to the Permit Director were, according to findings of the Permit Director, manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy and land outside such building.
- d. The use of a nonconforming structure may not be changed to another nonconforming use unless specifically allowed under other provisions of this ordinance or state statute. For example, a change in use of a nonconforming principal dwelling to an accessory dwelling is not allowed unless all accessory dwelling standards are met.
- e. Upon discontinuance or abandonment of any use for a period of six (6) consecutive months, or for eighteen (18) months during any three-year period, no use shall be made except as in conformance with the regulations of the district within which it is located.
- f. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

22.10: CHANGE OF USE:

- a. Non-conforming uses shall not be changed to another non-conforming use.
- b. Non-conforming uses shall not be re-established if voluntarily discontinued for a continuance twelve (12) month period.
- c. Non-conforming uses may add an accessory structure, provided the structure does not increase the non-conformity.
- d. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

22.12: NON-CONFORMING LOTS:

- a. A non-conforming lot may be allowed as a building site provided that:
  1. The lot is a Lot of Record as defined in Article III, Section 3.00 of this Ordinance.
  2. The lot is in separate ownership from abutting lands.
  3. All requirements of any St. Louis County sewage disposal regulations are complied with.
  4. The use is allowed within the district wherein the lot is located.
  5. The lot meets 65% of both the width and area requirements of this Ordinance.
  6. The setback requirements can be met, except as provided herein below.
- b. Non-conforming lots containing a principal structure may add a permitted accessory

structure, provided that any such addition will meet all minimum setback requirements of this ordinance, and will not cause the maximum percentage of lot coverage to be exceeded.

- c. Additions to principal or accessory structures located on non-conforming lots may be permitted, provided that any such addition will meet all minimum setback requirements of this Ordinance, and will not cause the maximum percentage of lot coverage to be exceeded.

22.14: NON-CONFORMING STRUCTURES:

- a. General Standards: Expansion of structures that are located in a manner that does not conform with the dimensional standards of this Ordinance ordinarily requires a variance approved by the Board of Adjustment unless the expansion falls within the standards found in this section. The general standards are as follows:
    - 1. Certain non-conforming structures may be allowed one addition, provided it does not increase the non-conformity. This provision pertains to additions to existing structures only. The existing structure must essentially remain as is, except for remodeling as defined in this Ordinance.
    - 2. No additions shall be allowed to non-conforming accessory structures.
    - 3. Any grandfathered non-conforming structure or deck that is altered, replaced or partially replaced beyond what is allowed for remodeling shall no longer be considered grandfathered.
  - b. Non-conforming structures located within the Shore Impact Zone may expand within a variance, if the following criteria can be met:
    - 1. The structure meets or exceeds a ground floor area of 400 square feet.
    - 2. The existing structure does not encroach upon a side or road setback.
    - 3. The existing structure (including deck) is setback from the shore a minimum of 25 feet or 25% of the required shoreline setback, whichever is greater.
    - 4. The height of the proposed addition, or completed structure, shall not exceed the height of the existing structure by more than 2 feet.
    - 5. No additions (barring a deck) have been added to the structure since 1982, and the original structure existed before setback requirements were established.
    - 6. The addition does not encroach upon the septic treatment system or expansion area.
  - c. If any non-conforming structure is destroyed by fire or other peril to the extent of fifty percent (50%) or more of its market value, any subsequent rebuilding or replacing of the structure shall conform to the terms of this Ordinance.
  - d. Should a non-conforming primary structure be moved horizontally for any distance whatsoever, it shall be done in such a manner as to conform to the regulations for the district in which it is relocated.
  - e. Non-conforming structures may remodel as defined in this Ordinance.
  - f. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the minimum lot size requirements of this Ordinance, the lot must not be considered as a separate parcel of land for the purpose of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of this ordinance.
  - g. A variance from setback requirements must be obtained before any use, sewage treatment
-



system or building permit is issued for a sub-standard lot. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.

- h. When a structure is destroyed, the landowner shall remove all debris and fill all areas resulting from the destruction so as to protect the public from any potential hazard. The landowner will complete the removal and add the necessary fill within 90 days, or upon permission of the Planning Commission for 180 days. When a landowner is unable and/or unwilling to comply with this regulation, the town board shall notify the landowner in writing, giving the landowner notice of a public hearing to order the compliance of said regulation, and be responsible to reimburse any expenses incurred by the town in removal or filling in shall then be assessed as a lien or assessment on the property.
- i. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

### **ARTICLE XXIII. TOWN PERMIT DIRECTOR: LAND USE PERMITS**

23.01: DESIGNATION: The Town Board shall appoint a Permit Director, 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:

- a. Prepare and provide necessary forms and applications.
- b. Issue land use permits upon demonstration of the applicant's compliance with the provisions of this Ordinance.
- c. Issue Certificates of Compliance.
- d. Issue any permits authorized by the Town Board or otherwise authorized by the provisions of this Ordinance.
- e. Identify and record information relative to non-conforming uses and structures.
- f. Provide assistance in zoning changes and amendments to the Ordinance text or map.
- g. Maintain files of application, permits and other relevant documents.
- h. Make a monthly and annual report of his activities to the Town Board and to the Planning Commission.

