

# WARD COUNTY FLOODPLAIN ZONING ORDINANCE

## **Chapter 1**

### **STATUTORY AUTHORITY, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE**

#### **SECTION 1.1 STATUTORY AUTHORITY**

This ordinance for the floodplain protection is adopted pursuant to the authorization contained in Section 11-33-03, Subparagraph 2 and Section 61-16-11 of the North Dakota Century Code.

#### **SECTION 1.2 FINDING OF FACT**

The uncontrolled use of the floodplains of Ward County, North Dakota, adversely affects the public health, safety, convenience and general welfare, and impairs the tax base of that county. In addition, extraordinary public expenditures are required for the protection of persons and property and for the relief of distress in areas subject to periodic flooding. Piling, construction, and certain other land use practices have been determined to be major causes of such effects. The effects of a single fill or other project upon flood heights, velocities, of floodplain storage areas may be relatively insignificant compared to the combined effects of a number of such projects which, over a long period of time, may drastically increase the flood hazard. Without a competent analysis of such projects, it is not possible to adequately ascertain the effects of each floodplain use upon subsequent development or the compatibility thereof with the long-range needs of the community. The legislature of the State of North Dakota has delegated authority to the Board of Ward County Commissioners to adopt ordinances and regulations, which will control or eliminate the practices leading to such adverse effects and this authority is hereby recognized.

#### **SECTION 1.3 STATEMENT OF PURPOSE**

It is the purpose of the ordinance to promote the public health, safety, and general welfare of Ward County and to minimize flood losses in the floodplain. This floodplain zoning ordinance is hereby established with the following purposes intended:

Section 1.3.1 To protect the storage capacity of the floodplains and to assure retention of sufficient floodway areas to convey flood flows, which can reasonably be expected to occur through:

- (A) Regulating filling, dumping, dredging, and alteration of channels by deepening, widening, or relocating.

- (B) Prohibiting unreasonable encroachments on the floodway.
- (C) Encouraging open space uses such as agriculture, recreation, and parking facilities.

Section 1.3.2 The objectives of this ordinance are:

- (A) To protect human life and health;
- (B) To minimize expenditure of public money for costly flood control projects;
- (C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) To minimize prolonged business interruptions;
- (E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (F) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (G) To insure that potential home buyers are notified that property is in a flood area.

## **Chapter 2**

### DEFINITIONS

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

1. "A ZONE" or "ZONE A": An area of special flood hazard without water surface elevations determined.
2. "A1-A30 ZONE" or "ZONE A1-A30": An area of special flood hazard with water surface elevations determined.
3. ADMINISTRATOR: The Federal Emergency Management Agency to whom the secretary has delegated the administration of the program.
4. BASE FLOOD: The flood having a one percent (1%) chance of being equaled or exceeded in any given year.
5. BASEMENT: See LOWEST FLOOR
6. BUILDING: See STRUCTURE
7. BULKHEAD: A wall, partition or other device attached either permanently or temporarily to a structure or embankment and designed to hold back water.

8. CHANNEL: A natural or artificial water course of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow thus is that water which is flowing within the limits of the defined channel.
9. COMMUNITY: The area of land within Ward County subject to this flood zoning ordinance which includes all of the unincorporated territories located within the boundaries of Ward County, and the territories located within the boundaries of the townships that have relinquished their zoning rights to Ward County.
10. COUNTY FLOODPLAIN MANAGEMENT AREA (CFMA): The inundation area associated with the County Floodplain Management Flow and as shown in the County Floodplain Management Map.
11. COUNTY FLOODPLAIN MANAGEMENT ELEVATION (CFME): The water surface elevation at a given location, which is derived from the County Floodplain Management Flow.
12. COUNTY FLOODPLAIN MANAGEMENT FLOW: The flowrate, adopted by the Ward County Commission, whose area of inundation will be managed by the Floodplain Zoning Ordinance.
13. COUNTY FLOODPLAIN MANAGEMENT MAP (CFMM): An adopted map of the community, on which the administrator has delineated both the County Floodplain Management Area applicable to the community. Said map is on file with the Ward County Auditor and said map is incorporated herein by reference.
14. DEPTH NUMBER: The highest “water surface elevation” as expressed in number of feet which is attained for a particular area or zone during the base flood.
15. DEVELOPMENT: Any man-made change to improve or diminish real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
16. ENCROACHMENT: Any fill, structure, equipment, building, use or development in the floodway
17. FLOOD (OR FLOODING): A general and temporary condition or partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or run off of surface waters from any source.
18. FLOOD INSURANCE RATE MAP (FIRM): An official map of the community on which the administrator has delineated both the special hazard area and the risk premium zones applicable to the community. Said map is on file with the Ward County Auditor and said map is incorporated herein by reference.