23.03: The Permit Director and/or Planning Director shall have all powers and authority conferred by laws, statutes and ordinances to enforce the provisions of this ordinance, including but not limited to the inspection or enforcement purposes by the permission of the owner or upon following:

- a. Access to any structure or premise subject to the issuance of permits by the Town of Midway.

23.06: LAND USE PERMIT: Land use permits shall be issued in accordance with the

following provisions:

- a. Applications shall be accommodated by scale maps or drawings showing accurately the location, size and shape of the lot(s) involved and of any proposed structures including the relation to abutting streets, lakes or streams, and the existing and proposed use of each structure and lot, and the number of families to be accommodated. One copy shall be retained by the Permit Director, and one copy shall be returned to the owner when such plans have been approved. A period of two weeks shall be allowed for inspection of plans before a permit is issued.
- b. Any permit shall be valid for twelve (12) months after date of issue. When construction has not been started on valid permits within a twelve month period from the date of issue, an extension of time may be granted upon application to the Planning Commission.
- c. Permits must be obtained in connection with the following:
  1. Permitted uses designated in the various zone districts and classified in this Ordinance, prior to any new construction incident therewith.
  2. Conditional uses designated in the various zone districts classified in this Ordinance, which permits shall be obtained pursuant to Article XX prior to any new construction and/or such uses.
  3. Permitted and conditional uses involving new structures sought to be constructed in variance of the terms and conditions of this Ordinance, which permits shall be obtained pursuant to Article XXIII prior to construction.
  4. Any other use not identified above, for which a permit is specifically required under provisions of this Ordinance. No permit shall be required for maintenance, repair or remodeling where building area coverage is not increased. Provided, however, permits shall be required for expansion of external dimensions of existing construction, including, but not limited to, basements, decks, dormers, attics and concrete slabs.
- d. Permits issued hereunder may be revoked for cause, including but not limited to mistakes or misrepresentation 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.
- e. Applicant gives permission to the Planning Commission and/or Board of Adjustment and/or Planning Director and/or Permit Director to inspect proposed building site before and after completion.

## **ARTICLE XXIV. VARIANCES**

### 24.01: APPLICATIONS FOR VARIANCES, HEARINGS, APPEALS, DECISIONS &

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CRITERIA:

a. GENERAL:

1. Appeals for variances from the terms of this Ordinance, or from any order, requirement, decision or determination made by the Permit Director shall be made to the Board of Adjustment.
2. Such appeals may be taken by any person aggrieved, or by any officer, department, board or bureau of a town, municipality, county or state.
3. Such appeals shall be taken to the Board of Adjustment within 45 days of receipt of notice from the Permit Director of any order, requirement, decision, or determination made by him.
4. An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment certifies that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property.

b. APPLICATIONS:

1. An appeal for a variance shall be filed with the Permit Director on a proper form provided for that purpose. Other appeals shall be filed in a manner prescribed by the Permit Director.
2. Appeals shall be filed in a timely manner in advance of a scheduled hearing date as the Board of Adjustment may provide in its rules of procedure.
3. Appeal forms shall be complete, and shall clearly specify the ground of the appeal. Where required by the Permit Director, the appeal shall be accompanied by detailed plans, drawn to scale, showing all details of the land areas and the nature of the circumstances surrounding the appeal, and title to property that contains the legal description.
4. The appeal shall be accompanied by the required fee.
5. The Permit Director shall reject, and refuse to refer to the Board of Adjustment any appeal not accompanied by the required fee or by other materials and information as required by this Ordinance.

c. HEARINGS & APPEALS:

1. Appeals to the Board may be taken by any person aggrieved. Such appeal shall be taken within ten (10) calendar days after such decision by filing with the Permit Director a notice of appeal specifying the grounds thereof. The Permit Director shall immediately transmit to the Board all documents and exhibits constituting the record from which the appeal is taken. The appeal shall stay all proceedings pending the decision of the Board.
2. The Board shall fix a reasonable time for hearing such appeal and shall render a decision within thirty (30) days of the date of hearing. The Board shall give public notice of the hearing and shall further mail written notice to all those personally known to be interested parties by members of the Board. At the hearing, any party may appear in person, by authorized agent or by an attorney.
3. A majority vote of the members of the Board shall be sufficient to reverse or sustain any order, requirement, decision or determination of the official or body appealed from.
4. The Board shall keep complete and detailed records of its proceedings which shall include the minutes of its meetings, its findings and actions taken on each matter heard by it including the final order. The Board shall record the vote of each member upon each

question or if absent or failing to vote, indicating such fact. All records shall be open to the public and shall immediately be filed in the office of the Town Clerk.

5. Recording all Variance Orders with the County Recorder's office will be handled by the Clerk of the Township.
6. After any appeal to the Board of Adjustment has been approved, the appellant shall have 60 days, after receipt of notice of the decision, to make application to the Permit Director for any permit necessary to begin the structure or the use for which the appeal was made.

d. CRITERIA FOR DECISIONS:

1. The Board of Adjustment may authorize a variance from the terms of this Ordinance will not be contrary to public interest, where owing to special conditions a difficulty or particular hardship would be created by carrying out the strict of the Ordinance, and when the terms of the variance are consistent with the and intent of this Ordinance and with the Town's Comprehensive Plan.
2. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties" as used in connection with granting a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this ordinance; the plight of the landowner is due to circumstances unique to the 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 practical difficulties if a reasonable use for the property exists under the terms of this ordinance. No variance may be granted that would allow any use that is prohibited in the zone district in which the subject property is located.
3. When in the opinion of the Board of Adjustment a variance may result in a material adverse effect on the environment, the appellant may be required by the Board of to demonstrate the nature and extent of the effect.
4. It shall be the burden of the appellant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this Ordinance, the Board of Adjustment shall not approve any variance.
5. The Board of Adjustment may impose conditions in the granting of variances to compliance and to protect adjacent properties and the public interest.
6. Variance permits shall expire if said use or structure is not completed within three years.

e. OTHER APPEALS:

1. The Board of Adjustment shall have the exclusive authority to hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with enforcing any ordinance or official control adopted pursuant to Minnesota Statutes.

2. The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end, shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit.
3. The Board of Adjustment shall always act with due consideration to promoting the public health, safety, convenience, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.
4. Appeals shall be taken to the Board of Adjustment within 45 days of receipt of notice from the Permit Director of any order, requirement, decision, or determination made by the Permit Director.
5. The burden of moving forward on appeal and demonstrating the need for relief from an order, requirement, decision, or determination shall be on the appellant.
6. Decisions of the Board of Adjustment shall be recorded with the County Recorder.

f. APPEALS FROM BOARD OF ADJUSTMENT DECISIONS: All decisions by the Board of Adjustment in granting variances or in hearing appeals any administrative order, requirement, decision or determination shall be final that any aggrieved person or persons, or any department, board or commission the Town or of the State shall have the right to appeal within 10 days after the of notice of the decision, to the Midway Town Board, on questions of law and fact.

## **ARTICLE XXV. AMENDMENTS**

### 25.01: GENERAL:

- a. This Ordinance, and the Zoning Map, may be amended whenever the public, health, safety, convenience and general welfare would best be served by such amendment, is accord with the Town's Comprehensive Plan by the procedures set forth in this article.

### 25.03: ZONING ORDINANCE TEXT:

- a. An amendment to this Ordinance text may be initiated by the Town Board or Planning Commission. An amendment not initiated by the Planning Commission shall be referred to it for study, public hearing and report back to the Town Board in writing.
- b. Public hearings on text amendments by the Planning Commission, including requirements of 10 day due notice to the public, shall be conducted pursuant to Minnesota Statutes regulating the adoption of ordinances by towns, and by the standards set forth in article of this Ordinance.
- c. After conducting a public hearing on an Ordinance text amendment, the Planning Commission shall report in writing to the Town Board within 30 days of the close of the hearing. Upon filing of a report by the Planning Commission the Town Board, in the manner prescribed by Minnesota Statutes, may by ordinance adopt the amendment or any portion

thereof as it deems advisable.

25.06: ZONING ORDINANCE MAP:

- f. An amendment to the Zoning Map may be initiated by the Town Board, the Planning Commission, or by the property owner of record.
  - 1. In the case of an amendment initiated by one or more property owners of, a verified petition shall be filed with the Permit Director containing the of not less than fifty (50) per cent of the owners of property lying 1/2 mile of the boundaries of the property affected by the proposed. Provided, however, no amendment shall be made to the zoning which would change its boundary lines of the zones or districts, unless% of the owners of the land to be changed submit a petition, whether the amendment be initiated by the board or property owners.
- b. The Planning Commission shall conduct at least one public hearing on all proposed Zoning Map amendments and report to the Town Board in writing within 20 days of the close of the hearing(s).
  - 1. The Planning Commission shall give 10 day due notice of public hearings for Zoning Map amendments.
  - 2. The Planning Commission's report to the Town Board shall contain a statement of the evidence relied upon, the factual determinations made from the evidence and the criteria used in reaching its recommendation.
  - 3. Failure of the Planning Commission to report to the Town Board within the herein prescribed time shall be deemed to be approval by the Commission of the proposed amendment.
- c. Upon the filing of a report by the Planning Commission or upon expiration of the 20 day period, the Town Board, in the manner described by the Minnesota Statutes, may by Ordinance adopt the amendment or a portion thereof as it deems advisable.
- d. Once an amendment has been acted upon by the Town Board, the matter shall not be reconsidered, nor shall any additional amendments involving the same parcel of property be heard or considered by the Planning Commission or the Town for at least twelve (12) months.
- e. Once a parcel of land has been rezoned by petition, the development intended for said parcel of land must be substantially begun within twelve (12) months of the date of approval of said zoning change. Failure to substantially initiate such development will result in the cancellation of said zoning change, and the zone classification shall revert to its previous classification.