19. **FLOODPLAIN or FLOOD-PRONE AREA:** Any land area susceptible to being inundated by water from any source (see definition of FLOOD). The flood-prone area is more extensive than the “special flood hazard area” for it includes not only the special flood hazard area but also those adjoining areas in which any flooding might occur during the base flood which would be less than one foot in depth.
20. **FLOOD-PROOFING:** Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
21. **FLOODWAY:** The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot.
22. **LOWEST FLOOR:** The lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable flood-proofing design requirements of this ordinance.
23. **MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
24. **MANUFACTURED HOME:** A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than 180 consecutive days.
25. **MEAN SEA LEVEL:** the average height of the sea for all stages of the tide.
26. **NEW CONSTRUCTION:** Structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community. It also means the erection of an entirely new and independent structure (as opposed to an alteration or repair of or addition to an existing structure).
27. **NONCONFORMING STRUCTURE:** An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies.
28. **PERSON:** Any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.
29. **PLANNING/ ZONING ADMINISTRATOR:** The Ward County Planning/ Zoning Administrator and staff that may be authorized to issue a building or moving permit.

30. **PRINCIPALLY ABOVE GROUND:** That at least 51% of the actual cash value of the structure, less land value, is above the ground.
31. **REACH:** A hydraulic engineering term to describe longitudinal segments of a stream or river. A reach will generally include the segment of the floodplain where flood heights are primarily controlled by man-made or natural floodplain obstructions or restrictions. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most likely be a reach.
32. **SPECIAL FLOOD HAZARD AREA (SFHA):** An area having special flood hazards and is shown on a FIRM or Flood Hazard Boundary Map (FHBM) as Zone A, , A1-A30, AE, AH, AO, Shaded Zone X and Zone X.
33. **SPECIAL FLOOD HAZARD AREA (SFHA):** The land in the flood-prone area subject to one percent (1%) or greater chance of flooding in any given year. This area as shown on the FIRM is usually defined to show Zones A, A1-A30, and A1-99.
34. **START OF CONSTRUCTION:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
35. **STRUCTURE:** A walled and roofed building, manufactured home, or a gas or liquid storage tank that is principally above ground.
36. **SUBDIVISION PROPOSAL:** (a) an application for a zone change, (b) an application or request for a special use permit, or (c) a request for approval of a plot pursuant to the provision of the land subdivision laws of the State of North Dakota.
37. **SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state

or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on a National Register of Historic Places or a State Inventory of Historic Places.

- 38. VARIANCE: A grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.
- 39. WATER SURFACE ELEVATION: The projected heights in relation to Mean Sea Level reached by floods of various magnitudes and frequencies and the floodplains of coastal or riverine areas.

## **Chapter 3**

### **CHANNEL PROVISIONS**

#### **SECTION 3.1 JURISDICTION**

The jurisdiction of this ordinance includes all lands adjacent to each reach of rivers or streams within the community that would be inundated by the base flood for that river or stream as defined in the definitions, Chapter 2 of this ordinance.

#### **SECTION 3.2 DISTRICT BOUNDARIES**

The boundaries of the base floodplain district shall be the areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) through a scientific and engineering report entitled “The Flood Insurance Study for Ward County, North Dakota” dated January 19, 2000 with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway maps and any revision thereto are hereby adopted by reference and declared to be a part of this ordinance. The boundaries shall include areas shown on the County Floodplain Management Map as County Floodplain Management Areas. Said maps are kept on file in the office of the Ward County Auditor at the time of the adoption of this ordinance, and shall be available for public inspection during the established County office hours. Said flood hazard areas may be changed periodically through additional floodplain maps derived from studies by federal, state and local officials. This new information for updating the flood insurance study and supplementary documents shall be forwarded to FEMA immediately. The area subject to the authority of the Ward County Floodplain Zoning Ordinance will be comprised of all unorganized areas located within the boundaries of Ward County, and those townships which have filed written relinquishments of their zoning authority to Ward County at the Ward County Auditor’s office. The townships which have filed their written relinquishments of zoning authority to Ward County pursuant to North Dakota Century Code, Chapter 11-33, are: Baden, Carbondale, Carpio, Harrison, Foxholm, Freedom, Kirkelie, Nedrose, New Prairie, Sawyer, Sundre, and Willis.

Section 3.2.1 The floodplain boundary lines on the maps shall be determined by the use of the scale appearing on the map. Where there is a conflict between the floodplain boundary illustrated on the map and the actual field conditions, the dispute shall be settled according to Section 14.4.2 entitled Mapping Disputes.

### **SECTION 3.3 COMPLIANCE AND ENFORCEMENT IN PENALTIES**

No structure, land or water shall hereafter be used and no structure shall be located, extended, converted or structurally altered without fill compliance with the terms of this ordinance and other applicable regulations. Every structure, building, fill or development placed or maintained within any floodplain in violation of this ordinance is a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated through the action at suit of the county, state, or any citizen thereof pursuant to authority granted in Chapter 11-33 of the North Dakota Century Code.