25.08: CRITERIA FOR ZONING MAP AMENDMENTS: Amendments to the Zoning Map shall be recommended for approval only upon the finding by the Planning Commission that all of the following conditions exist:

- a. The proposed zoning shall be consistent with the Town Comprehensive Plan.
- b. The proposed zoning shall not be spot zoning, which is zoning to discriminate in favor of one lot or parcel out of harmony with surrounding lots or parcels and the Comprehensive Plan; and without benefit to the community.
- c. A mistake has been made in the original zoning which was inconsistent with the

Comprehensive Plan; or an error was made in the Comprehensive Plan which would now be corrected along with the zoning; or substantial changes have occurred in the community since the adoption of the Comprehensive Plan, which should result in the plan and the zoning being amended.

- d. There shall exist a clear public need for and benefit from additional zoning of the type proposed, which shall be above and beyond any benefit or convenience to the land owner.
- e. Beyond a public need being evident, there shall be a showing that the public interest would be best served by re-zoning the property in question rather than other property in the community.
- f. In the case of down zoning, which is changing of a zoning district from a higher or more intensive use to a lower less intensive use, the proposed zoning shall allow the property owner a reasonable use of his property under the terms of this Ordinance, as well as serve the public interest.

25.10: NOTIFICATION PROCEDURES: (Mn.Rule 6120.3900 Subp. 6)

- a. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed plats must include copies of the plats.
- b. A copy of approved amendments and plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.
- c. Townships with shoreland management controls adopted under subpart 4a must also provide these materials to the zoning official of the county.

25.12: FEES:

No action shall be taken on any application by an applicant other than the Planning Commission or the Town Board until the applicant shall have paid to the Permit Director an appropriate filing fee established by the provision of Article XXX.

## **ARTICLE XXVI**

### **VIOLATIONS & PENALTY**

26.01: COMPLAINTS REGARDING VIOLATIONS:

- a. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person' may file a complaint with the Permit Director and/or Planning Director stating fully the causes and basis thereof. The Permit Director and/or Planning Director shall maintain a record of such complaints and shall take appropriate action pursuant to the provisions of this Ordinance, and pursuant to all other provisions of law.
- b. The Planning Director and/or Permit Director shall investigate all violations of this

Ordinance, notify the owners of violations and direct the property owner to correct violations within a reasonable period of time, and, if compliance is not obtained within a reasonable period of time, he shall report such violations to the Town Board who shall take appropriate and immediate action on the matter.

- c. Any unauthorized change of the Official Zoning Map shall constitute a violation of the provisions of this Ordinance.
- d. No building, structure, or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, re-constructed, moved or structurally altered unless in conformity with the provisions of this Ordinance, and the appropriate permit is received before construction is started.
- e. The Town Board, or any member thereof, upon notification from the Planning Director, may initiate action to prevent, restrain, correct or abate violations or threatened violations. The Town Board may at a later date vote to discontinue proceeding.

26.03: VIOLATION & PENALTY:

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance shall be guilty of a misdemeanor. Each day that a violation is permitted to exist shall constitute a separate offense.

## **ARTICLE XXVII**

### **SEVERABILITY**

27.01: In any case in which a specific provision or provisions of this Ordinance are declared by the courts to be unconstitutional or invalid, said ruling shall not affect the validity of the remaining provisions of the Ordinance and to this end the provisions of this Ordinance are declared to be severable.

## **ARTICLE XXVIII**

### **REPEAL OF CONFLICTING ORDINANCE**

28.03: Any zoning ordinance existing at the time of adoption of this zoning ordinance together with all amendments and supplements thereto, and all other ordinance promulgated by the Town Board which are inconsistent with the provisions of this Ordinance are, to the extent of such inconsistency and no further, hereby repealed.



**ARTICLE XXIX**  
**SCHEDULE OF FEES**

29.01: The Town Board hereby establishes a schedule of fees and a collection procedure for building permits, certificates of compliance, conditional use permits, variances, planned unit developments and initiation of amendment proceedings as required by this Ordinance.

29.03: No town building permit, certificate of compliance, conditional use permit, planned unit development permit or amendment petition shall be issued or recognized unless or until application fees shall have been paid in full to the Permit Director nor shall any action be taken on proceedings before the Board of Adjustment unless or until the application fees have been paid in full. Should a permit, certificate, variance or amendment be denied, the fee shall not be refunded. No fee shall be required for an amendment of this Ordinance or zoning map if petition is submitted by the Town Board or the Planning Commission.

29.06: LATE PERMITS - LATE FEES:

Late permits will be required of any person, organization, firm or corporation that starts construction before receiving the appropriate permit. Late permit fees will be doubled in amount of the required permit or permits. The late permit in no way prohibits Midway Township from further legal action, if deemed necessary by the Town Board.

**XXX. TOWN OF MIDWAY ORDINANCE 76-4**

30.01: TITLE:

An Ordinance creating a Board of Adjustment for the Town of Midway, Minnesota, providing for its membership, appointment, organization, authority, duties, procedures and compensation.