### **SECTION 3.4 ABROGATION AND GREATER RESTRICTIONS**

Section 3.4.1 This ordinance supersedes provisions of any zoning regulations relating to the floodplain covered by the ordinance.

Section 3.4.2 It is not otherwise intended by this ordinance to repeal, abrogate, or impair any existing deed restrictions; however, where this ordinance imposed greater restrictions the provisions of this ordinance shall prevail.

### **SECTION 3.5 INTERPRETATION**

In the interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by the North Dakota statutes.

### **SECTION 3.6 WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection intended to be provided by this ordinance is considered reasonable for the regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodplain zoning district boundaries or land use permitted within such districts will always be totally free from flooding or flood damages. Nor shall this ordinance create a liability on the part of or a cause of action against Ward County or any officer or employee thereof for any flood damages that may resolve for reliance on this ordinance.

## **SECTION 3.7 SEVERABILITY**

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

## **Chapter 4**

### **GENERAL FLOODPLAIN DISTRICT**

#### **SECTION 4.1 DESCRIPTION OF DISTRICT**

The general floodplain district shall include the land stated in SECTION 3.2 of this ordinance.

#### **SECTION 4.2 SPECIAL PROVISIONS**

The following regulations shall apply to all uses within the general floodplain district, notwithstanding that such uses may be specifically permitted under the terms of this ordinance.

Section 4.2.1 The flood protection elevation or height shall correspond to three feet above the elevation of the base flood profile or one foot above the County Floodplain Management Elevation whichever is greater.

Section 4.2.2 No floodplain shall unduly interfere with the efficiency of or unduly restrict the capacity of the channels or floodways of the main stream or any tributaries to the main stream, drainage ditches, or any drainage facilities or systems.

Section 4.2.3 No new construction, substantial improvements, or other development shall be permitted unless the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any one point within the county.

#### **SECTION 4.3 DESCRIPTION OF USES**

Permitted uses: The following open spaces shall be permitted within the general flood district to the extent that they are not prohibited in a particular area by any underlying zoning ordinance.

Section 4.3.1 Agricultural uses such as: general farming, including farmsteads, pasture land, grazing, truck farming, sod farming, wild crop harvesting, outdoor plant nurseries, horticulture, and viticulture.

- Section 4.3.2 Industrial-Commercial uses such as: loading areas, parking areas, airport landing strips, and storage yards for equipment or machinery easily moved or not subject to flood damage.
- Section 4.3.3 Public and private recreational uses not requiring “permanent or temporary structures” designed for human habitation such as: parks, swimming areas, golf courses, driving ranges, picnic grounds, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges and hunting, fishing, and hiking areas.
- Section 4.3.4 Utility facilities such as: dams, power plants, flowage areas, transmission lines, pipelines, and water monitoring devices. Permission for the construction of transmission lines in the flood hazard area must be obtained from the Board of Ward County Commissioners, upon a finding that this is the most feasible and less burdensome route for the transmission line.
- Section 4.3.5 Other water related uses such as: docks, piers, wharves, bridges, culverts and river crossings of transmission lines.

## **Chapter 5**

### **RESTRICTIONS ON LAND USE AND CONSTRUCTION, APPLICABLE TO ALL PORTIONS OF THE SPECIAL FLOOD HAZARD AREA**

#### **SECTION 5.1**

The provisions of this chapter shall be applicable to all of the land within the community which is shown on the FIRM as being in the special flood hazard area. This shall include all areas shown thereon which bear the designation “A” or which bear an “A” prefix, such as “A16”, “A18”, etc.

#### **SECTION 5.2**

All new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) on which work is commenced on or after May 25, 1977, shall (a) be designed (or modified) and anchored so as to prevent flotation, collapse, or lateral movement of the structure, (b) be constructed with materials and utility equipment resistant to flood damage, and (c) be constructed by methods and practices that minimize flood damage.

### **SECTION 5.3**

All public utilities and facilities such as sewer, gas, electrical and water systems constructed or substantially reconstructed on or after May 25, 1977, shall be located, designed and constructed so as to minimize or eliminate flood damage to such systems.

### **SECTION 5.4**

New and replacement water supply systems on which work is commenced on or after May 25, 1977, shall be designed to minimize or eliminate infiltration of flood waters into the systems.

### **SECTION 5.5**

Substantial alteration of the topography which is commenced on or after May 25, 1977, will be permitted only upon a demonstration that the alteration will not increase the base flood a height of more than one foot in the community either through direct drainage into the river or as a result of increased pressure upon the internal drainage system of the district or otherwise.

### **SECTION 5.6**

On or after May 25, 1977, no person or persons may perform any fill or land fill operations or place materials associated with other development activities within the geographical area to which this chapter applies unless they shall first have obtained a permit from the Ward County Engineer.