30.03: SUMMARY OF ORDINANCE

This Ordinance contains the following sections:

CONTENTS

Creation.  
Membership.  
Appoints.  
Removal for Cause.  
Organization & Procedures.  
Authority & Duties.  
Compensation.  
Severability.  
Effectuation.

## **CREATION**

30.06: The Town Board of Supervisors hereby creates a Board of Adjustment.

## **MEMBERSHIP**

30.08: MEMBERS;

- a. The Board of Adjustment shall consist of five (5) members, who shall be appointed by the Town Board of Supervisors as provided in this Ordinance, all of whom shall be residents of the Town of Midway.
- b. At least one (1) member of the Board of Adjustment shall also be a member of the Town Board.
- c. At least two (2) members shall also be members of the Town of Midway Planning Commission.
- d. No employee of the town shall serve on the Board of Adjustment.
- e. No voting member of the Board of Adjustment shall have received, during the two years prior to appointment, any substantial portion of his or her income from business operations involving the development of land within the Town for urban or urban-related purposes.

## **APPOINTMENTS**

30.10: METHOD OF APPOINTMENT

At the Annual Town meeting in each calendar year, the Chairman of the Town Board shall appoint members to the Board of Adjustment to fill expired terms. The appointments shall be submitted to the Board of Supervisors and shall be made upon approval of the Board by majority vote of the Board.

30.12: TERM OF OFFICE

- a. Except as provided in Section 30.12, b. below, each member of the Board of Adjustment shall be appointed to serve for a period of two (2) calendar years.
- b. Initial appointments made pursuant to this Ordinance shall be made in such a manner that no more than three (3) terms shall expire at the end of any given calendar year.
- c. Each calendar year shall be presumed to run from the date of the Annual Town meeting in a given calendar year to said meeting date in the next following calendar year.
- d. If a Board of Adjustment member's full term is up and the vacancy cannot be filled, appointments shall be made by the Town Board of Supervisors to fill any vacancy for the unexpired duration of the term shall apply.

30.14: VACANCIES;

- a. Appointments shall be made by the Town Board of Supervisors to fill any vacancy for the unexpired duration of the term. Such appointment shall be made at the earliest possible convenience of the Town Board.
- b. Vacancies in regular positions shall be declared by the Town Board under any of the following conditions:
  - 1. Death of a member.
  - 2. Resignation of a member.
  - 3. Removal of a member for a cause as provided in this Ordinance.

30.18: REMOVAL FOR CAUSE:

The following shall be deemed sufficient cause, grounds, or reason for the Town Board of Supervisors to remove any Board of Adjustment member. The Town Board shall remove any member upon the occurrence of any of the following conditions as reported to the Board by either the Chairman of the Board of Adjustment or the Permit Director.

- a. Failure of the member to attend one-third (1/3) of the regularly scheduled Board of Adjustment meetings in any 12 month period.
- b. Failure of the member to attend three (3) consecutive regular Board of Adjustment meetings, or to attend four (4) consecutive regular and special Board of Adjustment meetings.
- c. Attendance at several regular or special Board of Adjustment meetings for such a short length of time as to render the member's services of little value to the Town. The Town Board of Supervisors shall make judgment on such matters after receiving a report of the Chairman or the Director as provided in this section above.
- d. Violation by the member of any land use control ordinance adopted by the Town.

## **ORGANIZATION AND PROCEDURES**

30.20: OFFICERS:

The Board of Adjustment shall elect a chairman and vice-chairman from among its members, and shall appoint a secretary who need not be a member.

30.24: RULES OF PROCEDURES:

The Board of Adjustment shall adopt rules for the transaction of its business which shall not be inconsistent with or contrary to the statutes of the State of Minnesota or the ordinances of this Town.

30.26: MEETINGS:

The meetings of the Board of Adjustment shall be open to the public pursuant to Minnesota Statute.

30.28: VOTING:

- a. Each member, including the chairman, shall be entitled to vote on all questions unless a particular issue involves a conflict of interest.
- b. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the attending members except the member who is being challenged.
- c. Any member who believes he or she may have a conflict of interest, or who has a relative who has an interest, in any decision to be made by the Board of Adjustment shall disclose such interest and either disqualify him or herself or seek a ruling pursuant to Article V, Section 4, B of this Ordinance.

30.30: RECORDS:

The Board of Adjustment shall keep a written public record of all its transactions, findings, and determinations on matters referred to it, and shall cause such records to be recorded as necessary pursuant to Minnesota Statutes.

## **AUTHORITY & DUTIES**

30.32: VARIANCES:

- a. The Board of Adjustment shall have the exclusive authority to order the issuance of variances from the terms of any official control, including restrictions placed on non-conformities.
- b. The Board of Adjustment shall have the exclusive authority to order the issuance of permits for buildings and uses in areas designated for future public use on an official map.
- c. The Board of Adjustment may impose conditions in the granting of variances to insure compliance and protect adjacent properties and public interests.