New and replacement sanitary sewage systems on which work is commenced on or after May 25, 1977, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. On site waste disposal systems on which work is commenced on or after May 25, 1977, shall be located so as to avoid impairment to them or contamination from them in the event of flooding.

### **SECTION 5.7**

All new construction and substantial improvements (including additions and replacements) shall be anchored to prevent flotation, collapse, or lateral movement of the structure. All manufactured homes must be elevated so that the lowest floor is at least one foot above the Base Flood Elevation and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties secured to ground anchors. This requirement is in addition to applicable state and local requirements for resisting wind forces. Although minimum elevation for manufactured homes may be satisfied with properly compacted fill, regulations of the National Flood Insurance Program eligibility may require placement on a permanent foundation. Interpreting the requirements of or conformity with the eligibility requirements of the National Flood Insurance Program shall not be the responsibility of Ward County nor elected or appointed County

Officials. Notwithstanding the foregoing, this paragraph shall not apply to a manufactured home which is removed from its ordinary location as part of an official emergency evacuation of manufactured homes, and which manufactured home is returned to such location if the manufactured home was not subject to the tie-down requirements of this paragraph prior to the evacuation.

### **SECTION 5.8**

On or after May 25, 1977, no manufactured home shall be (a) moved into or within the geographical area to which this chapter applies and (b) placed at a site or location therein for more than five days unless a permit shall first have been obtained from the Ward County Planning/ Zoning Administrator.

## **Chapter 6**

### **RESTRICTIONS ON LAND USE AND CONSTRUCTION, APPLICABLE TO ALL PORTIONS OF THE COUNTY FLOODPLAIN MANAGEMENT AREA**

#### **SECTION 6.1**

The provisions of this chapter shall be applicable to all of the land within the community which is shown on the County Floodplain Management Map as being in the County Floodplain Management Area. All new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) on which work is commenced on or after the date this ordinance is approved, shall (a) be designed (or modified) and anchored so as to prevent flotation, collapse, or lateral movement of the structure, (b) be constructed with materials and utility equipment resistant to flood damage, and (c) be constructed by methods and practices that minimize flood damage.

#### **SECTION 6.2**

On or after the date this ordinance is approved, no person or persons may perform any fill or land fill operations or place materials associated with other development activities within the geographical area to which this chapter applies unless they shall first have obtained a permit from the Ward County Engineer.

New and replacement sanitary sewage systems on which work is commenced on or after the date this ordinance is approved, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. On site waste disposal systems on which work is commenced on or after the date this ordinance is approved, shall be located so as to avoid impairment to them or contamination from them in the event of flooding.

### **SECTION 6.3**

All new construction and substantial improvements (including additions and replacements) shall be anchored to prevent flotation, collapse, or lateral movement of the structure. All manufactured homes must be elevated so that the lowest floor is at least one foot above the County Floodplain Management Elevation and anchored to resist flotation, collapse or lateral movement. Methods or anchoring may include but are not limited to use of over-the-top or frame ties secured to ground anchors. This requirement is in addition to applicable state and local requirements for resisting wind forces. Notwithstanding the foregoing, this paragraph shall not apply to a manufactured home which is removed from its ordinary location as part of an official emergency evacuation of manufactured homes, and which manufactured home is returned to such location if the manufactured home was not subject to the tie-down requirements of this paragraph prior to the evacuation.

### **SECTION 6.4**

On or after the date this ordinance is approved, no manufactured home shall be (a) moved into or within the geographical area to which this chapter applies and (b) placed at a site or location therein for more than five days unless a permit shall first have been obtained from the Ward County Planning/ Zoning Administrator.

## **Chapter 7**

### **RESTRICTIONS APPLICABLE TO ZONE “A” OR “A1-A30”**

#### **SECTION 7.1**

The provisions of this chapter shall be applicable to all of the land within the community, which is shown on the FIRM as being in a zone bearing the designation “A” or “A1-A30”.

#### **SECTION 7.2**

The restrictions imposed by Chapter 5 are incorporated herein by reference and shall be considered as part of this chapter as though set forth fully herein.

#### **SECTION 7.3**

The Board of Ward County Commissioners shall obtain, review, and reasonably utilize any Base Flood Elevation data available from a Federal, State, or other source, until such other data has been provided by the Administrator, as criteria for requiring that (a) all new construction and substantial improvements of residential structures have the lowest floor including basement elevated to three feet above the Base Flood Elevation and (b) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or flood proofed to a level of three feet above the Base Flood Elevation.

## Chapter 8

### RESTRICTIONS APPLICABLE TO ZONE “AE”, “AH”, OR “AO”

#### SECTION 8.1

The provisions of this chapter shall be applicable to all of the land within the community, which is shown on the FIRM as being in the zone designated “AE”, “AH”, or “AO”.

#### SECTION 8.2

The restrictions imposed by Chapter 5 are incorporated herein by reference and shall be considered as part of this chapter as though set forth fully herein.

#### SECTION 8.3

All new construction and substantial improvements or residential structures on which work is commenced on or after May 25, 1977, shall have the lowest floor (including basement and excluding garage) elevated to three feet above the Base Flood Elevation.

#### SECTION 8.4

All new construction and substantial improvements of nonresidential structures on which work is commenced on or after May 25, 1977, shall have the lowest floor (including basement) elevated to three feet above the Base Flood Elevation, provided that, however, such elevation shall not be required if the new structure or substantial improvement of the structure, together with attendant utility and sanitary facilities, is designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. These fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (A) A minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding shall be provided;
- (B) The bottom of all openings shall be no lower than one foot above grade;
- (C) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

All elevations or flood proofing shall be certified by a registered professional engineer, architect or land surveyor (as is applicable), so that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Chapter 15.

## Chapter 9

### RESTRICTIONS APPLICABLE TO THE COUNTY FLOODPLAIN MANAGEMENT AREAS DESIGNATED ON THE COUNTY FLOODPLAIN MANAGEMENT MAP

#### SECTION 9.1

The provisions of this chapter shall be applicable to all of the land within the community, which is shown in the County Floodplain Management Areas as shown on the County Floodplain Management Map.

#### SECTION 9.2

All new construction and substantial improvements or residential structures on which work is commenced on or after the date this ordinance is approved, shall have the lowest floor (including basement and excluding garage) elevated to one foot above the County Floodplain Management Elevation.

#### SECTION 9.3

All new construction and substantial improvements of nonresidential structures on which work is commenced on or after the date this ordinance is approved, shall have the lowest floor (including basement) elevated to one foot above the County Floodplain Management Elevation, provided that, however, such elevation shall not be required if the new structure or substantial improvement of the structure, together with attendant utility and sanitary facilities, is designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. These fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (A) A minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding shall be provided;
- (B) The bottom of all openings shall be no lower than one foot above grade;
- (C) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

All elevations or flood proofing shall be certified by a registered professional engineer, architect or land surveyor (as is applicable), so that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Chapter 15.

## **Chapter 10**

### **RESTRICTIONS APPLICABLE TO THE DESIGNATED REGULATORY FLOODWAY**

#### **SECTION 10.1**

The provisions of this chapter shall be applicable to all of the land within the community, which is shown on the maps provided by the Federal Emergency Management Agency as being located within the designated regulatory floodway.

#### **SECTION 10.2**

The restrictions imposed by the chapter are in addition to those restrictions which may be imposed by the operation of any other chapter. This chapter shall become effective upon (a) the recommendation by the Ward County Engineer of the perimeters or boundaries of the designated regulatory floodway, (b) the confirmation of such boundaries by ordinance by the Board of Ward County Commissioners, and (c) the entry of such perimeters on the Ward County Zoning Map. Before confirming such boundaries the Board of Ward County Commissioners shall conduct a public hearing on the question of the appropriate location of the perimeters. At such public hearing all persons aggrieved by the proposed location of the perimeters as recommended by the Ward County Engineer may present technical engineering data and other information in support of a change of the location of all or any portion of the perimeter of the designated regulatory floodway. Notice of such public hearing shall be published once a week for three weeks in a newspaper of general circulation within Ward County with the last publication to be no less than two days prior to the date of the public hearing. Such notice shall include a brief description of the date, time, place, and purpose of the public hearing and a brief recital of the restrictions which shall be imposed upon the property lying within the floodway as a result of this chapter, and shall also include a map showing the proposed perimeter of the floodway in sufficient detail to permit property owners to determine the location of their property to the designated regulatory floodway.

#### **SECTION 10.3**

The Board of Ward County Commissioners shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point.

#### **SECTION 10.4**

Any encroachments, including fill, new construction, substantial improvements or other development which would result in any increase in flood levels are prohibited. However, a development or improvement which consists of the repair or reconstruction of a damaged

structure and which does not alter the external dimensions of the structure as they existed prior to the occurrence of the damage shall be excluded from the operation of this section. For residential and agricultural structures and churches only, additions and garages attached to such structures and newly constructed free standing agricultural structures are permitted provided (1) a registered, professional engineer determines that such construction will not result in any measurable increase in flood levels during the occurrence of the base flood, and (2) such residential, agricultural or church construction does not constitute more than 50% of the fair market value of the existing structure before such construction was started.

## **Chapter 11**

### **DUTIES OF THE WARD COUNTY PLANNING COMMISSION**

#### **SECTION 11.1**

The Ward County Planning Commission shall apply the provisions of this chapter to subdivision proposals made on or after May 25, 1977, if it shall determine that the premises affected by the subdivision proposal are within the Special Flood Hazard Area as shown on the FIRM or within the County Floodplain Management Area as shown on the County Floodplain Management Map. The provisions of this chapter are in addition to all other provisions of law relating to subdivision proposals.