30.34: OTHER APPEALS:

- a. The Board of Adjustment shall have the exclusive authority to hear and decide appeals from and review any order, requirements, decision or determination made by the Permit Director.
- b. The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit.
- c. Appeals shall be taken to the Board of Adjustment within 45 days of receipt of notice from the Permit Director of any order, requirement, decision or determination made by him.

30.36: PUBLIC HEARINGS:

- a. The Board of Adjustment shall conduct public hearings on all variance appeals and other appeals brought before it.
- b. The Board of Adjustment shall fix a reasonable time for the hearing of all appeals and give due notice thereof to the applicant and the Permit Director when taken from him, and to the public as prescribed by Minnesota Statutes and applicable ordinances of the Town.
- c. Decisions by the Board of Adjustment shall be rendered on all appeals within thirty (30) days

from the date the public hearing is closed.

- d. The reasons for the decision of the Board of Adjustment shall be stated in writing.
- e. All decisions by the Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision or determination or in granting any permit, shall be final except that any aggrieved person or persons or any department, board or commission of the jurisdiction or of the State shall have the right to appeal within thirty (30) days, after receipt of notice of the decision, to the District Court in the County in which the land is located, on questions of law and fact.

30.38: NOTIFICATION PROCEDURES: (Mn. Rule 6120.3900 Subp. 6)

- a. Copies of all notices of any public hearings to consider variances, amendments or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed plats must include copies of the plats.
- b. A copy of approved amendments and plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.
- c. Townships with shoreland management controls adopted under subpart 4a must also provide these materials to the zoning official of the county.

30.40: OTHER DUTIES & AUTHORITY:

The Board of Adjustment shall have such other duties and authorities as are prescribed by proper ordinances of this Town.

30.42: OPEN MEETING LAW:

All meetings and hearings of the Board shall be conducted in conformance with the provisions of the Minnesota Open Meeting Law, Minnesota Statutes, Section 471, 705, and any additions or amendments thereto.

## **COMPENSATION**

30.44: The members of the Board of Adjustment may be compensated in any amount determined by the Town Board, and may be paid their necessary expenses in attending meetings of the Board of Adjustment and in the conduct of business of the Board of Adjustment.

## **SEVERABILITY**

30.46: Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

## XXXI. TOWN OF MIDWAY ORDINANCE #76-5

### 31.01: TITLE

- a. An Ordinance creating a Planning Commission for the Town of Midway, Minnesota, providing for its membership, appointments, organization, authority, duties, procedures, and compensation.
- b. This Ordinance hereby supersedes Town of Midway Ordinance #76-3 Summary of Ordinance: This Ordinance contains the following sections:

### CONTENTS

Creation.  
Membership.  
Appointments.  
Removal for Cause..  
Organization and Procedures  
Authority and Duties  
Compensation  
Severability  
Effectuation

### CREATION

31.03: The Town Board of Supervisors hereby creates a Planning Commission.

### MEMBERSHIP

#### 31.06: REGULAR VOTING MEMBERS:

- a. The Planning Commission shall consist of nine (9) voting members, who shall be appointed by the Town Board of Supervisors as provided in this Ordinance, all of whom shall be residents of the Town of Midway.
- b. One voting member shall also be a member of the Town Board of Supervisors.
- c. No more than one voting member shall be an officer or employee of the Town.
- d. No voting member of the Planning Commission shall have received, during the two years prior to appointment, any substantial portion of his or her income from business operations involving the development of land within the Town for urban or urban-related purposes.

31.08: EX-OFFICIO MEMBERS: The following Town officers or employees are hereby

designated as ex-officio, non-voting members of the Planning Commission:

1. Town Permit Director.
2. Town Attorney.

## **APPOINTMENTS**

31.10: METHODS OF APPOINTMENT: At the Annual Meeting, the Chairman of the Town Board shall appoint members to the Planning Commission to fill expired terms. The appointments shall be made upon approval of the Board by the majority vote of the Board.

31.12: TERMS OF OFFICE:

- a. Except as provided in Section 31.12, b. & c. below, each member of the Planning Commission shall be appointed to serve for a period of three (3) calendar years.
- b. If a member's full term is up and the vacancy cannot be filled, the Town Board can reappoint that member and no limitation on term shall apply.
- c. The Town Board serving on the Planning Commission shall be appointed for a term of one calendar year.
- d. Initial appointments made pursuant to this Ordinance shall be made in such a manner that no more than four terms including that of the Town Board member, shall expire at the close of any calendar year.
- e. Each calendar year shall be presumed to run from the date of the Annual Town Meeting in a given calendar year to said meeting date in the next following calendar year.

31.14: VACANCIES:

- a. Appointments shall be made by the Town Board of Supervisors to fill any vacancy for the unexpired duration of the term. Such appointment shall be made at the earliest possible convenience of the Town Board.
- b. Vacancies in regular positions shall be declared by the Town Board under any of the following conditions:
  1. Death of a member.
  2. Resignation of a member.
  3. Removal of a member for cause as provided in this Ordinance.

## **REMOVAL FOR CAUSE**

31.16: The following shall be deemed sufficient cause, grounds, or reason for the Town Board of Supervisors to remove any regular Planning Commission member. The Town Board shall remove any member upon the occurrence of any of the following conditions as reported to the Board by either the Chairman of the Planning Commission or the Permit Director.

- a. Failure of the member to attend one-third (1/3) of the regularly scheduled Commission

- meetings in any 12-month period.
- b. Failure of the member to attend three (3) consecutive regular Commission meetings, or to attend four (4) consecutive regular and special Commission meetings.
  - c. Attendance at several regular or special Commission meetings for such a short length of time as to render the member's services of little value to the Town. The Town Board shall make judgment on such matters after receiving a report of the Chairman or the Director as provided in this section above.
  - d. Violation by the member of any land use control ordinance adopted by the Town pursuant to law.

## **ORGANIZATION AND PROCEDURES**

31.18: OFFICERS; The Planning Commission shall elect a chairman and vice-chairman from among its regular members, and shall elect a secretary from among its regular or ex-officio members.

31.20: RULES OF PROCEDURE: The Planning Commission shall adopt rules for the transaction of its business which shall not be inconsistent with or contrary to the statutes of the State of Minnesota or the Ordinances of this Town.

31.22: MEETINGS:

- a. The meetings of the Planning Commission shall be held at the call of the chairman and at such other times as the Commission in its rules of procedure may specify.
- b. All meetings of the Planning Commission shall be open to the public pursuant to Minnesota Statutes.

31.24: VOTING:

- a. Each regular member, including the chairman, shall be entitled to vote on all questions, unless a particular issue involves a conflict of interest.
- b. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the attending members except the member who is being challenged.
- c. Any member who believes he or she may have a conflict of interest, or who has a relative who has an interest, in any decision to be made by the Planning Commission shall disclose such interest and either disqualify him or herself or seek a ruling pursuant to Article V, Sec. 4, B of this Ordinance.
- d. Ex-officio members of the Planning Commission shall not have the right to vote on any issues before the Planning Commission.

31.26: RECORDS:. The Planning Commission shall keep a written public record of all its transactions, findings, and determinations on all matters referred to it, and shall cause such records to be recorded as necessary pursuant to Minnesota Statutes.



## **AUTHORITY & DUTIES**

### 31.28: PLAN PREPARATION AND REVIEW:

- a. The Planning Commission shall cooperate with the Permit Director and other employees of the Town in preparing and recommending to the Town Board for adoption
- b. a Comprehensive Plan and recommendations for plan execution in the form of official controls and other measures, and amendments thereto.
- c. The Planning Commission, shall review any comprehensive, land use, or other plans or any official controls sent to the Town for review by any unit of government, any council of governments, or any regional, state or federal agency and shall report thereon in writing to the Town Board.

### 31.30: PUBLIC HEARINGS:

- a. The Planning Commission shall hold all required public hearings for comprehensive plans and amendments thereto, official controls and amendments thereto, all conditional use permit applications, and other matters as may be prescribed by law.
  1. The Planning Commission shall have the final authority to approve or deny all conditional use permit applications, and to direct the issuance of conditional use permits, except those conditional uses for which the Town Board has reserved such authority as provided in other Ordinances of this Town.
  2. On all other matters which are before the Planning Commission for public hearing, the Commission shall report in writing to the Town Board.
- b. The Planning Commission shall fix a reasonable time for all hearings, shall give due notice thereof and shall conduct hearings in the manner prescribed by Minnesota Statutes and other Ordinances of this Town.

### 31.32: NOTIFICATION PROCEDURES ( Subject to Mn. Rule 6120.3900 Subp 6)

- a. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed plats must include copies of the plats.
- b. A copy of approved amendments and plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.
- c. Townships with shoreland management controls adopted under subpart 4a must also provide these materials to the zoning official of the county.

## **COMPENSATION**

31.34: The voting members of the Planning Commission, other than the member of the Town Board, may be compensated in an amount determined by the Town Board. All voting members

of the Planning Commission, including the member of the Town Board, may be paid their necessary expenses in attending meetings of the Planning Commission and in the conduct of the business of the Planning Commission. Nothing in this subdivision shall be construed to prohibit the payment of a per diem to the Town Board member pursuant to law.

### **SEVERABILITY**

31:36: Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

This Ordinance was declared adopted by the Town of Midway Board of Supervisors on the 5th day of August 1976. Certified as a complete and accurate copy of Ordinance #76-3.

ATTEST; /s/ Elmer V. Lennartson, clerk  
Town of Midway Town Board  
Recorded: August 17, 1976 (23781)  
P.J. August 23, 1976  
Map recorded: August 20, 1976

/s/ Earl E. Elde  
Chairman, Town Board

SEAL: Town of Midway  
County of St. Louis  
Minnesota

### **EFFECTUATION**

Amendments to this Ordinance shall take effect and be in full force on the 26th day of July, 1983, upon its adoption by the Midway Town Supervisors and shall be published in the official newspaper (Proctor Journal) of St. Louis County as provided by Minnesota Statutes.