#### **SECTION 11.2**

Subdivision proposals subject to the provisions of this chapter shall be reviewed to determine that (1) the proposal is consistent with the need to minimize flood damage, (2) proposed or projected easements for public utilities and facilities, such as sewer, gas, electrical, and water systems, are so located as to minimize or eliminate flood damage, and (3) adequate drainage is provided to reduce exposure to flood hazards. To facilitate such review the Planning Commission may prescribe the type of information it requires and the form in which the information is to be provided as part of the subdivision proposal.

#### **SECTION 11.3**

Subdivision proposals within the community subject to this chapter, shall include Base Flood Elevation and County Floodplain Management Elevation data as to the premises involved. The Planning Commission may prescribe the type of information it requires in the form in which the information is provided as part of the subdivision proposal.

## **Chapter 12**

### **DUTIES OF THE WARD COUNTY PLANNING/ ZONING ADMINISTRATOR**

#### **SECTION 12.1**

The Ward County Planning/ Zoning Administrator is hereby appointed as the official with the primary responsibility and authority to implement such commitments, file such reports and take such actions as may be required by the Federal Emergency Management Agency pursuant to authority of Sections 60.3 and 60.6 of Title 44 of the Code of Federal Regulations (1976).

#### **SECTION 12.2**

Ward County Planning/ Zoning Administrator is designated as the official with the responsibility and authority to submit an annual report to the Federal Emergency Management Agency concerning the participation of Ward County in the national flood insurance program authorized by 42 USC Sections 4001-4128, which report shall describe the development and implementation of flood-prone area management regulations. The Administrator shall also perform on behalf of Ward County all other actions required of the County pursuant to Sections 60.3 and 60.6 of Title 44 of the Code of Federal Regulations referred to in the preceding paragraph including, generally speaking, filing biennial report FEMA Form 81-29, Nov. 84.

#### **SECTION 12.3**

The responsibility of the reports and recordings of data lies with the Ward County Planning/ Zoning Administrator. The approval of the Board of Ward County Commissioners is required before any reports are to be sent to their respective destinations.

#### **SECTION 12.4**

The provisions of this chapter shall be considered as supplementary to and not as superseding other provisions in state law concerning the form of such application for a building permit, the showing or demonstration which must be made before a permit may be granted, and the method or procedure by which a permit is granted or denied.

#### **SECTION 12.5**

Before a building permit is granted, the Ward County Planning/ Zoning Administrator shall determine that all necessary permits relating to the proposed development have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33, USC 1334. Such determination may be made by (a) requiring that copies of the state or federal permits be included as part of the application for the building permit, or (b) by the applicant

displaying the original or the state or federal permit to the Planning/ Zoning Administrator with the Planning/ Zoning Administrator certifying the existence of the same on the application.

#### **SECTION 12.6**

The Planning/ Zoning Administrator shall review all permit applications to determine whether the proposed development or building sites are reasonably free from flooding and complies with the requirements of this ordinance, and other applicable state law.

#### **SECTION 12.7**

When the Planning/ Zoning Administrator has issued a building permit for a building which is to be flood-proof pursuant to the regulations of this zoning ordinance, the Planning/ Zoning Administrator shall require that a written flood-proofing certificate from a registered professional engineer or architect to the effect that the flood-proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood be received. The flood-proofing certificate shall indicate thereon the specific elevation (in relation to Mean Sea level) to which the structure is flood-proofed. The original of the flood-proofing certificate shall be retained by the Planning/ Zoning Administrator as a permanent record open for public inspection. Provisions of this paragraph shall apply only to developments, structures or substantial improvements wholly or partially within the SFHA as shown on the FIRM or within the County Floodplain Management Area (CFMA) as shown on the County Floodplain Management Map (CFMM) on which work is commenced on or after May 25, 1977.

#### **SECTION 12.8**

The Ward County Planning/ Zoning Administrator shall, as to all new or substantially improved structures within the SFHA as shown on the FIRM or within the CFMA as shown on the CFMM on which work is commenced on or after May 25, 1977, obtain and maintain as a permanent record open for public inspection the following information:

- (A) The elevation (in relation to Mean Sea Level) of the lowest floor (including basement and excluding garage),
- (B) Whether or not such structure contains a basement and/or a garage, and
- (C) If applicable, the elevation (in relation to Mean Sea Level) to which the structure has been flood-proofed.

## **Chapter 13**

### **DUTIES OF THE WARD COUNTY ENGINEER**

#### **SECTION 13.1**

Ward County Engineer shall notify in writing adjacent communities and the North Dakota State Water Commission prior to the alteration or relocation of a water course within the community and the Engineer shall submit copies of these notifications to the Federal Emergency Management Agency. The Ward County Engineer shall provide documentation that the flood carrying capacity within the altered or relocated portion of the water course is maintained at no less than the capacity prior to such alteration or relocation. To achieve the purposes set forth herein, the Ward County Engineer with approval of the Board of Ward County Commissioners is permitted on behalf of Ward County to bring appropriate court proceedings to enjoin acts by private persons which, to a reasonable degree of certainty, would diminish the capacity of a water course within the community. The Ward County Engineer is further authorized to issue cease and desist orders to any persons acting under the authority of Ward County if it is determined such person is engaging in activities which, to a reasonable degree of certainty, would have the tendency to diminish the capacity of a water course within the community.

#### **SECTION 13.2**

The Ward County Emergency Manager shall prepare an evacuation plan for all manufactured home parks located within the SFHA on the FIRM or within the CFMA as shown on the CFMM, which shall indicate alternate vehicular access and escape routes, and update as often as changed circumstances make necessary. The Ward County Emergency Manager shall file the plan and amendments thereto with the office of the Ward County Auditor upon completion.

## **Chapter 14**

### **ADMINISTRATION**

#### **SECTION 14.1**

The Board of Ward County Commissioners shall provide for whatever assistance and approval may be necessary in the office of the County Planning/ Zoning Administrator to carry out the provisions of this ordinance.

#### **SECTION 14.2 ZONING CHANGES**

Land use zone changes in the floodplain or the County Floodplain Management Area shall be made by the procedure specified in any Zoning Ordinance applicable to the land area

concerned. Changes to the FIRM shall only be made by FEMA and shall be considered and handled as amendments to this ordinance.

### **SECTION 14.3 BOARD OF WARD COUNTY COMMISSIONERS-POWERS**

Section 14.3.1 The Board of Ward County Commissioners shall have all powers vested in it by the North Dakota Century Code to adopt rules for the conduct of business and may exercise all of the powers conferred on the Commissioners by the North Dakota Century Code.

Section 14.3.2 The Board of Ward County Commissioners shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.

Section 14.3.3 It shall hear and decide variances and exceptions to the terms of this ordinance upon which the Board of Ward County Commissioners are required to pass under this under this ordinance.

### **SECTION 14.4 APPEALS TO THE BOARD OF WARD COUNTY COMMISSIONERS**

Appeals to the Board of Ward County Commissioners may be taken by a person aggrieved or by an officer, department, board or bureau of the political subdivision affected by any decision of the County Commissioners.

#### Section 14.4.1 Hearing Appeals

Separate Hearings. Any person aggrieved by any provision of a ordinance adopted hereunder, or any amendment thereto, may within sixty (60) days after the taking effect of such provision petition for a separate hearing thereon before the County Commissioners. The petition shall be in writing and shall specify in detail the ground of the objections. The petition shall be filed with the Ward County Auditor. A hearing thereon shall be held by the County Commissioners no sooner than ten (10) days, nor longer than forty (40) days, after the filing of the petition with the County Auditor who shall notify the petitioner of the time and place of the hearing. At this hearing the County Commissioners shall consider the matter complained of and shall notify the petitioner, by registered mail, what action, if any, it proposes to take thereon. The provisions of this action shall not operate to curtail or exclude the exercise of any rights or powers of the County Commissioners or any citizen.

Appeals to the District Court. Any person or persons jointly or severally aggrieved by a decision of the County Commissioners under this ordinance may appeal to the District Court in the manner provided in Chapter

- (A) Such variance shall only be issued upon:

- (i) A showing of good sufficient cause,
  - (ii) A determination that the failure to grant the variance would result in exceptional hardship to the applicant,
  - (iii) A determination that the granting of the variance will not result in increase in the Base Flood Elevation or County Floodplain Management Elevation, additional threats to public safety, extraordinary public expense, or create nuisances, or cause fraud on or victimization of the public, or conflict with existing ordinances other than this zoning ordinance, and
  - (iv) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (B) No variance shall be granted within the floodway if any increase in flood levels in the community during the Base Flood or the County Floodplain Management Flow would result from the grant of such variance.
- (C) Variances may be issued by the Board of Ward County Commissioners for new construction and substantial improvement to be erected on a lot contiguous to and surrounded by lots and existing structures constructed below the Base Flood Elevation or the County Floodplain Management Elevation.
- (D) If a variance is granted as requested, the Commissioners shall notify the applicant in writing over the signature of one of the members of the Commission that:
- (i) The application is granted or modified and as modified is granted,
  - (ii) The issuance of a variance to construct the structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and
  - (iii) Such construction below the Base Flood Elevation or the County Floodplain Management Elevation increases the risk to life and property.
- (E) The Ward County Planning/ Zoning Administrator shall maintain as a public record open for inspection all variance applications. If an application was granted or modified and as modified granted, the Planning/ Zoning Administrator shall prepare a written memorandum setting forth the reasons or justifications for the issuance of the variance which shall be annexed to the application. In addition, there shall be attached to the application a photocopy of the notice sent to the applicant pursuant to Section 14.4.1(D)(iii) above and an affidavit of service by mail establishing that the notice was mailed to the applicant at the address provided by the applicant as part of the application.
- (F) The Ward County Planning/ Zoning Administrator shall report such variances issued along with the reason therefore to FEMA in a biennial report.