Public hearings were held at the Midway Town Hall, Midway, Minnesota, on the 23<sup>rd</sup> of June, 1983 by the Midway Planning Commission and by the Midway Town Supervisors on July 26, 1983.

Recommended by the Planning Commission to the Midway Town Board for adoption on the 11th day of July 1983.

Supervisor, Rudy Nikko moved the adoption of these Ordinance amendments and Supervisor, Herbert Stark, duly seconded the motion and it was adopted on the following vote: Yeas: 3 Nays: 0 Absent: 0.

/s/ Earl E. Elde  
Chairman, Midway Town Board

### **EFFECTUATION**

Amendments to this Ordinance shall take effect and be in full force on the 4th day of August, 1988, upon its adoption by the Midway Town Supervisors and shall be published in the official newspaper (Proctor Journal) of St. Louis County as provided by Minnesota Statutes.

Public hearings were held at the Midway Town Hall, Midway, Minnesota, on the 14th day of July, 1988, by the Midway Planning Commission and by the Midway Town Supervisors on August 4, 1988.

Recommended by the Planning Commission to the Midway Town Board for adoption on the 14th day of July, 1988.

Supervisor, Rudy Nikko, moved the adoption of these Ordinance amendments and Supervisor, Herbert Stark, duly seconded the motion and it was adopted on the following vote:  
Yeas: 3 Nays: 0 Absent: 0.

/s/ Earl E. Elde, Chairman  
Midway Town Board

### **EFFECTUATION**

Amendments to this Ordinance shall take effect and be in full force on the 7th day of April, 1994, upon its adoption by the Midway Town Supervisors and shall be published in the official newspaper (Proctor Journal) of St. Louis County as provided by Minnesota Statutes.

Public hearings were held at the Midway Town Hall, Midway, Minnesota on the 23rd day of February, 1994 by the Midway Planning Commission and by the Midway Town Supervisors on March 30, 1994.

Recommended by the Planning Commission to the Midway Town Board for adoption on the 30th day of March, 1994.

Supervisor, Rudy Nikko, moved the adoption of these Ordinance amendments and Supervisor, Herbert Stark, duly seconded the motion and it was adopted on the following vote:  
Yeas: 3 Nays: 0 Absent: 0.

\_\_\_\_\_  
/s/ Earl Elde, Chairman  
Midway Town Board

## EFFECTUATION

Amendments to this Ordinance and map shall take effect and be in full force on the 16<sup>th</sup> day of April 1998, upon its adoption by the Midway Town Supervisors and shall be published in the official newspaper (Proctor Journal) of St. Louis County as provided by Minnesota Statutes.

Public hearings were held at the Midway Town Hall, Midway, Minnesota, on the 30th day of March, 1998 by the Midway Planning Commission and by the Midway Town Supervisors on April 16, 1998.

Recommended by the Planning Commission to the Midway Town Board for adoption on April 2, 1998.

Supervisor, Rudy Nikko, moved the adoption of these Ordinance amendments and map, and Supervisor, Margaret Taylor, duly seconded the motion and it was adopted on the following vote: Yeas: 3 Nays: 0 Absent: 0.

\_\_\_\_\_  
/s/ Earl Elde, Chairman  
Midway Town Board

## EFFECTUATION

Amendments to this Ordinance and map shall take effect and be in full force on the 19<sup>th</sup> day of June, 2003, upon its adoption by the Midway Town Supervisors and shall be published in the official newspaper (Proctor Journal) of St. Louis County as provided by Minnesota Statutes.

Public hearings were held at the Midway Town Hall, Midway Minnesota, on the 12<sup>th</sup> day of June 2003, by the Midway Planning Commission and by the Midway Town Supervisors on June 19th, 2003.

Recommended by the Planning Commission at the Midway Town Board for adoption on July 1, 2003.

Supervisors, James Aird, moved the adoption of these Ordinance amendments and map, and Supervisor, Margaret Taylor, duly seconded the motion and it was adopted on the following vote: Yeas 3, Nays: 0, Absent 0.

\_\_\_\_\_  
/s/ Earl Elde, Chairman  
Midway Town Board

## EFFECTUATION

Amendments to this Ordinance and map shall take effect and be in full force on the 1st day of December, 2005, upon its adoption by the Midway Town Supervisors and shall be published in the official newspaper (Proctor Journal) of St. Louis County as provided by Minnesota Statutes.

Public Hearings were held at the Midway Town Hall, Midway, Minnesota, on the 15th day of September, 2005 and on September 22, 2005 by the Planning Commission, and on October 3, 2005 by the Midway Town Board.

Recommended by the Planning Commission to the Midway Town Board for adoption on December 1, 2005 Supervisor, James Aird moved the adoption of these ordinance amendments and map, and Supervisor, Margaret Taylor, duly seconded the motion and it was adopted on the following vote. Yeas: 3, Nays 0, Absent 0.

\_\_\_\_\_  
/s/ Earl Elde, Chairman  
Midway Town Board