Section 14.4.2 Mapping Disputes

The following procedure shall be used by the County Commissioners in deciding contested cases in which the location of a floodplain zoning district boundary is disputed. The County Commissioners may, at its discretion, refer any dispute to the Ward County Planning Commission for study and to FEMA. In all cases the person contesting the location of the district boundary shall be given a reasonable opportunity to present their case to the Board of Ward County Commissioners and to submit their own technical evidence if they so desire. The County Commission shall not allow deviations from the boundary lines and zones as established by the maps provided by the Federal Emergency Management Agency unless the evidence presented clearly and conclusively establishes that the maps are incorrect. The maps provided by the Corps of Engineers, and other federal, state and local studies, may be used for technical assistance. Conclusive evidence will be forwarded to FEMA for review and FIRM amendment approval.

## **Chapter 15**

### **CERTIFICATE OF COMPLIANCE**

No vacant land shall be occupied or used and no building hereafter erected, altered, or moved on the floodplain of any river or stream or shall be occupied until a certificate of compliance shall have been issued by the office of the Ward County Planning/ Zoning Administrator. The Planning/ Zoning Administrator shall require the applicant to submit a certification by a registered professional engineer, land surveyor, or architect that the finished fill and building flood elevations, flood-proofing measures are in compliance. The Planning/ Zoning Administrator shall within ten (10) days after receipt of such certification from the applicant issue a certificate of compliance only if the building or premises and the proposed use thereof conform to all the requirements of this ordinance.

## **Chapter 16**

### **AMENDMENTS**

The Board of Ward County Commissioners may, from time to time, amend this regulation by supplementing, change, modifying, or repealing any of the regulations, restrictions, or other provisions of this ordinance. A proposed amendment may be initiated by proceedings as established in Chapter 11-33 of the North Dakota Century Code.

## **Chapter 17**

### **VARIANCES**

If the variance requested relates to a restriction or requirement imposed by this zoning ordinance, the Board of Ward County Commissioners shall apply the following additional criteria and procedures to such request:

- (A) Such variance shall only be issued upon
  - (i) A showing of good sufficient cause,
  - (ii) A determination that the failure to grant the variance would result in exceptional hardship to the applicant,
  - (iii) a determination that the granting of the variance will not result in increased Base Flood Elevation or the County Floodplain Management Elevation, additional threats to public safety, extraordinary public expense, or create nuisances, or cause fraud on or victimization of the public, or conflict with existing ordinances other than this zoning ordinance, and
  - (iv) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (B) No variance shall be granted within the floodway if any increase in flood levels in the community during the Base Flood Elevation or the County Floodplain Management Elevation would result from the grant of such variance.
- (C) Variances may be issued by the Board of Ward County Commissioners for new construction and substantial improvement to be erected on a lot contiguous to and surrounded by lots and existing structures constructed below the Base Flood Elevation or the County Floodplain Management Elevation.
- (D) If a variance is granted as requested, the Commissioners shall notify the applicant in writing over the signature of one of the members of the Commission that:
  - (i) The application is granted or modified and as modified is granted,
  - (ii) The issuance of a variance to construct the structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and
  - (iii) Such construction below the Base Flood Elevation or County Floodplain Management Elevation increases the risk to life and property.
- (E) The Ward County Planning/ Zoning Administrator shall maintain as a public record open for inspection all variance applications. If an application was granted or modified and as modified granted, the Planning/ Zoning Administrator shall prepare a written memorandum setting forth the reasons or justifications for the issuance of the variance which shall be annexed to the application. In addition, there shall be attached to the application a photocopy of the notice sent to the applicant pursuant to Chapter 17(D)(iii)above and an affidavit of service by mail establishing that the

notice was mailed to the applicant at the address provided by the applicant as part of the application.

- (F) The Ward County Planning/ Zoning Administrator shall report such variances issued along with the reason therefore to FEMA in a biennial report.

First Reading: 18 December, 2012

Publication Date: 24 December, 2012

Second Reading: 15 January, 2013

Adopted this 15<sup>th</sup> day of January, 2013

Signed: 

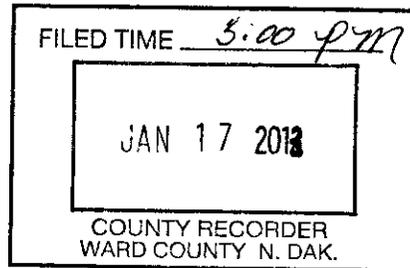
Attest: 



# Fee Schedule Floodplain Zoning

Fill Permit ..... \$50.00

Building Permit..... \$4.50 per \$1,000 of Structure Value



*BB*